



W.P(MD)Nos.14021 & 15853 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P(MD)Nos.14021 and 15853 of 2023

and

W.M.P(MD)No.11846 of 2023

W.P(MD)No.14021 of 2023:-

1. M/s.Maxican Export,
Represented by its Partners,
Mr.N.Dhanaraj and Mrs.D.Subadevi,
No.9/1497/1, Mahatma Nagar,
Andankovil East Anna Nagar,
Karur-639 002.

2. Dhanaraj

3. Subadevi

... Petitioners

VS.

1. The Authorized Officer,
Canara Bank,
Karur Branch,
Karur.

2. M.Prabu

3. M.Suresh

... Respondents

(R2 & R3 are impleaded vide court order dated 20.07.2023 in
WMP(MD)No.14657 of 2023)



W.P(MD)Nos.14021 & 15853 of 2023

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondent from confirming the auction sale conducted on 12.06.2023 pursuant to his sale notice dated 10.05.2023 and thereby direct the respondent to issue NOC and partial discharge of the petitioners' property given as collateral based on the petitioners' representation dated 12.06.2023 submitted through E-mail and post within the time limit that may be stipulated by this Court.

For Petitioners : Mr.S.Srinivasa Raghavan for
Mr.G.Thalaimutharasu
For R1 : Mr.R.Anandharaj
For R2 & R3 : Mr.K.Suresh

W.P(MD)No.15853 of 2023:-

Dhanaraj

... Petitioner

-VS-

1. The General Manager,
Canara Bank,
Madurai Circle Office,
Madurai.

2. The Deputy General Manager,
Canara Bank,
Trichy Regional Office,
Trichy.

3. The Assistant General Manager,
Canara Bank,
Trichy Regional Office,
Trichy.

... Respondents



W.P(MD)Nos.14021 & 15853 of 2023

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to permit the petitioner to operate his Savings Bank Account maintained with the 3rd respondent in A/c.No.110062608105 i.e. to withdraw and deposit money so as to meet his day to day needs/expenses based on his representation dated 26.06.2023 within the time limit that may be stipulated by this Court.

For Petitioner : Mr.S.Srinivasa Raghavan for
Mr.G.Thalaimutharasu
For R1 : Mr.R.Anandharaj
For R2 & R3 : Mr.K.Suresh

COMMON ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

W.P(MD)No.14021 of 2023 is filed to issue a Writ of Mandamus, forbearing the respondent from confirming the auction sale conducted on 12.06.2023 pursuant to the sale notice dated 10.05.2023 and thereby direct the respondent to issue NOC and partial discharge of the petitioners' property given as collateral based on the petitioners' representation dated 12.06.2023 submitted through E-mail and post within a time limit that may be stipulated by this Court.



W.P(MD)Nos.14021 & 15853 of 2023

2. W.P(MD)No.15853 of 2023 is filed for a Mandamus, directing the respondents to permit the petitioner to operate his Savings Bank Account maintained with the 3rd respondent vide A/c.No.110062608105 i.e. to withdraw and deposit money so as to meet his day to day needs/expenses, based on his representation dated 26.06.2023 within a time frame.

3. Pursuant to the sale notice, it is admitted that the respondents 2 and 3 in W.P(MD)No.14021 of 2023 have participated in the auction and were successful in their offer for Rs. 2,56,00,000/-. It is at that stage, the petitioners in W.P(MD)No. 14021 of 2023 approached this Court and this Court by order dated 15.06.2023 granted interim injunction restraining the respondent Bank from issuing sale certificate on condition that the petitioners should pay a sum of Rs.3 Crores on or before 15.07.2023. A further direction was also issued to the Bank to keep the amount in an interest bearing account till further orders.

