IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

*** * * ***

W.P.Nos.5872 and 4117 of 2019

Between:

M/s Jai Santoshi Mata Realtors
A Partnership Firm, Having Registered Office
at Plot No 86, Main Road Vasavi Colony, R K Puram,
Hyderabad, Represented By Its Managing Partner Sri G Srinivas,
S/O Sri Bala Narasaiah, Aged About 45 Years, Occ Business,
R/O Plot No 86, Kamala Nivas, Main Road Vasavi Colony,
R K Puram, Hyderabad.

…Petitioner

Vs.

Reliance Home Finance Ltd
3rd Floor Malik Estates 63344
Opp JV Road Park Road No 1 Banjara Hills
Hyderabad Rep by its Authorized Officer
& 12 others

…Respondents

JUDGMENT PRONOUNCED ON: 18.02.2022

THE HONOURABLE SRI JUSTICE UJJAL BHUYAN

And

The HONOURABLE SRI JUSTICE A. VENKATESHWARA REDDY

1.	**Whether Reporters of Local newspapers may be allowed to see the Judgments?**	**: Yes**
2.	**Whether the copies of judgment may be Marked to Law Reporters/Journals?**	**: Yes**
3.	**Whether His Lordship wishes to see the fair copy of the Judgment?**	**: Yes**

UJJAL BHUYAN, J

*** THE HONOURABLE SRI JUSTICE UJJAL BHUYAN**

And

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3rd Floor, Malik Estates 63344,
Opp JV Road Park, Road No 1, Banjara Hills,
Hyderabad, Rep by its Authorized Officer
& 12 others

…Respondents

! **Counsel for Petitioner in W.P.No.5872 of 2019: Mr. Srinivas Velagapudi**

Counsel for Petitioner in W.P.No.4117 of 2019: Mr. B.Chandrasen Reddy

^ **Counsel for respondent No.1 in both cases: Mr. Manoj Maharaj Ganji**

< **GIST:**

> **HEAD NOTE:**

? **Cases referred**

HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
HONOURABLE SRI JUSTICE A. VENKATESHWARA REDDY
W.P.Nos.5872 and 4117 of 2019

Common Order: *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

This order will dispose of W.P.Nos.5872 of 2019 and 4117 of 2019.

2. We have heard Mr. Srinivas Velagapudi, learned counsel for the petitioner in W.P.No.5872 of 2019 (M/s.Jai Santoshi Mata Realtors); Mr. K.Sunil, learned counsel representing Mr. B.Chandrasen Reddy, learned counsel for the petitioner in W.P.No.4117 of 2019 (M/s.Sonovision Enterprises); and Mr. Manoj Maharaj Ganji, learned counsel for respondent No.1 in both the cases *i.e.,* Reliance Home Finance Limited.

3. For convenience, we may separately refer to the facts pleaded in the two writ petitions.

4. In W.P.No.5872 of 2019, M/s. Jai Santoshi Mata Realtors is the petitioner. By filing this petition under Article 226 of the

Constitution of India, petitioner seeks quashing of the warrant of commission dated 10.08.2018, issued by the Chief Metropolitan Magistrate at Nampally, Hyderabad, in Crl.M.P.No.6106 of 2018 and further seeks a direction to the respondents not to dispossess the petitioner including its tenant from the schedule property, the details of which are as under:

> "The property admeasuring 8138 sq. feet spread over in ground to second floor areas admeasuring 2719 sq. feet each bearing Municipal No.6-3-670, Panjagutta, Hyderabad-500082, Telangana State."

5. According to the petitioner, it had entered into a Development Agreement-cum-General Power of Attorney dated 22.02.2017, with respondents No.2 and 3 for development of the aforesaid property. It had obtained necessary permission from the municipal authorities whereafter, it had commenced construction of building thereon. Be it stated that respondents No.2 and 3 are owners of the said property. In terms of the development agreement, petitioner had paid Rs.50 lakhs to respondents No.2 and 3; 40% share of the building was allotted to the petitioner; and 60% share of the building was allotted to respondents No.2 and 3, who have let out the same

to various entities including the petitioner in W.P.No.4117 of 2019 (M/s.Sonovision Enterprises).

6. While the matter rested thus, petitioner received notice from respondent No.13/Advocate Commissioner on 19.02.2019, which stated that respondent No.1 had filed Crl.M.P.No.6106 of 2018 before the Chief Metropolitan Magistrate at Nampally, Hyderabad, for appointment of Advocate Commissioner to take over physical possession of the schedule property. Chief Metropolitan Magistrate issued warrant on 10.08.2018 appointing respondent No.13 as the Advocate Commissioner. Accordingly, respondent No.13 directed the petitioner to hand over physical possession of the schedule property to him.

