BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2023

CORAM:

THE HON'BLE MR.T.RAJA, THE ACTING CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.(MD) No.24298 of 2022
and
W.M.P(MD)Nos.18398 and 18400 of 2022

1.Jebadurai
2.Paulraj
3.Jebastin
4.Paul Thangam
5.Jegan Christober ... Petitioners

-vs-

1.M/s.Sundaram House Finance Limited,
Rep. by its Authorized Officer,
No.21, Pattulos Road,
Chennai – 600 002.

2.Sundaram Home Finance Limited,
Rep. by its Branch Officer,
No.184/9B/6, Palayamkottai Road West,
Opp. To V.V.D. Oil Mill,
Tuticorin District.

3.Arulsekar,
Son of Subbiah,
Door No.32/2, VKC Nagar,
Near 4th Gate,
Tuticorin District.

4.The Sub Registrar,
Mellur,
Tuticorin District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Sale Certificate issued by the 1st respondent in favour of the 3rd respondent and registered vide, document No.4907 of 2022 dated 30.09.2022 on the file of the Sub Registrar, Mellur, Tuticorin, in respect of the house sites property comprised in Survey No.513, Plot No.37, situated within the District of Tuticorin and quash the same as unconstitutional, illegal and ultra virus the Act and Rules and consequently direct the respondent Bank to act only in accordance with the SARFAESI Act and Security Interest (Enforcement) Rules.

For Petitioner	:	Mr.M.Benazir Begum
For R1 to R3	:	No appearance
For R4	:	Mr.N.Sathesh Kumar Additional Government Pleader

O R D E R

**[Order of the Court was made by
The Hon'ble The ACTING CHIEF JUSTICE]**

Petitioners 1, 3 to 5 are sons of the second petitioner. A joint writ petition has been filed challenging the Sale Certificate issued by the 1st respondent in favour of the 3rd respondent and registered vide, document No.4907 of 2022 dated 30.09.2022 on the file of the Sub Registrar, Mellur, Tuticorin, in respect of the house sites property comprised in Survey No.513, Plot No.37, situated within the District of Tuticorin, as unconstitutional, illegal and ultra virus the Act and Rules and consequently direct the respondent Bank to act only in accordance with the SARFAESI Act and Security Interest (Enforcement) Rules.

2. Learned counsel for the petitioners submitted that petitioners have availed a loan of Rs.21,00,000/- from the 2nd respondent finance company, by way of mortgage and by deposit of title deeds of their property in the year 2013 and they were paying the loan amount by way of instalments. Due to default in paying the instalments, the second respondent has issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as the SARFAESI Act, 2022), demanding payment of defaulted amount within sixth days from the date of the said notice. Thereafter, the petitioner requested the finance company to furnish the details of the payments and entries made in their loan account. Without furnishing the same, the finance company issued another notice under Section 13(2) of the

SARFAESI Act, 2022, claiming another sum along with exorbitant interest. Thereafter, auction sale notice dated 22.06.2022 was issued fixing the auction on 15.07.2022. Hence, the petitioner filed W.P. (MD) No. 14091 of 2022 and this Court passed a conditional order to deposit the entire amount in four instalments. The petitioner paid the 1st instalment amount of Rs.2,50,000/- on 14.07.2022 but failed to pay the remaining instalments. On 02.10.2022, the 3rd respondent informed the petitioner that he had purchased the property mortgaged with the first respondent for Rs.36,30,000/- and the first respondent has issued sale certificate and the same was registered as document No.4907 of 2022 dated 30.09.2022 on the file of the fourth respondent. Hence, the Writ Petition has been filed to quash the sale certificate.

3. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the fourth respondent and perused the materials available on record.

4. We are unable to entertain the writ petition in view of the decision of the Hon'ble Apex Court in **Dwarika Prasad vs.**

State of Uttar Pradesh and others [**2018 (3) CT8C 877**] that the right to redemption stands extinguished on the date of execution of the registered sale deed. The relevant portions of the said decision is extracted below:-

> ''4. On the other hand, the learned counsel appearing on behalf of the bank and for the auction purchasers supported the order of the High Court. It was urged that despite moving the DRT, the appellant sought relief before the Allahabad High Court in proceeding under Article 226 of the Constitution. After the High Court passed an order on 15 March 2016 recording the statement that the appellant would deposit an amount of Rs 7,00,000 by 28 March 2016 and the balance by 30 April 2016 the writ petition was withdrawn on 28 March 2016 with liberty to pursue the proceedings before the Tribunal. At no stage did the Tribunal interdict the issuance of a certificate of sale. The sale certificate was issued and was followed by the registration of the sale deed in April 2016. The bank had advertised the proposed sale by auction and followed all requisite procedure under law. The appellant failed to comply with the provisions of Section 13(8). Having failed to do so, the appellant cannot assert an equity of redemption upon the completion of the sale and the registration

of the sale deed.

