IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE G.K.IlANTHIRAIYAN

W.P.No.21972 of 2021

Kayalvizhi ... Petitioner

Vs

1.The General Manager,
Reserve Bank of India,
Fort Glacis, 16, Rajaji Road,
Fort St.George, Chennai-1.

2.The Zonal Manager,
The Federal Bank,
Bhattad Tower, 1st floor,
30, West Cott Road,
Royapettah, Chennai.

3.The Regional Manager,
The Federal Bank,
No.20, Ramakrishna Road,
Salem, Tamilnadu.

4.The Branch Manager,
The Federal Bank,
Ramakapettai,
Krishnagiri Road,
Tirupattur Town & District. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the Auction Notice publication, dated 15.06.2021 and following private sale on 30.06.2021 by the respondents 2 and 3 as null and void and consequently direct the respondents 2 to 4 to receive the entire amount dues under the petitioner's gold loan account and to redeem gold ornaments pledged by the petitioner or equivalent gold to the petitioner.

For Petitioner : Mr.PA.Sudesh Kumar

For Respondents : Mr.P.V.Muralidhar

ORDER

This Writ Petition has been filed challenging the Auction Notice publication, dated 15.06.2021, following private sale dated 30.06.2021 by the respondents 2 and 3 as null and void.

2.The petitioner availed the facilities of jewel loan from the 4th respondent. Accordingly, the petitioner pledged the gold ornaments weighing 474.2 grams and availed three jewel loans to the tune of Rs.17,94,000/-. By doing so, the petitioner was served with notice dated 09.06.2021 from the 4th respondent thereby called upon the petitioner to redeem the items pledged or to renew the pledge by settling the existing liabilities. The said notice was received by the petitioner only on 21.06.2021. As per the notice, 15 days time was given for redemption of jewels or to renew the pledge. When the petitioner approached the 4th respondent with money to redeem the jewel, it was not accepted by the 4th respondent, since the 4th respondent conducted the auction and sold the entire jewellary, which was pledged by the petitioner on 30.06.2021.

3.The learned counsel for the petitioner would submit that, due to COVID 19, the petitioner was not able to redeem the jewel. Even according to the 4th respondent by notice dated 09.06.2021, 15 days time was given for redemption of jewels or to renew the pledge. However, the said notice was received only on 21.06.2021 and the petitioner approached immediately which is the next day of receipt of the said notice. The 4th respondent refused to receive the amount to redeem the jewel. However, without even completing 15 days from the date of receipt of the letter i.e., 21.06.2021, 4th respondent had auctioned the jewel on 30.06.2021. Therefore, the 4th respondent did not even follow any guidelines issued by the 1st respondent.

4.He further submitted that 1st respondent also failed to monitor the respondents 2 to 4. Therefore, the Auction Notice publication, dated 15.06.2021, following private sale on 30.06.2021 by the respondents 2 and 3 may be ordered as null and void.

5.The learned counsel for the 2nd to 4th respondents filed counter. The submissions made by the learned counsel for the 2nd to 4th respondents reveal that, while offering the loan, the petitioner agreed that *"In case the defendant fails to redeem the pledge within the due date, the ornament will be put to auction or dispose off by private negotiation and the proceeds will be adjusted towards liability under the loan account. In case the amounts are not sufficient to discharge the liability in full, the defendant and her assets will be liable for the deficit."* The petitioner has failed to close the accounts. However, there was no response and as such, on 30.06.2021, the gold ornaments were put in auction and sold through private treaty sale. The petitioner never approached the 4th respondent. Notice dated 09.06.2021 was duly received by him on 21.06.2021. However, they have visited the bank only on 05.07.2021. That apart, on that date, they had also remitted a sum of Rs.95,000/- to the credit of loan account. No private bank will pay a further sum of Rs.95,000/- once the jewel were sold out in a private auction sale to realize the loan account. That apart, the petitioner was asked to pay the outstanding dues, vide notice dated 19.07.2021 which was agreed by the petitioner to settle the dues with the 4th respondent.

6.On perusal of the statement of accounts, it is seen that, Rs.91,990.29/- was appropriated in the loan account No.20696100020867, Rs.4,29,087.38/- was appropriated in the loan account No.20696400084233 and Rs.12,26,776.70/- was appropriated in the loan account 20696400084241 on 30.06.2021 after defraying the expenses. As on 31.03.2024, aggregate of Rs.2,71,492.84/- consisting Rs.37,746.74/- in the Loan Ac No.20696400084233 and Rs.2,33,746.10/- in Loan Ac No.20696400084241 is due from the petitioner herein.

7.Learned counsel for the respondents submitted that the Writ Petition itself is not maintainable as against the private bank and relied on the judgment of the Hon'ble Supreme Court of India reported in ***MANU/SC/0769/2003*** in the case of ***Federal Bank Ltd Vs. Sagar Thomas and Ors.*** In this case, the Hon'ble Supreme Court of India held that,

> *"33. Merely because the Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors*

etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business of or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. Provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for acquiring authority.

34.For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory *obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed."*

8.Therefore, it is clear that this Writ Petition itself is not maintainable. Since 2nd to 4th respondents are carrying out banking business as a scheduled bank, it cannot be termed as an institution or Company carrying on any statutory or public duty. The private body or a person may be amenable to Writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. Thus, this Court is of the view that this Writ Petition is not maintainable. Accordingly, this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition, if any, is closed. No costs.

10.06.2024

Index :Yes/No
Internet :Yes/No
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G.K.ILANTHIRAIYAN, J.

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