



WP.No.19505 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.19505 of 2024

E.Dinesh Verma

... Petitioner

Vs.

1.The Commissioner,
Aavadi Corporation,
Thiruvellore District,
Chennai – 54.

2.IIFL Home Finance Limited
formerly known as India Infoline Housing
Finance Limited rep. By its
Authorised Officer Mr.Chandramouli
Old No.41, New No.76, Block No.1,
NU Tech Building, Third Floor,
First Main Road, CIT Nagar West,
Nandhanam, Chennai – 35.

Branch Office at
9th Floor, Basconfutura,
No.10/1, Venkatnarayana Road,
T.Nagar, Chennai – 17.

3.King Craft rep. By

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Lakshminarayan, S/o.Govindarajan,
No.1/8, Manikandapuram 4th Street,
Thirumullaivoyal,
Opposite Mangalam Wedding Hall,
Chennai , Tamil Nadu – 600 062.
Respondents

...

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the first respondent to remove the illegal encroachment of the third respondent in Survey Nos.7 and 12 situated at Plot No.4, Thirumullaivoyal Ward No.16, Block No.83, Survey No.16 (New) Survey No.12, Ward No.16, Avadi Taluk, Thiruvallur District and further directing the first respondent to consider the representations of the petitioner dated 16.03.2023 and 29.05.2024 within stipulated time fixed by this Court.

For Petitioner : Mr.M.Anantharaj
For Respondents : Mr.RA.Gopinath,
Standing Counsel for R1

ORDER

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

In the captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity), Mr.M.Anantharaj, learned counsel on record for writ petitioner is before us on the VC (video conferencing) platform.



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2. Learned counsel for petitioner submits that the writ petitioner has purchased a property at 'Door No.1/8, Plot No.4 in Survey No.573, Avadi Town Survey Field Register Extract RPT No.8812/12 as per T.S.No.16, Block No.83, Ward D, Thirumullaivoil Village, MTH Road, Manikandapuram, Thirumullaivoil, Ambattur Taluk, Now Avadi Taluk, Thiruvallur District' (hereinafter 'said property' for the sake of convenience and clarity) by way of a sale certificate dated 14.02.2023 under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). A co-mortgagor filed a writ petition assailing the sale certificate and the same came to be disposed of by another Hon'ble Division Bench in and by an order dated 06.03.2024 making it clear that the Court cannot come to the aid of the mortgagor and that the mortgagor will be entitled to withdraw monies if deposited. This is vide order dated 06.03.2024 in W.P. No.7656 of 2023 made by another Hon'ble Division Bench and a scanned reproduction of the order is as follows:



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W.P.No. 7656 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.7656 of 2023

Moon Light

Rep. by its Proprietor G.Lakshminarayanan
No.1/8, Manikandapuram 4th Street
Thirumullaivoli, Chennai 600 062.

.. Petitioner

Vs.

1. IIFL Home Finance Limited
Formerly known as
M/s. India Infoline Housing Finance Limited
Rep. by its Authorised Officer Chandramouli
Branch Office at 9th Floor, Basconfutura
No.10/1, Venkatanarayan Road
T.Nagar, Chennai 600 017.

2. E.Dinesh Verma

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified Mandamus calling for records pertaining to the issue of Impugned sale certificate dated 14.02.2023 and quash the same relating to the property namely bearing Door No.1/8, Plot No.4 of an extent of 2340 sq.ft. comprised in survey No.573, Avadi Town Survey Field Register Extract RPT No.8812/12 as per T.S.No.15,

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Block No.83, Ward D, Thirumullaivoil Village, MTH Road, Manikandapuram, Thirumullaivoil, Ambattur Taluk, Now Avadi Taluk, Thiruvallur District and direct the 1st respondent to issue fresh notice of demand in Loan Account No.735407 to the legal heirs of the deceased co-borrowers for repayment of the loan amount.