5. Section 13(8) of the SARFAESI Act provides as follows:-

''(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.''

These provisions have fallen for interpretation before this Court in Mathew Varghese (supra). Dwelling on Section 60 of the Transfer of the Property Act, this Court held that the right of redemption is available to a mortgagor unless it stands extinguished by an act of parties. The right of the mortgagor to redeem the property survives until there has been a transfer of the mortgagor's interest by a registered instrument of sale. Applying these principles in the context of the SARFAESI Act this Court held as follows:-

''39. When we apply the above principles stated with reference to Section 60 of the T.P. Act in respect of a secured interest in a secured asset in favour of the secured creditor under the provisions of the SARFAESI Act and the relevant Rules applicable, under Section 13(1), a free hand is given to a secured creditor to resort to a sale without the intervention of the Court or Tribunal. However, under Section 13(8), it is clearly stipulated that the mortgagor, i.e. the borrower, who is otherwise called as a debtor, retains his full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer. Under Sub-section (8) of Section 13, as noted earlier, the secured asset should not be sold or transferred by the secured creditor when such tender is made by the borrower at the last moment before the sale or transfer. The said Sub-section also states that no further step should be taken by the secured creditor for transfer or sale of that secured asset. We find no reason to state that the principles laid down with reference to Section 60 of the T.P. Act, which is general in nature in respect of all mortgages, can have no application in respect of a secured interest in a secured asset created in favour of a secured creditor, as all the above-stated principles apply in all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act".

6. In the present case, the appellant failed to comply with the provisions of Section 13(8). The statute mandates that it is only where the dues of the secured creditor are tendered together with costs,

charges and expenses before the date fixed for sale or transfer that the secured asset is not to be sold or transferred. The appellant was aware of the proceedings initiated by the bank for asserting its right to recover its dues by selling the property. The appellant moved the DRT in Securitization Application 176 of 2015. During the pendency of those proceedings, orders were passed by the Tribunal on 1 February 2016 and 3 February 2016. The appellant moved the Allahabad High Court which by its order dated 9 March 2016 restrained the bank and the auction purchaser from executing the sale deed until 15 March 2016. The stay was extended till 28 March 2016 by which date the appellant was to deposit an amount of Rs 7,00,000. The balance was required to be deposited by 30 April 2016. While appellant deposited an amount of Rs.7,00,000 with the bank, he failed to deposit the balance in accordance with the provisions of Section 13(8). Even after the writ proceedings before the High Court was withdrawn, the appellant did not deposit the balance due together with the costs, charges and expenses. The sale was confirmed, a sale certificate was issued and a registered sale deed was executed on 12 April 2016. The appellant failed to ensure compliance with Section 13(8). The right to redemption stands extinguished on the execution of the registered sale deed. This is also the view which has been expressed in the judgment in Mathew Varghese (supra).''

5. In the present case on hand, auction sale held on 09.08.2022 and the sale deed was executed on 30.09.2022 in favour of the third respondent, but the petitioner has chosen to file the present writ petition only on 19.10.2022, after the execution of the sale deed. As per the aforesaid Apex Court's judgment, right to redemption stands extinguished on the execution of the registered sale deed i.e., on 30.09.2022 itself and therefore we find no merits in the contentions of the petitioners.

6. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[T.R., A.C.J.] [D.K.K., J.]
02.02.2023

NCC : Yes / No
Index : Yes / No
Internet: Yes / No
sj/myr

T.RAJA, A.C.J.
and
D.KRISHNAKUMAR, J.

sj/myr

To

1. The Sub Registrar,
   Mellur,
   Tuticorin District.

ORDER MADE IN
W.P.(MD) No.18400 of 2022

DATED : 02.02.2023