IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2025

CORAM

THE HON'BLE MR.MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

WP No.26719 of 2025

M.Z.Fazlur Rahman .. Petitioner

-vs-

1. M/s.Arka Fincap Limited
   Regd. Office at 2504, 25th Floor,
   One Lodha Place, Senapati Bapat Marg,
   Lower Parel, Mumbai, Rep. by its
   Authorized Officer.

2. Reserve Bank of India,
   16, Rajaji Salai, Fort Glacis,
   Chennai, Tamil Nadu 600 001. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the the 1st respondent to refund the sale proceeds of Rs.1,35,30,000 /- (Rupees one crore Thirty - Five Lakhs Thirty thousand only) deposited by the petitioner on 05.05.2025 pursuant to auction sale conducted by the 1st respondent on 10.04.2025 with interest at 24 percent per annum from 05.05.2025 till the date of repayment as claimed by the petitioner within a time frame stipulated by this Court.

For Petitioner	:	Mr.A.Arokia Satheesh
For Respondents	:	Mr.Chevanan Mohan for M/s.King & Partridge as Amicus Curie
	:	Mr.V.Balasubramani for R-1

* * * * *

ORDER

(Order of the Court was made
by the Hon'ble Chief Justice)

This petition has been filed by the petitioner praying for issuance of writ of mandamus or any other appropriate writ or direction directing the first respondent/private financial institution to refund the sale price of Rs.1,35,30,000/- deposited by the petitioner, along with interest at the rate of 24% p.a. from 05.05.2025 till the date of repayment.

2. Quintessential facts leading to the filing of the instant petition are stated infra:

Respondent No.1 is a private financial institution and is a secured creditor, which proceeded to auction a secured asset in the form of a mortgage created in its favour by the borrower. The petitioner emerged as a successful bidder in the auction proceedings and after fulfilling the terms and conditions of auction, he deposited the entire bid amount of Rs.1,35,30,000/- with the first respondent/institution. Thereafter, the first respondent issued a sale certificate in his favour on 05.05.2025 itself.

2.1. The petitioner intended to have the sale certificate registered at the office of Sub-Registrar, Kancheepuram, to which the first respondent/institution agreed and steps in that direction were taken by the petitioner as well as by the first respondent. Though the registration was scheduled on 20.05.2025, however, upon approaching the office of the Sub-Registrar on that date, the petitioner was informed that the registration could not be completed because of an objection dated 16.12.2024 filed by one Mrs.N.Azhagi, W/o Mr.Natarajan, claiming rights over the property. As a dispute was raised, the Sub-Registrar returned the sale certificate without registration.

2.2. The petitioner having now realised that he has purchased a litigious property, extended a request to the first respondent/institution to refund the entire amount of sale consideration which was paid by him in the auction proceedings. However, the first respondent, in reply to the petitioner's request, did not refund the amount, though it clearly stated that it is in support of the petitioner towards registration of sale certificate and would also be supporting petitioner's cause in the matter of claim for registration of the certificate with the Sub-Registrar, Kancheepuram.

2.3. The petitioner, having found that his money has been blocked, as according to him he has purchased a litigious property, has filed this petition seeking the relief as stated above.

3. During the course of argument, it transpired that the first respondent/institution, against which a writ of mandamus is sought by the petitioner, is a private financial institution and therefore, during the course of arguments on the earlier date of hearing, the issue with regard to maintainability of this very petition arose and the question, which the Court is now required to answer, is as to whether the first respondent, a private financial institution, is amenable to writ jurisdiction of this Court.

4. We requested Sri.Chevanan Mohan, learned counsel, to assist the Court as Amicus Curiae, even though he is appearing for the second respondent, which otherwise is not interested in the outcome of the litigation and has been arrayed only as a formal party without any relief being sought against it by the petitioner.

5. Learned counsel for the first respondent/institution has also raised his objection to the maintainability of this petition on the submission that that the first respondent is not amenable to writ jurisdiction and therefore, this writ petition would not be maintainable,

as no mandamus could be issued to the first respondent which is a private financial institution.

6. Learned Amicus and learned counsel for the first respondent/ institution would heavily rely upon a recent judicial pronouncement of the Supreme Court in the case of ***S.Shobha vs. Muthoot Finance Ltd., 2025 SCC OnLine SC 177***. According to them, in view of the authoritative pronouncement of the Supreme Court in the judgment supra, the present petition against the first respondent, a private financial institution, would not be maintainable and it is open for the petitioner to take recourse to such remedy as may be available before any other forum.