For the Petitioner : Mr.S.Sadasharam

For the Respondents : Mr.V.Balasubramani
for Respondent-1

Mrs.D.Malarvizhi
for Respondent-2

ORDER
(Made by the Hon'ble Chief Justice)

We have heard Mr.S.Sadasharam, learned counsel for the petitioner, Mr.V.Balasubramani, learned counsel for the first respondent and Mrs.D.Malarvizhi, learned counsel for the second respondent.

2. The petitioner challenges the sale certificate pursuant to an auction under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

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W.P.No.2656 of 2023

3. Learned counsel for the petitioner submits that the petitioner, after the sale has been conducted, has deposited an amount of Rs.68.00 lakh (Rupees sixty eight lakh only) on 28.03.2023, i.e. the entire amount of sale. The petitioner is entitled to redemption of mortgage.

4. The petitioner claims to be the legal heir of one of the co-mortgagors, namely Govindarajan. Learned counsel for the petitioner submits that the said Govindarajan died on 31.12.2022 and the auction is conducted on 16.01.2023. On the date of auction, the said Govindarajan had died. Two other mortgagors have also passed away before the date of auction. Learned counsel further submits that no notice was served upon the legal heirs of the deceased Govindarajan.

5. It is further submitted that Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 have been violated. The respondents have not made clear as to whether the auction purchaser had deposited 25% amount on the same date. No dates are given in the sale certificate of the deposit of the amount. The notice has to be

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served upon the borrower under Rule 8(6). The same is also not served. It is further contended that the property has been sold at a very less value.

6. Learned counsel for the first respondent submits that the notice has been served on the borrowers on 08.12.2023, An affidavit has been executed even by the present petitioner agreeing for sale of the property. Even Mr.Lakshminarayanan has signed the same. So also, Mr.Govindarajan, father of the petitioner, The notice of sale was served upon the father of the petitioner, namely Govindarajan, who was a co-mortgagor.

7. It appears that the notice has been served upon Govindarajan, through whom the petitioner claims, on 08.12.2022, regarding the sale of the property. Govindarajan, Lakshminarayanan, so also the present petitioner have executed an affidavit in favour of the bank agreeing for the sale of the property to the prospective buyer. The said fact is not stated in the petition.

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8. The sale certificate has been issued within one month of the auction sale. The entire amount of consideration has been paid within one month of the auction sale by the auction purchaser. Rules 8 and 9 of the Rules appear to have been complied with.

9. The petitioner lost his right of redemption after the issuance of sale notice in view of the judgment of the Apex Court in *Civil Appeal Nos.5542 – 5543 of 2023, dated 21.09.2023 (Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. and others)*.

10. In the light of that, this Court cannot come to the aid of the petitioner. The writ petition, as such, stands disposed of. In case the petitioner has deposited the amount, the petitioner is entitled to withdraw the same. There shall be no order as to costs. Consequently, W.M.P.Nos.7806, 7809 and 17499 of 2023 are closed.

(S.V.G., CJ.)

(D.B.C., J.)

06.03.2024

Index : Yes/No
Neutral Citation : Yes/No

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3. To be noted, writ petitioner before us in the captioned matter is R2 in the earlier WP and R2 before us is R1 in the earlier WP. Learned counsel submits that R3 in the captioned WP has now encroached upon a public road blocking the writ petitioner's ingress and egress to aforementioned property purchased by writ petitioner by way of sale certificate.

4. Issue notice to official respondent i.e., R1 (The Commissioner, Aavadi Corporation, Thiruvellore District, Chennai – 54).

5. Mr.RA.Gopinath, learned standing counsel accepts notice for R1.

6. Learned counsel for R1 on instructions submits that the writ petitioner has sent two representations one dated 16.03.2023 and another dated 29.05.2024 but whether the alleged encroachment is in public road or in private property is not clear. Therefore, Avadi Corporation has written to the jurisdictional Revenue Tahsildar seeking clarification in this regard i.e., clarification by conducting

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survey. A copy of the communication dated 01.07.2024 in this regard placed before us by learned counsel for R1 is as follows:

