



W.P(MD)No.14955 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14955 of 2015

and

M.P.(MD) Nos.1 & 2 of 2015

Rajakumari

... Petitioner

Vs

- 1.The Deputy Registrar,
Co-operative Societies,
Thuckalai,
Kanyakumari District.
- 2.The Authorised Officer,
M/s.Sundaram BNP Paribas Home
Finance Limited,
No.131, Kallalagar Shopping Complex,
Tallakulam,
Madurai-02.
- 3.Puliyur Salai Primary Agricultural
Co-operative Credit Society,
Puliyur Salai,
Kanyakumari District.
***(R.3 is suo motu impleaded vide
order of this Court dated 20.07.2023)***

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned auction notice dated 08.07.2015 published by the first respondent on 11.07.2015 insofar as it relates to the extent of 10 cents along with residential building measuring 1034 sq. ft. bearing Old Door No.4/33 and New Door No. 4/51 situated in Muzhucode Village Panchayat, Vellamcode Village, Vilavancode Taluk, Kanyakumari District and quash the same.

For Petitioner : Mr.G.Gnanagurunathan

For Respondents : Mr.D.Gandhiraj
Special Government Pleader
for R.1 & R.3

No appearance for R.2

ORDER

Heard both sides.

2. The petitioner had participated in the auction conducted by the second respondent on 29.02.2008 and purchased the petition mentioned property which measures 10 cents. The second respondent also issued registered sale certificate dated 18.11.2008 (Document No.314/2009). The petitioner is in possession and enjoyment of the purchased land and building. She is aggrieved by the impugned auction notice dated 08.07.2015 issued by the first respondent. The property purchased by the petitioner is also covered by the impugned auction notice. That led to the filing of this writ petition.



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3. The following facts are beyond dispute. The petition mentioned property belonged to one K.Nallathambi. He was employed in the third respondent Society as Secretary. He appears to have committed misappropriation. The surcharge order was also passed against him. The property was attached on 25.08.2004 under the provisions of the Tamil Nadu Co-operative Societies Act. Unfortunately for the third respondent, the said K.Nallathambi had mortgaged the property in favour of the second respondent on 01.07.2003 itself. The second respondent is an institution empowered to invoke the provisions of SARFAESI Act. Exercising the statutory power, the property was brought to sale. The petitioner purchased the property in the auction held under the provisions of SARFAESI Act. It is well settled that the provisions of the Act will prevail over any other debt, due or demand. The Hon'ble Full Bench of Madras High Court in a decision reported in **2016 (6) CTC 769 (The Assistant Commissioner Vs. The Indian Overseas Bank and another)** had held as follows :

“1. The Writ Petitions have been listed before the Full Bench in pursuance to the reference order in W.P.No. 6267 of 2006 and W.P.No.253 of 2011, in respect of the following issues:

a) As to whether the Financial Institution, which is a secured creditor, or the department of the government



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concerned, would have the 'Priority of Charge' over the mortgaged property in question, with regard to the tax and other dues.

b) As to the status and the rights of a third party purchaser of the mortgaged property in question.

2. We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 41 of the same seeking to introduce Section 31B in the Principal Act, which reads as under:-

"31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

Explanation. - For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."



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3. There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with "notwithstanding" clause and has come into force from 01.09.2016.

4. The law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending.”

This has been consistently followed. Therefore, the purchase effected by the petitioner cannot in anyway be affected by the attachment made by the first respondent. To that extent, the petitioner's rights are affected, the impugned auction sale notice is set aside.

4. This writ petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

03.08.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA



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