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W.P.(MD)No.4544 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2023

CORAM:

**THE HON'BLE MR.T.RAJA, THE ACTING CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR**

**W.P.(MD)No.4544 of 2023
and
W.M.P(MD)No.4257 of 2023**

C.Bijumon Jacob,
S/o.Chocko,
Madathil House,
Near Government College,
Vellaiyangudi Post,
Veliakandam,
Kattapana,
Kerala State.

... Petitioner

-VS-

1.The Authorised Officer,
State Bank of India,
Stressed Assets Management Branch,
Vinayaganagar Branch,
First Floor, No.8, Dr.Ambedkar Road,
Madurai District.

2.The Branch Manager,
State Bank of India,
Theni Branch,
No.289, SR Tower,
Periyakulam Road,
Theni District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the e-auction sale notice issued by the first respondent dated 16.02.2023 and quash the same as illegal and consequently, direct the respondent to hand over the possession of the description of the property mentioned in the above said notice to the petitioner.

For Petitioner : Mr.G.Thiruvartselvan

For Respondents : Mr.Pethu Rajesh
Standing Counsel

ORDER

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

Mr.C.Bijumon Jacob, S/o.Chocko, approached the second respondent / State Bank of India, Theni Branch and availed mortgaged loan of Rs.1,87,00,000/- in the year 2009 by giving his agricultural land as a collateral security.

2.Learned counsel appearing for the petitioner submitted that although the petitioner was regularly repaying the said loan, in the year 2010, the petitioner and three other title holders of the property entered into a sale agreement with one



Guru Ambeth, for a sum of Rs.2,62,50,000/-, in respect of 57 acres. In the said agreement, the buyer also admitted that he would repay the entire loan amount and further promised to complete the sale within a period of 60 days and the said Guru Ambeth also approached the petitioner and stated that he is arranging the entire amount for repayment and asked for a date to register the document. Believing the words of the said Guru Ambeth that the said subsequent purchaser would come forward to pay the money, which can be paid to the respondent Bank, all of them executed a sale deed in favour of the abovesaid Guru Ambeth on the file of the Sub Registrar Office, Chinnamanur, Theni District. After completing the sale, the said Guru Ambeth escaped from his liability to pay the sale consideration to the petitioner and others. In view thereof, after more than three years, the respondent Bank registered a criminal case in Crime No.30 of 2014 for the offences against the petitioner and four others under Sections 468, 471, 420 r/w 34 of I.P.C on the basis of the complaint lodged by the Branch Manager, State Bank of Travancore, Theni Branch.



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3. In the meanwhile, due to the failure of monsoon, the petitioner was unable to get any yield. As a result, he was unable to pay the monthly instalments to the respondent Bank. Therefore, the respondent Bank has issued a demand notice under Section 13(2) of the SARFAESI Act on 13.10.2016, demanding a sum of Rs.91,85,587/-. The respondent Bank also filed an application in O.A.No.143 of 2017 before the Debts Recovery Tribunal, Madurai, against the petitioner and three others. While so, the first respondent again issued a demand notice on 02.08.2022 under Section 13(2) of the SARFAESI Act demanding a sum of Rs.2,92,86,629/-, followed by possession notice issued under Section 13(4) of the SARFAESI Act on 03.11.2022. The said Guru Ambeth challenged the possession notice issued under Section 13(4) of the Act, dated 03.11.2022 in S.A.Nos.383 and 384 of 2022, adding the petitioner as fourth defendant. Subsequently, the first respondent issued e-auction sale notice for recovery a sum of Rs.3,00,76,015/- and the sale was fixed on 15.12.2022. Since the sale was not conducted on the said date, the first respondent once again issued an e-auction sale notice for recovery of a sum of Rs.1,09,46,166/- by the first respondent Bank on 16.02.2023.



Aggrieved over the same, the petitioner has been advised to come to this Court.

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4. In reply, the learned standing counsel appearing for the Bank filed a counter-affidavit on behalf of the respondents 1 and 2 and submitted that the petitioner has come to this Court with unclean hands and therefore, he is not entitled to approach this Court invoking the extra ordinary jurisdiction under Article 226 of the Constitution of India.

5. Firstly, having pledged the property by handing over the title deeds, the petitioner has borrowed a loan for a sum of Rs.1,87,00,000/- showing the subject property as a security by way of mortgage in the year 2009. Thereafter, the petitioner has entered into a sale agreement on 23.08.2010. This is the first crime committed by the petitioner.

6. Secondly, after receiving the sale consideration from the subsequent purchaser, Guru Ambeth, the petitioner has not even paid the money. Thereafter, the respondent Bank also approached the District Crime Branch, Theni against the petitioner



and three others for their collusion with Guru Ambeth and registered a criminal complaint for the offences under Sections 468, 471, 420 r/w 34 of I.P.C in Crime No.30 of 2014. Even after the registration of the First Information Report, the accused in the crime are very adamant in their attitude and they have also made various transactions in respect of the property mortgaged in the respondent Bank.

7. Therefore, when the petitioner has come to this Court with unclean hands, this extraordinary jurisdiction under Article 226 of the Constitution of India cannot be extended to him. Adding further, the learned counsel appearing for the petitioner submitted that the petitioner has paid some amount. When the petitioner has borrowed loan for a sum of Rs.1,87,00,000/- from the second respondent Bank, it is not known as to how the petitioner can alienate the mortgaged property to the third parties. Having taken steps to sell away the mortgaged property, he could have taken extra care to repay the amount, failing which, the respondent Bank is always legally entitled to prosecute a criminal case against the petitioner and others, which has been done in this case.



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8. In view of the above, we are of the view that the petitioner has not come to this Court with clean hands, for which, we are inclined to impose a cost of Rs.5,000/- (Rupees Five Thousand Only) to the petitioner.

9. Accordingly, this Writ Petition is dismissed with costs of Rs.5,000/- (Rupees Five Thousand Only) payable by the petitioner to the Legal Aid Services Authority attached to this Bench, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

[T.R., A.C.J.] [D.K.K., J.]
03.03.2023

NCC : Yes / No
Index : Yes / No
Internet: Yes
ps



W.P.(MD)No.4544 of 2021



To

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T.RAJA, A.C.J.

and

D.KRISHNAKUMAR, J.

ps

ORDER MADE IN
W.P.(MD)No.4544 of 2023

DATED : 03.03.2023