7. Aggrieved by the above, present writ petition (W.P.No.5872 of 2019) has been filed seeking the relief as indicated above.

8. This Court, by order dated 03.07.2019, had issued notice.

9. Respondent No.1 has filed counter-affidavit. It is stated that respondents No.2 and 3 had availed loan from respondent No.1 for

purchase of the said land. However, respondents No.2 and 3 defaulted in making repayment. As a result, their loan account was classified as Non Performing Asset (NPA) with effect from 16.04.2018 whereafter, respondent No.1 initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'). Respondent No.1 issued statutory notice under Section 13(2) of the SARFAESI Act on 19.04.2018, as per which, the outstanding liabilities of respondents No.2 and 3 were quantified at Rs.9,07,14,625.00 as on 18.04.2018.

10. It is stated that against the action taken by respondent No.1 under the SARFAESI Act, respondents No.2 and 3 have preferred a securitisation application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal at Hyderabad (for short 'the Tribunal'), which has been registered as S.A.No.115 of 2019 and is pending.

11. In so far the development agreement is concerned, respondent No.1 has referred to the loan availed of by respondents No.2 and 3

from respondent No.1 stating that the said property was mortgaged in favour of respondent No.1 as security. The loan agreement was entered into by respondents No.2 and 3 with respondent No.1 on 20.06.2011 whereas the development agreement was executed on 22.02.2017. Alleging collusion between petitioner and respondents No.2 and 3, respondent No.1 seeks dismissal of the writ petition.

12. W.P.No.4117 of 2019 has been filed by M/s. Sonovision Enterprises, which is one of the tenants in the schedule property rented out by respondent No.2 and 3 out of their share in terms of the development agreement.

13. According to the petitioner, it had taken the premises of the schedule property on lease *vide* registered lease deed dated 24.09.2018. The lease agreement is for initial period of twelve years. While enjoying its leasehold rights over the schedule property, petitioner received notice dated 19.02.2019 from respondent No.13/Advocate Commissioner calling upon it to vacate the premises and to hand over physical possession of the schedule

property to him. Aggrieved by the notice issued by the Advocate Commissioner, petitioner-M/s.Sonovision Enterprises has filed the present writ petition for setting aside the warrant of commission dated 10.08.2018, issued by the Chief Metropolitan Magistrate, Nampally at Hyderabad, in Crl.M.P.No.6106 of 2018, with further direction to the respondents not to dispossess it from the schedule property.

14. This court by order dated 28.02.2019, had issued notice and passed an interim order to the effect that order of the Chief Metropolitan Magistrate, Nampally, shall stand suspended.

15. Learned counsel for the petitioner in W.P.No.5872 of 2019 submits that petitioner should be allowed to participate in the auction sale and in the event of it becoming the successful bidder, it would be able to continue its possession over the schedule property. He further submits that petitioner will give an undertaking that it would deposit the rental income accrued from its share of the schedule property to respondent No.1.

16. According to learned counsel, the schedule property would fetch a much higher price in the sale out of which, the outstanding liabilities of respondents No.2 and 3 can be met.

17. In so far petitioner in W.P.No.4117 of 2019 is concerned, learned counsel for the petitioner also makes a submission that petitioner- M/s. Sonovision Enterprises is willing to participate in the auction and give an undertaking that if it is unsuccessful in the auction, it would hand over possession of the schedule property to respondent No.1 within thirty days. That apart, petitioner would deposit the monthly rent with respondent No.1 instead of paying the same to respondents No.2 and 3. He submits that leasehold rights of the petitioner under the lease deed dated 24.09.2018 should be protected.

18. In response to the submissions of learned counsel for the petitioner in W.P.No.5872 of 2019, learned counsel for respondent No.1 has referred to the development agreement dated 22.02.2017, more particularly, to clause (1) thereof as per which, the land owners (respondents No.2 and 3) had declared that the schedule property

was free from all encumbrances, charges, liens, mortgages, court attachments and acquisition proceedings except mortgage to respondent No.1.

19. Learned counsel further submits that in the said development agreement itself, respondents No.2 and 3 had clearly mentioned that land owners had availed loan of Rs.9,90,00,000.00 from respondent No.1 and in the process, they clearly undertook to mortgage the area falling within the share of petitioner. He further submits that petitioner was fully aware of the loan agreement dated 20.06.2011, while entering into the development agreement dated 22.02.2017. He therefore, submits that there is no merit in the writ petition, which should be dismissed.