மாநகராட்சி நிர்வாகம் மற்றும் இலாப நஷ்ட நலன் துறை

விடுநர்: திரு. எஸ். பாலசுப்பிரமணியன், நகர திட்டமிடுநர், (செயல்பொறுதியாளர் தலைவர்) ஆலாடி மாநகராட்சி, ஆலாடி, சென்னை. நகராண்மை 960/2024/எம்1	பெறுநர்: மாட்டாட்சியர், மாட்டாட்சியர் அலுவலகம், ஆலாடி (மேற்குத் துறை) அருகில், ஆலாடி, சென்னை - 72. நாள்: 07.2024
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அவ்வாறு

பொருள்: ஆலாடி மாநகராட்சி - திருமுல்லைவாயல் கிராமம் - சரவே எண்: 7 மற்றும் 12, மாநகராட்சி சாலை ஆக்கிரமிப்பு - நில அளவை செய்து - அறிக்கை சமர்ப்பிப்பது - சம்பந்தமாக.

மற்றவை: திரு. டாக்டர். தி. ஜெனகமணி, அவர்களின் மனு நாள்: 04.06.2024.

ஆலாடி மாநகராட்சி எல்லைக்குட்பட்ட திருமுல்லைவாயல் கிராமம், சரவே எண்: 7 மற்றும் 12, மாநகராட்சி பராமரிப்பில் இருக்கும் சாலையினை, திரு. எஸ். பாலசுப்பிரமணியன், நகர திட்டமிடுநர், திரு. இலாட்சுமி நாராயணன் என்பவர் போது மக்கள் பயன்பாட்டில் இருக்கும் சாலையினை ஆக்கிரமிப்பு செய்து கற்று கடை அமைத்துள்ளதாக பார்வையில் கண்டுள்ளபடியும், புகார் வரப்பெற்றுள்ளது. எனவே, மேற்படி இடத்தினை நில அளவை செய்து ஆக்கிரமிப்பு இருப்பின் வரைபடத்தின் கடியை விரிவான அறிக்கையினை அனுப்பிவைக்குமாறு கேட்டுக்கொள்ளப்படுகிறது.



(Signature)
நகர திட்டமிடுநர்,
(செயல்பொறுதியாளர் தலைவர்)
ஆலாடி மாநகராட்சி
11/7/24



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7. Learned counsel for R1 submits that if the encroachment is in a public place, proceedings under Section 128(1)(b) of 'The Tamil Nadu Urban Local Bodies Act, 1998' {hereinafter 'TNULB Act' for the sake of brevity} would be initiated.

8. In the light of the narrative thus far, we find that the legal perimeter within which captioned WP should now perambulate has dwindled considerably. Therefore, with the consent of learned counsel for writ petitioner and learned counsel for R1, main WP is taken up. We are acutely conscious that R2 and R3 who are private respondents are not before us. Therefore, we also make it clear we would be mentioning infra about the safety valve qua R2 and R3.

9. It is clear from the stand of R1 counsel that post survey by the jurisdictional Revenue Tahsildar, if alleged encroachment is in a public place, the removal of encroachment procedure under Section 128(1)(b) of TNULB Act would be kick started. A careful perusal of Section 128(1)(b) and proviso thereof of TNULB Act makes it clear that it provides for alleged encroachers to be made noticees, show caused giving seven days time. The proviso also provides for disposal



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of any representation if received within the seven days period i.e., disposal before making final orders. Therefore, if the encroachment is by R2 and R3 (private respondents) or by any other person or entity, the person or entity shall be show caused in accordance with Section 128(1)(b) of TNULB Act. This is the safety valve which we are putting in qua private respondents i.e., R2 and R3. In this regard, we make it clear that all the rights and contentions of R2 and R3 are left open and obviously rights and contentions of other parties are also left open if proceedings under Section 128(1)(b) of TNULB Act are kick started.

10. R1 will do well to get a report from the jurisdictional Revenue Tahsildar and do the needful depending on the report as expeditiously as the business of R1 would permit.

11. Recording the stated position of R1, captioned WP is disposed of as closed. There shall be no order as to costs.

(M.S.,J.) **(K.G.T.,J.)**

16.07.2024

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Neutral Citation : Yes / No
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To

The Commissioner,
Aavadi Corporation,
Thiruvellore District,
Chennai – 54.



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**M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

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