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W.M.P.No.19804 of 2024
in W.P.No.30999 of 2023

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S.S. SUNDAR, J.
and
K. RAJASEKAR, J.

[Order of the Court was made by **S.S. SUNDAR, J.**]

This petition is filed to appoint an Advocate Commissioner to inspect the mortgaged property comprised in Old Survey No.214/4 with present Sub-Divisions in S.No.214/4A and S.No.214/4B of Alukkuli Village, Gobichettipalayam Taluk, Erode District, and to file a report about the agricultural activities and the existence of Mira Exports Buildings.

2.The main writ petition is filed challenging the final order passed by the Debt Recovery Appellate Tribunal at Chennai in R.A.(SA) No.5 of 2021, dated 26.09.2023, filed by the writ petitioner as against the order of the Debt Recovery Tribunal, dismissing the application filed by the writ petitioner challenging the sale notice.



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3. One of the issues raised by the writ petitioner before the Debt Recovery Tribunal and the Appellate Tribunal is that proceedings cannot be initiated under the SARFAESI Act as the property mortgaged is an agricultural land. The stand taken by the borrower/writ petitioner was opposed by the Bank before the Debt Recovery Tribunal as well the Appellate Tribunal during the pendency of the proceedings. One of the contentions of the respondent Bank is that there was a building. The specific contention of the respondent Bank is that the factory building that was in existence at the time of creating mortgage was subsequently demolished by the borrower.

4. Having regard to the stand taken by the petitioner as well the contesting respondents, this Court is of the view that a report from the Advocate Commissioner, after making a local inspection about the physical features, will be of some assistance to this Court to resolve the factual contentions. Even though learned counsel representing the auction purchaser also seriously opposed this petition on the ground that the petitioner has mortgaged the property showing the building as part of



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the mortgaged property, all his objections are not considered for the present and it will be open to the auction purchaser to argue his case at the relevant point of time when we consider the issue whether proceedings under SARFAESI Act can be invoked as against the property mortgaged. Even though there are some contentious issues raised before this Court, this Court, without prejudice to the contentions of the respondents, is inclined to allow this petition.

5. Accordingly, this Writ Miscellaneous Petition is allowed. Ms.L.Karthiga, Advocate, having office at No.125/257, 5th Floor (Canara Bank Building), Angappa Naicken Street, Parrys, Chennai – 600 001, is appointed as Advocate Commissioner to inspect the entire property which is the subject matter of mortgage comprised in Old Survey No.214/4 (with present Sub-Divisions in S.No.214/4A and S.No.214/4B) of Alukkuli Village, Gobichettipalayam Taluk, Erode District. The Advocate Commissioner is directed to find out whether there is any building and whether there are traces of existence of any building. The Commissioner is also directed to find out whether the land is fit for cultivation and the source of water and other physical features which



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would indicate the land being used as agricultural land in the present and past. The Commissioner is also permitted to make her personal assessment and findings on the memo of instructions given by the petitioner as well the respondent Bank at the time of inspection. The Advocate Commissioner is directed to inspect the entire property and find out any service connection and irrigation facilities for doing agriculture or any other traces of carrying agricultural operations.

6.The Advocate Commissioner shall file her report before this Court within a period of three weeks. The petitioner is directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) towards initial remuneration and bear all the expenses for the Advocate Commissioner in carrying out the assignment.

7.The Advocate Commissioner is permitted to get any assistance from the Tahsildar concerned, who may provide the service of a qualified Surveyor, and the Village Administrative Officer to produce the Revenue records. Prior notice shall be issued in advance to the parties fixing the date of inspection.



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8.Post the matter after three weeks.

(S.S.S.R., J.) (K.R.S., J.)
14.08.2024
(1/2)

mkn

Copy to :

Ms.L.Karthiga,
Advocate,
having office at No.125/257,
5th Floor (Canara Bank Building),
Angappa Naicken Street,
Parrys, Chennai – 600 001.
Mobile No. : 98401 68624



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