



W.P(MD)No.14530 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.07.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.P(MD)No.14530 of 2024
and
WMP(MD)No.12755 of 2024**

P.Kanagaraj

... Petitioner

vs.

Union Bank of India,
Rep. by its Chief Manager/
Authorised Officer,
Asset Recovery Branch,
No.51, Rosary Church Building,
Town Hall Road,
Madurai-625 001.

... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to provide road access to the petitioner's auctioned property measuring 35 cents bearing S.No.8/5A of Mappillaiurani Village, Tuticorin Taluk and District and in-default return the amount deposited by the petitioner in pursuance of the sale conducted on 30.04.2024 under the sale notice dated 27.03.2024 issued by the respondent.

For Petitioner : Mr.T.Mohan, Senior Counsel for
Mr.M.Saravanan



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For Respondent : Mr.R.Pandivel

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ORDER

(Order of the Court was made by **R.SURESH KUMAR, J.**)

The prayer sought for in this writ petition is for issuance of a Writ of Mandamus, directing the respondent to provide road access to the petitioner's auctioned property measuring 35 cents bearing S.No.8/5A of Mappillaiurani Village, Tuticorin Taluk and District and in-default to return the amount deposited by the petitioner in pursuance of the sale conducted on 30.04.2024 under the sale notice dated 27.03.2024 issued by the respondent.

2. That, the respondent Bank issued auction notification by way of E-auction on 28.03.2024 with regard to the property measuring 35 cents bearing S.No.8/5A of Mappillaiurani Village, Tuticorin Taluk and District.

3. Pursuant to the said E-auction notice, the writ petitioner is one among the participants who participated in the E-auction and he has become the successful bidder. As per the conditions of auction, 25% of the



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auction amount has been deposited by the petitioner. Therefore, auction has been confirmed in his favour.

4. Thereafter only, after visiting the property, the petitioner came to know that, there has been no ingress and egress to the property which was sold by way of public auction by the Bank and there has been no scope for entering into the property. Therefore, the petitioner has made a request to the Bank either to make arrangements to provide ingress and egress, otherwise 25% of the auction amount deposited by him be refunded to him.

5. Since the said request made by the petitioner has not been considered by the respondent Bank, the petitioner has approached this Court by filing the present writ petition with the aforestated prayer.

6. Heard Mr.T.Mohan, learned Senior Counsel appearing for Mr.M.Saravanan, learned counsel for the petitioner and Mr.R.Pandivel, learned standing counsel appearing for the respondent.

7. Though it was submitted by the learned standing counsel appearing for the respondent Bank that, having known to the fact that the



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property held to be auctioned will not have any access to reach, taking that risk only, the petitioner had participated in the auction and since he was the highest bidder, after paying 25% of the auction amount, the auction sale was confirmed in his favour. Therefore, at this juncture, he cannot turn around and seek for refund of the amount or to provide access by the Bank to the property in question.

8. However, the learned Senior Counsel appearing for the petitioner would contend that, it is quite common knowledge that, whenever the landed property is sold, that too, by public auction by the Bank authorities under the provisions of the SARFAESI Act, it must be free from all encumbrances. If a landed property is available without any access to reach, then, the property will not have any worth and it cannot be utilised for any other purpose as even if the owner of the property who purchased the same, cannot have an access to the property. Therefore, it will have a zero value.

9. Hence, the responsibility rests with the Bank to make arrangements for providing access to the property, otherwise, the money that has been deposited by the petitioner has to be refunded.



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10. We have considered the said submissions made by both sides and have perused the materials placed before this Court.

11. There is justification on the part of the petitioner to seek such a remedy. The reason being that, when it is a landed property and on all the four sides, there has been no access even to reach the property, it cannot be treated as a property for any worth. Therefore, either the Bank should come forward to provide access, otherwise, the Bank has to refund the money, that is, 25% of the auction money that has been deposited by the petitioner.

12. Therefore, absolutely there is no justification in the stand of the respondent Bank in either not providing access to the property or refunding the 25% of the auction money which has already been deposited by the petitioner.

13. Therefore, at this juncture, since the Bank has not come forward to provide access to the property, we have no hesitation to hold that, the Bank is liable to pay back the money that has been deposited by the petitioner, that is, 25% of the auction amount.



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14. Resultantly, the following orders are passed in this writ petition:

That, there shall be a direction to the respondent Bank to refund the 25% of the auction money, that is, Rs.47,80,000/- immediately to the petitioner, within a maximum period of two weeks from the date of receipt of a copy of this order. On making the payment, it is open to the respondent Bank to explore the possibility to raise the value of the property by providing access and it is also open to the Bank to explore the possibility of selling the same by way of fresh auction.

15. With these observation and direction, the Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.)

(G.A.M., J.)

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Index : Yes / No
Neutral Citation : Yes / No
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Note to Registry : Issue order copy on 04.07.2024.



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and
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