7. On the other hand, learned counsel for the petitioner would submit that merely because the first respondent appears to be a private financial institution, it cannot be said that in all cases, no writ could be issued. He would submit that present is a case where the first respondent has acted arbitrarily in refusing to refund the amount. He would submit that the petitioner was allowed to participate in an auction proceedings on the belief that the property is free from any

dispute, etc. It is only later on, when the sale certificate was placed before the Sub Registrar for registration that it surfaced that there are many claims on the property and the property appears to be a litigious one. At that stage, the petitioner was free to take his own choice whether to go ahead with the registration or to seek refund of the amount which was paid by him to the first respondent.

7.1. Referring to provision contained in Rule 9 Sub-Rule (9) of the Security Interest (Enforcement) Rules, 2002, he would emphasize that present is a case where even though the first respondent is a private body and not a nationalised bank or an instrumentality of the State, it is obliged under the law and owns a public duty to refund the amount, once the property becomes litigious, as otherwise it would amount to taking undue benefit of collecting huge amount from a bonafide auction purchaser and then, throwing them into litigation in respect of the litigious property.

7.2. Learned counsel for the petitioner also relied upon an order dated 04.04.2024 passed by a Division Bench of this Court in W.P.No.10356 of 2020 (between ***M/s.Hari and Keerti Engineers***

Pvt. Ltd. vs. M/s.Tamilnadu Mercantil Bank Ltd., and Others), wherein, in an identical situation where the Court found that the property purchased in auction appeared to be litigious property, this Court issued a mandamus directing refund of the sale price deposited by the bonafide auction purchaser. The SLP filed against the said order was also dismissed. Therefore, it is contended that in view of the aforesaid order, it is clear that the present writ petition is maintainable and the first respondent/institution is amenable to writ jurisdiction under Article 226 of the Constitution of India.

7.3. Learned counsel for the petitioner has also relied upon several decisions, namely, (i) ***Anandi Mukta Sadguru Shree Mukta vs. V.R.Rudani, 1989 (2) SCC 691***; (ii) ***Federal Bank Ltd. Vs. Sagar Thomas & Ors., 2003 (12) SCC 68***; (iii) ***Binny Ltd. & Anr. vs. V.Sadasivan & Ors., 2005 (6) SCC 657***; (iv) ***Rajbir Surajbhan Singh vs. Chairman, Institute of Banking Personal Section, 2019 (14) SCC 189***; and (v) ***Harshad Govardan Sondagar vs. Internl. Assets Reconstrn. Co. Ltd., 2014 (6) SCC 1***, in support of his submissions.

8. The first respondent, as has been described in the petition, is a private financial institution and is not a nationalised bank. While respondent No.2, Reserve Bank of India, is undoubtedly a State as defined under Article 12 of the Constitution of India, the petitioner has prayed for issuance of mandamus only against respondent No.1, seeking refund of the amount.

9. If respondent No.1 is a private financial institution, the question which would arise for consideration is whether it is amenable to writ jurisdiction of this Court and whether a mandamus or any other order of writ or direction could be issued in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

10. In our considered opinion, this issue is no longer *res integra* and it stands concluded by the authoritative pronouncement of the Hon'ble Supreme Court in the case of ***S.Shobha*** (supra). On facts, that was a case where relief was sought against a private financial institution, namely, Muthoot Finance Ltd. Their Lordships in the Supreme Court, after having surveyed the legal position and earlier

decisions rendered by it from time to time, came to the conclusion that a private financial institution cannot be called a public body as it has no duty towards the public and it's duty is only towards the account holders, which may include the borrowers having availed of the loan facility. In paragraph 7 of the aforesaid judgment, the following pertinent observations were made with the conclusion contained therein:

> *"7. Applying the above test, the respondent herein cannot be called a public body. It has no duty towards the public. It's duty is towards its account holders, which may include the borrowers having availed of the loan facility. It has no power to take any action, or pass any order affecting the rights of the members of the public. The binding nature of its orders and actions is confined to its account holders and borrowers and to its employees. Its functions are also not akin to Governmental functions."*

11. After having considered the legal position in this regard, legal position was summed up in the concluding paragraph as below:

> *"9. We may sum up thus:*
>
> *(1) For issuing writ against a legal entity, it would have to be an Instrumentality or agency of a State or should have been entrusted with such functions as are*

Governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental.

(2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

(3) Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.

(4) A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast

upon it by some statute or statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) Merely because a statute or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.

(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there mus tbe the public law element in such action.

(8) According to Halsbury's Laws of England, 3rd Ex. Vol.30, p.682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform, and which perform the duties and carries out its transactions for the benefit of the public and not for private profit". There cannot be any general definition of public authority or public action. The facts of each case decide the point."

