



W.P.(MD) No.5938 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.03.2023

CORAM:

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

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and

W.M.P.(MD) Nos.5516 & 5517 of 2023

A.Evangeline Jemi

... Petitioner

-VS-

1.The Regional Director,
Reserve Bank of India,
Department of Banking Supervisor,
For Glacis, No.16, Rajaji Salai,
Chennai – 600 001.

2.The Authorized Officer,
Tamil Nadu Mercantile Bank Limited,
Palliyadi Branch,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the impugned sale notice, dated 14.02.2023 published in the Tamil Dailies fixing the auction sale on 21.03.2023 by the second respondent in respect of the petitioner's property mentioned as Item No.2 bearing Survey No.790/4 situated at



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Thiruvithamcode Village, Kalkulam Taluk, Kanyakumari District
measuring to an extent of 52 cents and quash the same as devoid of merits
forthwith.

For Petitioners : Mr.B.Ashok

For Respondents : Mr.N.Dilip Kumar, Standing Counsel

ORDER

[Order of the Court was made by R.SUBRAMANIAN, J.]

The challenge in the writ petition is to the sale notice, dated 14.02.2023, notifying the sale of the property that was purchased by the petitioner in a Court auction held pursuant to a decree of a civil Court on 21.03.2023.

2. The learned counsel for the petitioner would vehemently contend that she being a *bonafide* purchaser in a Court auction sale held in the year 2018, the bank cannot proceed with the sale of the property.

3. Mr.N.Dilip Kumar, learned Standing Counsel appearing for the bank would submit that the mortgage was executed in the year 2007 way ahead of the sale in favour of the petitioner. Therefore, the bank has got a right to bring the property for sale based on the mortgage.



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4. After hearing the learned counsel for some time, we find that the original borrower, who was running a Chit Fund Company had mortgaged several properties, numbering about fifteen, in favour of the bank on various dates. The subject property which is purchased by the petitioner is one of them. The learned counsel for the petitioner would submit that if only the bank postpones the sale of the property that has been purchased by the petitioner and sells the other properties, she would be able to save the property if the sale of other properties are sufficient to satisfy the debt due to the bank.

5. We find some reasonableness in the request of the learned counsel for the petitioner. At the same time, we also find that the petitioner has purchased the property for about Rs.20,00,000/- in the Court auction. The reserved price notified for the property by the bank is Rs.47,43,000/-. There is difference of Rs.27,43,000/- in the valuation of the property. Even if we account half of it towards escalation in price, still there will be a balance of Rs.13,50,000/- left with the petitioner. We, therefore, find it will be in the interest of justice, to direct the petitioner to pay Rs.15,00,000/-(Rupees Fifteen Lakhs Only) to the bank on or before 15.04.2023 and on such payment, the bank is permitted to conduct the sale but it shall not confirm the sale. If the bank is able to recover the



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debt through the sale of other properties, the bank will repay the sum of Rs.15,00,000/- to the petitioner sans interest and there will be no need to sell the property purchased by the petitioner. If the bank is not able to recover the debt by the sale of other properties, the bank will repay Rs.15,00,000/- to the petitioner and it can proceed with the sale of the property purchased by the petitioner.

6. The writ petition is disposed of on the above terms.

No Costs. Consequently, connected miscellaneous petitions are closed.

[R.S.M., J.]

[L.V.G., J.]

17.03.2023

NCC : Yes/No

Index : Yes/No

PM



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and
L.VICTORIA GOWRI, J.

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