



W.P.(MD) No.19098 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.19098 of 2018

and

W.M.P.(MD)No.16954 of 2018

1.M/s.Eswari Traders,
Rep. by its Proprietor,
C.Narendrakumar

2.C.Kanagarathinam ... Petitioners
(Both of them represented through their power agent C.Chandrasekaran)

-Vs-

1.The Authorized Officer,
State Bank of India, Salem Main Branch,
Fort Main Road, Salem-636001.

2.T.Arumuganathan

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... Respondents

(R3 is impleaded vide Court order dated 23.03.2021 in W.M.P.(MD)No. 18091/2019 in W.P.(MD)No.19098 of 2018)

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the DRAT, Chennai in MA(SA)No.13 of 2011 and quash the impugned order dated 31.07.2018 and to restore the petitioners' building which demolished by the respondents within the time stipulated by this Court.

For Petitioners	: Mr.M.Ramesh, For Mr.R.Venkataraman
For R1	: Mr.P.Pethu Rajesh, Standing Counsel
For R2	: No Appearance
For R3	: Mr.K.P.Narayana Kumar

ORDER

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

Challenging the order dated 31.07.2018 passed by the Debts Recovery Appellate Tribunal, Chennai in MA(SA)No.13 of 2011, this Writ Petition is filed

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with a consequential direction to restore the petitioners' building, which was demolished by the respondents within the time stipulated by this Court.

2.We heard the learned counsel on either side and perused the materials available on record carefully.

3.On perusal of the records, it is seen that the property in question was sold to the 2nd respondent, who was the highest bidder in the auction conducted by the respondent Bank and sale certificate was also issued on 13.07.2007, which was registered before the Sub Registrar, Dhathagapatti, Salem. The petitioner challenged the SARFAESI proceedings initiated by the respondent Bank before the Debts Recovery Tribunal with delay of more than two years from the date of issuance of sale certificate and the Debts Recovery Tribunal dismissed the petition for condoning the delay in filing the appeal filed by the petitioner. Aggrieved by the same, the petitioner filed an appeal before the Debts Recovery Appellate Tribunal, which was also dismissed. Challenging the same, the petitioner has approached this Court.

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4. At this juncture, it would be relevant to refer the decision of the Hon'ble Supreme Court of India in ***Dwarika Prasad Vs. State of Uttarpradesh*** reported in **2018 3 CTC 877:-**

“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



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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, the property in question was sold to the 2nd respondent and sale certificate was also issued on 13.07.2007 and the same was registered before the Sub Registrar, Dhathagapatti, Salem. Therefore, as per the decision cited supra, the right to redemption stands extinguished. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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