



W.P(MD)Nos.5822 and 13972 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2023

CORAM :

**THE HONOURABLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.P(MD)Nos.5822 and 13972 of 2021

and

W.M.P(MD)No.4576 of 2021

and

W.M.P(MD)Nos.10920 and 10921 of 2021

W.P(MD)No.5822 of 2021:

M.R.Gopinathan

... Petitioner

Vs.

- 1.The Chairperson,
Debts Recovery Appellate Tribunal,
Chennai.
- 2.The Presiding Officer,
The Debts Recovery Tribunal,
Madurai.
- 3.The Recovery Officer-II,
The Debts Recovery Tribunal,
Madurai.
- 4.Mr.Rajeshkannan
- 5.Mrs.Tamilkodi



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6.M/s.Dhanalakshmi Bank Limited.,
Urmila Complex,
32, Station Avenue Road,
Chembur, Mumbai – 400 071.

7.Gold Coin Textiles,
52, Champa Galli,
1st Floor, Zaveri Bazar,
Mumbai.

8.Mrs.Shanthi Gopinath,
Sole Prop. Of Gold Coin,
52, Champa Galli,
1st Floor, Zaveri Bazar,
Mumbai.

9.Mrs.R.Anitha

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order of the first respondent in M.A.No.115 of 2015 dated 15.09.2020 and quash the same as illegal and consequently confirm the order of the second respondent in A.O.R.No.1 of 2015 dated 21.07.2015 and the third respondent in I.A.No.826 of 2008 in R.P.No.352 of 2007 in D.R.C.No.EX.52 and 53 dated 20.02.2015.

For Petitioner : Mr.M.Kannan

For R-5 : Mr.G.Prabhu Rajadurai.



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5.Mr.M.Rajeshkannan

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PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order of the first respondent in M.A.No.115 of 2015 dated 15.09.2020 confirming the order of the 2nd respondent dated 21.07.2015 in AOR.No.1 of 2015 and that the third respondent dated 20.02.2015 in I.A.No.826 of 2008 and to quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai

For R-4 : Mr.M.Kannan

For R1 to R-3 &
R5 to R8 : No Appearance

COMMON ORDER

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

Heard the learned counsel on either side.

2. W.P(MD)No.5822 of 2021, is filed by the borrower.

3. W.P(MD)No.13972 of 2021, is filed by the purchaser from the auction purchaser.



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4. It appears that the bank had filed original application before the Debts Recovery Tribunal for recovery of amount from the borrower. Recovery certificate is issued for Rs.19,50,118/- with future interest on or about 24.08.2004. The execution proceedings/recovery proceedings were filed by the bank before the Debts Recovery Tribunal. On or about 24.03.2008, tender-cum-auction notice was issued in respect of three properties of the borrower and auction was conducted on 24.03.2008. Three properties were put to auction. Two properties were purchased by one auction purchaser and another property was purchased by another auction purchaser, who happened to be the wife of one of the Officers of the Debts Recovery Tribunal according to the learned counsel for the borrower.

5. In respect of the properties purchased by the auction purchaser and subject matter of the present writ litigation, the reserve price was fixed at Rs.6,31,000/- and Rs.8,67,000/-. The borrower challenged the auction sale conducted on 24.03.2008. The Debts Recovery Tribunal granted stay to the confirmation of the sale on or about 16.05.2008 and the sale certificate was issued on 27.06.2008 after the stay was granted. The Debts Recovery Tribunal set aside the auction sale on the following two grounds:



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(i) The property was sold on the basis of the reserve price

fixed about 1 ½ years back; and

(ii) In spite of the order of stay, the sale certificate was issued.

6. The order of the Debts Recovery Tribunal was challenged before the Debt Recovery Appellate Tribunal by the auction purchaser.

7. In the interregnum, the auction purchaser sold the property to the petitioner in W.P(MD)No.13972 of 2021 by way of a registered sale deed. As such, the said petitioner joined as appellant No.2 in the appeal. The appeal was dismissed with certain directions. The borrower has challenged the direction No.10(iii) and the purchaser from the auction purchaser has assailed the entire order.

8. The learned Advocate for the petitioner in W.P(MD)No.13972 of 2021, submits that the Debts Recovery Tribunal erred in arriving at the conclusion that the reserve price fixed was on the lower side. The property was sold in 2008. The petitioner in W.P(MD)No.13972 of 2021, purchased the property in the year 2012. Even on the said



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date, the Government valuation of the said properties was less than the reserve price. As such, it cannot be said that the reserve price is unconscionable or low. The stay was after the sale, ie., after the auction was conducted. As such, only because the sale certificate is issued after stay is granted, the same would not affect the merits of the sale.

9. The learned Advocate for the borrower submits that there was no reason for directing compensation of Rs.5,00,000/- to be paid by the borrower. The borrower was challenging the sale on legal grounds. For prosecuting legal remedies, the compensation could not have been directed against the borrower.

10. We have considered the submissions canvassed by the parties.

11. The bank or the auction purchaser has not challenged the order of the Debt Recovery Appellate Tribunal. The bank has accepted the order. The auction purchaser certainly now has no interest as he sold the property to the petitioner in W.P(MD)No.13972 of 2021.

12. We can understand the predicament of the petitioner in



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W.P(MD)No.13972 of 2021. However, the fact also remains that the sale certificate was issued during the operation of the order of stay so also steps were not taken to get the reserve price fixed in a proper manner prior to the sale being conducted.

13. The orders of the Debts Recovery Tribunal and Debt Recovery Appellate Tribunal does not appear to be perverse.

14. The contention of the borrower that he has been unnecessarily saddled with the compensation of Rs..5,00,000/-, cannot be appreciated. The borrower has not deposited the amount. Even after the order was passed, the borrower has not paid the compensation, not paid the amount to the bank. The bonafides of the petitioners are doubtful.

15. In view of that, we are not inclined to exercise our jurisdiction in favour of the borrower under Article 226 of the Constitution of India.

16. The learned Advocate for the borrower submits that the borrower has moved for One Time Settlement with the bank. It is for the bank to consider the same.

17. In light of the above, the order of the Debts Recovery



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Appellate Tribunal, is not interfered with.

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18. The borrower shall pay the compensation amount as directed by the Debts Recovery Tribunal or or before 15.01.2024. If the petitioner fails to pay the amount as directed by the Debts Recovery Tribunal, the bank may be entitled to proceed further in accordance with law.

19. The Writ Petitions stand dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

[S.V.G., C.J.]

[L.V.G., J.]

30.11.2023

Index : Yes / No
Neutral Citation : Yes / No
PM

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THE HONOURABLE CHIEF JUSTICE
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L.VICTORIA GOWRI, J.

PM

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