12. In view of the authoritative pronouncement of the Hon'ble Supreme Court, particularly what has been laid down as a proposition of law in Clause (4) of Paragraph 9, it is no longer *res integra* that a private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.

12.1. Apparently, therefore, the respondent/institution, which is carrying on banking business as a scheduled bank, cannot be termed as a company carrying any public function or public duty.

13. If that be so, the next question which arises is, are there any exceptional circumstances under which a writ of mandamus could be issued to such private financial institution. The answer lies in the exception clause as carved out in Clause (5) of para 9 of the Supreme Court decision in the case of ***Shoba*** (supra). It was held that normally mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases, a writ of mandamus or a writ in the nature of mandamus may issue to a private body but only where a public duty

is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

13.1. Examining the legal issue on hand, on the anvil of aforesaid decision propounded by the Hon'ble Supreme Court, we find that there is no provision contained either in the SARFAESI Act or the Rules made thereunder, which obliged the first respondent/institution to refund the amount in case any claim or title adverse to that of the borrower in respect of the mortgaged property is raised by anyone. In fact, we do not find any provision which obliges the first respondent/institution to refund the sale price to the successful bidder in any circumstances.

13.2. The submission of learned counsel for the petitioner that Rule 9(9) of the Security Interest (Enforcement) Rules, 2002, imposes such a statutory obligation to the first respondent/institution which could be directed to be performed by issuance of a writ of mandamus does not impress us on the face of the provisions contained therein. Sub Rule (9) of Rule 9, for ready reference, is extracted hereunder:

"9. Time of sale, issue of sale certificate and delivery of

possession, etc. -

...

(9) *The authorized officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above. ... "*

13.3. An apparent and literal reading of this provision only shows that it obliges the Authorized Officer to deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as is specified in sub-rule (7) of Rule 9.

13.4. By no stretch of imagination, this provision can be extended to infer that it obliges the first respondent/institution to refund the sale price as deposited by the auction purchaser, in case, later on, it is found that there are certain claims being raised in respect of the property sold in auction by third parties.

13.5. Except this, no other provision was brought to the notice of this Court by the learned counsel for the petitioner to advance submission that a case of issuance of writ of mandamus is made out in terms of what has been stated by the Hon'ble Supreme Court in clause

(5) of paragraph 9 of the judgment in the case of ***Shoba*** (supra).

14. The submission of learned counsel for the petitioner that in a similar case, mandamus has been issued by this Court and therefore, in this case also similar direction may be issued, with respect to the authority relied upon, does not merit acceptance. It appears that on a petition filed before this Court by a successful auction purchaser raising a grievance that after he had purchased the mortgaged property in auction, it turned out to be a litigious property, the Division Bench of this Court proceeded to issue a direction for refund of the money. In that case, it was neither objected by the bank nor the Court had any occasion to examine the issue with regard to the maintainability of the writ petition on the ground that a private financial institution is not amenable to writ jurisdiction. That judgment, therefore, is not an authority for the said proposition. It appears that the bank involved in that case was M/s.Tamilnadu Mercantil Bank Ltd. Whether or not that bank is a public body was neither raised nor was decided. Present is not a case against M/s.Tamilnadu Mercantil Bank Ltd.

14.1. The dismissal of the SLP against the said order would not in any way come to the aid of the petitioner as the issue as to whether a private financial institution is amenable to writ jurisdiction was not decided in those proceedings.

15. The other decisions which have been relied upon by the learned counsel for the petitioner do not come to his aid in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case of ***Shoba*** (supra), as the legal position in this regard now stands very well settled and has no two opinions.

16. The submission of the learned counsel for the petitioner that irrespective of any provision under law, it is a part of public duty of the first respondent/institution to refund the money as soon as the property emerges to be a litigious property, is required to be rejected, as it has no foundation or principled basis.

17. As an upshot of aforesaid discussion, we are of the firm view that this petition seeking issuance of writ of mandamus against the

private financial institution/respondent No.1 is not maintainable and is, therefore, dismissed as such. We leave it open to the petitioner to work out such remedy as may be available under law to redress his grievance either towards refund of money or any other relief to which he may consider himself to be entitled to. There shall be no order as to costs.

We place on record our appreciation for the valuable assistance rendered by the learned Amicus Curiae.

(MANINDRA MOHAN SHRIVASTAVA, CJ.)(SUNDER MOHAN, J.)
20.08.2025

Index : Yes
Neutral Citation : Yes

sra

To

Reserve Bank of India,
16, Rajaji Salai, Fort Glacis,

Chennai, Tamil Nadu 600 001.

THE HON'BLE CHIEF JUSTICE
AND
SUNDER MOHAN, J.

(sra)

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