



W.P(MD)No.5354 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :05.04.2023

CORAM :

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P(MD)No.5354 of 2023
and
WMP(MD)No.5017 of 2023**

Mr.K.S.Gnanamuthu

... Petitioner

vs.

1. The Authorized Officer,
Union Bank of India,
Thanjavur Kauvery Nagar Branch,
D No.1, Dhimmal Ammal Nagar,
Pudukottai Road, Thanjavur.

2. Mr.George David

3. Mrs.Paulin Jothi

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent pertaining to E-auction Sale Notice dated 21.02.2023 and quash the same as it was issued by him in an arbitrary manner and to direct him to bring the house site belonging to the 2nd respondent comprised in Old Survey No.120/2 and New Survey No.120/2A2 ad measuring 2250 sq.ft situated in Madhakottai Village, Nanjikottai Taluk, Thanjavur for auction.



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For Petitioner : Mr.P.Sesubalan Raja
For R1 : Mr.R.Pandivel

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ORDER

(Order of the Court was made by R.SUBRAMANIAN, J.)

With a view to ensure an opportunity to the petitioner to save his house property, we had passed an interim order deferring the sale on condition that the petitioner pays a sum of Rs.28 Lakhs on or before 27.03.2023. It is now stated that the said condition has not been complied with. The petitioner would claim that he had made an offer to pay Rs.28 Lakhs through a third person who had agreed to purchase the property of the principal debtor namely, the son of the petitioner, situated in new Survey No.120/2A2. The Bank cannot agree for such course of conduct, since a private sale under the SARFAESI Act has to happen with the consent of the mortgagor. Therefore, the Bank has rightly refused to accept the said offer.

2. The learned counsel for the petitioner would vehemently contend that considering the age of the petitioner and the fact that the principal debtor is possessed of valuable property, the action of the Bank in bringing his property alone is unjustified.



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3. We do not think we can go into the said question since the law relating to the liability of the guarantor is well settled. The petitioner has a right to seek recovery of the value of his property from the principal borrower namely, his son, who even according to the petitioner is possessed a property worths more than several crores. If we have to accede to the submissions of the learned counsel for the petitioner, we would be in effect re-writing the contract between the parties. We do not think that we could undertake such an exercise in the writ jurisdiction.

4. Hence, the Writ Petition fails and it is accordingly dismissed. However, it will be open to the petitioner to move the Debts Recovery Tribunal, if he is so advised. No costs. Connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) & (L.VICTORIA GOWRI, J.)
05.04.2023

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and
L.VICTORIA GOWRI, J.

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ORDER MADE IN
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