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WP(MD)No.14535 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.14535 of 2016

1.Gokula Kannan
2.M.Nitheesh Kannan

.. Petitioners

VS.

1.The Securities and Exchange Board of India,
Mumbai.
Represented by its Chairman

2.HDFC Reality Limited,
3rd Floor, HT Parekh Marg,
Backbay Reclamation,
Churchgate, Mumbai.
Represented by its Manager.

3.Sahara India Real Estate Corporation Limited,
Calcutta,
Represented by its Chairman.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus, directing the second respondent not to effect any e-sale of the property comprised in S.F.No.42 corresponding to new S.F.No. 118/1A, 118/1B, 118/1C in all total extent of 5 acres 44 cents at Panchapur Village, Srirangam Taluk, Trichy District.



WP(MD)No.14535 of 2016

For Petitioner : Mr.V.Illanche

For Respondents : Mr.Shiva Kumar for R1

ORDER

This Writ Petition has been filed for issuance of a writ of Mandamus, directing the second respondent not to effect any e-sale in respect of the property comprised in S.F.No.42 corresponding to new S.F.Nos.118/1A, 118/1B and 118/1C, measuring to an extent of 5 acres 44 cents, situated at Panchapur Village, Srirangam Taluk, Trichy District.

2. The learned counsel appearing for the petitioners submits that the property in S.F.No.42 corresponding to new S.F.Nos.118/1A, 118/1B, 118/1C, is the ancestral property of the petitioners and when they were minors their mother died on 14.05.2003 and their father died on 17.10.2011. After the death of their mother they were in the custody of their paternal grandfather and their paternal grandfather has filed a petition for Guardianship under the Guardian and Wards Act before the I Additional District Court, Trichirappalli and he was appointed as Guardian for the petitioners. He sold the property of the petitioners' father to one A.Mohammed by way of a sale deed, dated 08.01.2004 for a meagre amount of



WP(MD)No.14535 of 2016

Rs.3,40,000/- (Rupees Three Lakhs Forty Thousand only) and the said Mohammed, in turn, has sold the very same property to Sahara Group of Institutions by way of a registered sale deed for a sum of Rs.54,40,000/- (Rupees Fifty Four Lakhs Forty Thousand only). Since the Sahara Group of Institutions has failed to pay the amount to its depositors and owes a lot of money to the public, the properties in Survey Nos.S.F.No.118/1A, 118/1B and 118/1C are brought to auction. Therefore, the petitioners have filed the present Writ Petition to direct the second respondent not to effect any e-sale in respect of the subject property.

3. The learned counsel appearing for the first respondent submits that the properties of the Sahara Group of Institutions are brought into auction, pursuant to the orders of the Hon'ble Supreme Court of India in Contempt Petition (C) No.412 of 2012 in Civil Appeal No.9813 of 2011 dated 17.07.2013 and 29.03.2016. He further submits that the petitioners are not in possession of the subject property and their paternal grandfather has sold the property to one Mohammed in the year 2004 and the said Mohammed sold the property to the Sahara Group of Institutions. Hence, he prays for dismissal of the present Writ Petition.



WP(MD)No.14535 of 2016

4. This Court considered the rival submissions made by both sides and perused the materials available on record.

5. The petitioners claim that the property in S.F.No.42 corresponding to new S.F.No.118/1A, 118/1B and 118/1C is their ancestral property and their father and mother died, when they were minors and their paternal grandfather was appointed as Guardian for them. He has sold the subject property to one A.Mohammed, who in turn, has sold the property to the Sahara Group of Institutions.

6. From the facts narrated in the affidavit filed in support of this petition, it is clear that the paternal grandfather of the petitioners has sold the subject property in the year 2004 itself, after getting permission from the I Additional District Munsif Court, Tiruchirapalli in G.W.O.P.No.100 of 2003 dated 31.12.2023 and therefore, the petitioners have no *locus standi* to claim right over the subject property. Pursuant to the order of the Hon'ble Supreme Court of India in Contempt Petition (C) No.412 of 2012 in Civil Appeal No.9813 of 2011 dated 17.07.2013, the properties of Sahara Group of Institutions are brought into auction, since the purchaser has failed to deposit the amount to its depositors. For better appreciation, the said order, dated 17.07.2013 of the Hon'ble Supreme Court of India is extracted hereunder:



WP(MD)No.14535 of 2016

WEB COPY

“Registry is directed to get numbered the contempt Petition filed against this Court's order dated 05.12.2012 and post the same along with these matters on 24.07.2013 at 02.00 P.M.

We call for the Appeals Nos.42/2012 (titled Subrata Roy Sahara v. SEBI), 48/2013 (titled SHICL v.SEBI) and 49/2013 (titled SIRECL v.SEBI) and 50/2013 (titled Ashok Roy Chaudhary & Ors., v.SEBI) pending before the Securities Appellate Tribunal Mumbai and W.P. 2088 of 2013 (titled Sahara India Lucknow and another v.SEBI) pending before the High Court of Judicature at Allahabad, which shall stand transferred to this Court.

We make it clear that the High Court, Securities Appellate Tribunal and any other Forum shall pass any orders against the orders passed by the Securities and Exchange Board of India (SEBI) in implementation of this Court's judgment dated 31.08.2012”.

7. In view of the facts and circumstances of the case and the order passed by the Hon'ble Supreme Court of India in Contempt Petition (C) No.412 of 2012 in Civil Appeal No.9813 of 2011 dated 17.07.2013, this Court is not inclined to grant the relief as sought for by the petitioner in this Writ Petition.



WP(MD)No.14535 of 2016

WEB COPY

8. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

Index : Yes / No
NCC : Yes / No
Internet : Yes
ssb

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WP(MD)No.14535 of 2016

B.PUGALENDHI, J.

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WP(MD)No.14535 of 2016

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