4. The auction purchasers were willing to raise their offer from Rs.2,56,00,000/- to Rs.3,10,00,000/- for the 10 plots which



W.P(MD)Nos.14021 & 15853 of 2023

were advertised for sale. It is in the said circumstances, the borrower has undertaken to file an affidavit that he would pay a sum of Rs.3.3 Crores for releasing 10 plots which were brought for auction. In the said circumstances, this Court after recording the statement of the respective counsels, pointed out to the respondent Bank that the offer of the borrower will be more beneficial to the respondent Bank and directed the petitioners to file an affidavit of undertaking and the Bank to file an affidavit to indicate that they have no objection for releasing 10 plots in case a sum of Rs.3.3 Crores is deposited by the petitioners in the loan account.

5. Today, an undertaking affidavit filed by one Gunasekaran is produced before this Court, wherein, he has stated that he has negotiated with the petitioner's company namely, M/s.Maxican Export for purchase of 10 plots registered in the names of the petitioners namely, Dhanaraj and Subadevi. In the affidavit, the said Gunasekaran has admitted that he is ready to transfer a sum of Rs.3 Crores from his savings bank account to the 1st respondent bank, after receiving the no objection certificate from the 1st respondent bank to enable M/s.Maxican Export to execute a sale deed in his



W.P(MD)Nos.14021 & 15853 of 2023

favour. In the undertaking affidavit, it is further stated that the said Gunasekaran is also proposed to purchase the other assets of M/s.Maxican Export so as to enable the petitioners to discharge all the loans due to the 1st respondent bank. The petitioners have also given an undertaking to discharge the remaining amount due to the Bank in respect of all the loan accounts within a period of six months from the date of no objection certificate. The petitioners have undertaken to deposit the remaining amount of Rs.30 Lakhs to be adjusted in the loan.

6. The 1st respondent has also filed an affidavit acknowledging that the petitioners undertook to deposit a sum of Rs. 3,30,00,000/- and that on such deposit, the Bank is ready to receive the said amount and give no objection certificate to the petitioners for the release of the 10 plots mentioned in the sale notice.

7. Since the borrower has come before this Court before the sale is confirmed in favour of the auction purchasers, this Court finds that the right of redemption should be upheld and as agreed by the respondent Bank, the mortgaged property namely, the 10 plots can



W.P(MD)Nos.14021 & 15853 of 2023

be permitted to be sold by the petitioners to any third party. Having regard to the facts and circumstances recorded by this Court, this writ petition is allowed and disposed of with the following directions:-

(a) The sale notice dated 10.05.2023 and all further proceedings pursuant to the sale notice are set aside subject to the condition that the 1st respondent Bank pays 25% of the amount deposited by the respondents 2 and 3 to them with interest at 12% per annum within a period of one week from the date of receipt of a copy of this order. Such interest amount payable by the Bank will be debited to the loan account of the petitioners.

(b) The respondent Bank shall release the 10 plots from mortgage so as to enable the petitioners to sell the same to the third party, upon receipt of a sum of Rs.3.30 Crores as agreed.

(c) It is also open to the 1st respondent Bank to consider release of other properties when the petitioners bring any prospective buyer to purchase any other property for the price that may be mutually agreed by the Bank as well as the petitioners.

(d) It is open to the parties to approach this Court in case of any conflict in the working arrangement as indicated in this order.

(e) It is made clear that the petitioners are expected to make



W.P(MD)Nos.14021 & 15853 of 2023

substantial payment before seeking release of any property of other items.

(f) As per the undertaking, the petitioners shall discharge the entire loan within a period of six months from the date of issuance of no objection certificate.

(g) In case, the petitioners are unable to discharge the entire loan, it is open to them to seek extension of time.

No costs. Connected miscellaneous petition is closed.

[S.S.S.R, J.] [D.B.C., J.]
27.07.2023

Index : Yes / No
Neutral Citation : Yes / No
bala



WEB COPY



W.P(MD)Nos.14021 & 15853 of 2023

S.S.SUNDAR, J.
and
D.BHARATHA CHAKRAVARTHY, J.

bala

W.P(MD)Nos.14021 & 15853 of 2023

27.07.2023