



W.P.(MD) No.20914 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD) No.20914 of 2022

and W.M.P.(MD)Nos.15162, 15163 & 17174 of 2022

1.T.Sankarasubramaniam

2.K.P.Tirumalai

... Petitioners

Vs.

1.The Debts Recovery Tribunal,
IV Floor, Kalyani Tower,
Melur Road,
Madurai.

2.The Authorized Officer,
City Union Bank Limited,
Credit Recovery and Management Department,
“NARAYANA”Administrative Office,
No.24-B, Gandhi Nagar,
Kumbakonam – 612 001.



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3.The Branch Manager,
City Union Bank Limited,
Srivilliputhur Branch,
Srivilliputhur.

4.R.Shamugapriya

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned Auction Sale Notice of the 2nd respondent dated 31.05.2022 and the alleged Auction Sale conducted on 18.06.2022 ending up with the Registration of Sale Deed in favour of the 4th respondent dated 03.08.2022 on the file of S.R.O.Watrrap, for the subject properties, and quash the same.

For Petitioners : Mr.Isaac Mohanlal,
Senior Counsel for Mr.J.Alaguramjothi

For Respondents : Mr.V.Malaiyendran for R1
Mr.V.S.Karthi
Standing Counsel for R2 & R3
Mr.G.Prabhu Rajadurai
for Mr.S.Manickam for R4



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ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

This Writ Petition has been filed challenging the impugned Auction Sale Notice of the 2nd respondent dated 31.05.2022 and the alleged Auction Sale conducted on 18.06.2022, ending up with the Registration of Sale Deed in favour of the fourth respondent dated 03.08.2022 on the file of S.R.O., Wattrap, for the subject properties.

2. It is the case of the petitioners that the 1st petitioner along with one G.Muthusmay was doing Food Masala Manufacturing and selling business and they availed credit facilities from the 3rd respondent bank for their business activities. Due to health conditions, the petitioners were not in a position to repay the loan amount and hence, the 2nd bank classified the loan account of the petitioners as NPA on 03.10.2016 and issued a demand notice dated 22.02.2017 under Section 13(2) of the SARFAESI Act, demanding a sum of Rs.99,22,629/- as on 19.02.2017. Thereafter, the 2nd respondent bank issued possession notice



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dated 18.08.2017, under Section 13(4) of the SARFAESI Act, and took symbolic possession of the subject properties and the physical possession was also taken during 2019. Thereafter, the 2nd respondent bank issued the impugned auction sale notice dated 31.05.2022, by fixing the date of sale on 18.06.2022. As against the same, the petitioner has filed this Writ Petition.

3. The learned Senior Counsel appearing for the petitioner has relied upon the earlier auction sale notice dated 26.11.2018 and submitted that in the said notice, the reserved price was fixed as Rs.45 lakhs in respect of the first property and Rs.12 lakhs in respect of the second property, totally Rs.57 lakhs, whereas in the present impugned auction sale notice, the reserved price was fixed for the properties 1 and 2 as Rs.35 lakhs. He further submitted that the 4th respondent, in colluding with the respondent banks, participated in the auction sale and has purchased the subject properties for meagre amount, without taking note of the earlier reserved priced fixed by the respondents bank. Therefore, the impugned order is liable to be set aside.



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4. The learned counsel appearing for the auction purchaser / 4th respondent has strongly objected the contention of the learned Senior Counsel appearing for the petitioner and submitted that the auction notice has been served to the petitioner on 31.05.2022 and the auction was held on 18.06.2022 and the auction purchaser viz., Smt.R.Shanmugapriya, was the successful bidder in the aforesaid auction and 2nd respondent bank has confirmed the sale and thereafter, issued the sale certificate in favour of the 4th respondent on 12.07.2022 and the patta was also muted in the name of the 4th respondent on 23.08.2022. He further submitted that if the petitioner is aggrieved by the aforesaid reserved priced fixed by the respondents bank, he has to challenge the aforesaid auction sale conducted by the respondents bank before the appropriate forum. However, without doing the same, now the petitioner has filed this writ petition and therefore, this writ petition is liable to be dismissed.

5. We have heard the learned counsel appearing for the respective parties and perused the materials available on record.



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6. On a perusal of the records, it is seen that the 2nd respondent bank issued the impugned auction sale notice dated 31.05.2022, by fixing the date of auction on 18.06.2022. The petitioner was also present in the office of the second respondent on the date of sale. As rightly contended by the learned counsel appearing for the auction purchaser, if the petitioner is aggrieved by the reserved price fixed by the respondents bank, he has to approach the appropriate forum by challenging the said auction conducted by the respondents bank. Further, it is seen that the auction was conducted on 18.06.2022, the sale was confirmed and the sale certificate was also issued in favour of the 4th respondent and the patta was also mutated in the name of the fourth respondent on 23.08.2022. In view of the above facts, we are of the view that the petitioners have not challenged the subsequent even taken place for registration of the sale certificate in favour of the 4th respondent. Hence, we are not inclined to entertain this Writ Petition. However, if any illegality committed by the respondents bank in conducting the sale, it is always open to the petitioner to approach the DRT for appropriate orders. If any appeal arises against any of the



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proceedings, the period during which the writ petition was pending before this Court, shall be excluded by the forum concerned.

7. With the above liberty, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

[D.K.K., J.] [R.V., J.]

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NCC : Yes / No
Index : Yes / No

vsm

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