20. In so far the writ petition filed by M/s Sonovision Enterprises (W.P.No. 4117 of 2019) is concerned, learned counsel for respondent No.1 submits that lease deed was entered into on 24.09.2018 *i.e.,* after the demand notice was issued by respondent No.1 to respondents No.2 and 3 on 19.04.2018 under Section 13(2) of the SARFAESI Act. Referring to sub-section (13) of Section 13

of the SARFAESI Act, he submits that no written consent of secured creditor *i.e.,* respondent No.1 was obtained before such alienation of schedule property. Therefore, there is violation of sub-section (13) of Section 13 of the SARFAESI Act. As such, petitioner is not entitled to any relief.

21. Submissions made by learned counsel for the parties have received the due consideration of the Court.

22. From the narration of facts as above, what is discernible is that respondents No.2 and 3 had availed loan from respondent No.1 for which, they had entered into loan agreement by mortgaging the schedule property with respondent No.1 *vide* registered mortgage deed dated 20.06.2011.

23. While the schedule property was under mortgage, respondents No.2 and 3 had entered into development agreement with M/s. Jai Santoshi Mata Realtors (petitioner in W.P.No.5872 of 2019) on 22.02.2017 which thereafter developed the property. In the development agreement, there is clear reference to the loan availed of by respondents No.2 and 3 from respondent No.1 and the

commitment of the said respondents to redeem the share of the petitioner by repaying the loan. That being the position, it is clearly evident that petitioner in W.P.No.5872 of 2019 was fully aware of the loan commitments of respondents No.2 and 3. When respondents No.2 and 3 defaulted in repayment of loan leading to closure and classification of the loan account as NPA and initiation of action under the SARFAESI Act, the legal consequences would naturally follow.

24. We find from the materials on record that while respondents No.2 and 3 have preferred S.A.No.115 of 2019 before the Tribunal, petitioner has approached the High Court under Article 226 of the Constitution of India.

25. In so far the other petitioner- M/s Sonovision Enterprises is concerned, the lease deed was entered into on 24.09.2018, after the property was mortgaged by respondents No.2 and 3 to respondent No.1 on 20.06.2011. Even in the lease deed, there is a clear reference to payment of lease/rent into the account of respondent No.1 on account of the loan availed of by respondents No.2 and 3.

26. From the material papers, we find that notice under Section 13(2) of the SARFAESI Act was issued by respondent No.1 to respondents No.2 and 3 on 19.04.2018 whereafter, possession notice was issued on 21.06.2018. As already noted above, the lease deed dated 24.09.2018 was executed after issuance of notice dated 19.04.2018 under Section 13(2) of the SARFAESI Act.

27. Sub-section (13) of Section 13 of the SARFAESI Act makes it clear that no borrower shall, after receipt of notice under Section 13(2) of the SARFAESI Act, transfer by way of sale, lease or otherwise any of his secured assets referred to in the notice, without the prior written consent of the secured creditor. There is nothing on record to suggest that respondents No.1 and 2 had obtained prior written consent of respondent No.1 for leasing out the schedule property to the petitioner.

28. In so far issuance of warrant by the Chief Metropolitan Magistrate is concerned, the same has been issued under Section 14 of the SARFAESI Act. We may mention that action under Section 14 of the SARFAESI Act is consequent and

subsequent to action taken by the secured creditor under Section 13(4) of the SARFAESI Act which action of the secured creditor can be challenged by any aggrieved person including the borrower before the jurisdictional Tribunal under sub-section (1) of Section 17 of the SARFAESI Act. Being a consequential action, the legislature has mandated under sub-section (3) of Section 14 of the SARFAESI Act that no act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of Section 14 of the SARFAESI Act shall be called in question in any court or before any authority.

29. In the light of the above facts and the clear legal embargo as alluded to hereinabove, we are of the view that the present two writ petitions do not merit any interference by the writ court.

30. Since respondents No.2 and 3 are already before the Tribunal in S.A.No.115 of 2019, it is open to the petitioners to join the said proceedings for redressal of their grievance

31. Both these Writ Petitions are, accordingly, dismissed. Interim order passed earlier stands vacated. Related interlocutory applications, pending if any, stand dismissed.

32. No costs.

UJJAL BHUYAN , J

A. VENKATESHWARA REDDY, J

Date: 18-02-2022

Note:
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