

**IN THE HIGH COURT OF ANDHRA PRADESH:
AT AMARAVATI**

Writ Petition No.15580 of 2022

Between:

- 1) M/s.Moonlight Poultry Farm, Rep. by its Proprietor Mrs. Khazi Rasheeda, W/o.Syed Habeebullah, age about 58 years, occupation- Proprietor, R/o.D.No. 3-19-6, Railway Station Road, Hindupur, Anantapur District, Andhra Pradesh and **Two** others.

.... Petitioners

And

- 1) The Union Bank of India, rep. by its Chief General Manager Zonal Office, D.No.32-9-17, 3rd Floor, Madhu Mahalaxmi Chambers, Madhu Gardens, Mogalrajpuram, Vijayawada, Andhra Pradesh & **Three** others.

....Respondents.

Writ Petition No.15632 of 2022

Between:

- 1) M/s.Moonlight Poultry Farm, Rep. by its Proprietor Mrs. Khazi Rasheeda, W/o.Syed Habeebullah, age about 58 years, occupation- Proprietor, R/o.D.No. 3-19-6, Railway Station Road, Hindupur, Anantapur District, Andhra Pradesh and **Two** others.

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Writ Petition No.23932 of 2022

Between:

- 1) M/s.Moonlight Poultry Farm, Rep. by its Proprietor Mrs. Khazi Rasheeda, W/o.Syed Habeebullah, age about 58 years, occupation- Proprietor, R/o.D.No. 3-19-6, Railway Station Road, Hindupur, Anantapur District, Andhra Pradesh and **Two** others.

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....Respondents.

Date of Judgment pronounced on : 26.08.2022

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

1. Whether Reporters of Local newspapers may be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals : Yes/No

3. Whether the Lordship wishes to see the fair copy of the Judgment? : Yes/No

JUSTICE C. PRAVEEN KUMAR

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! Counsel for the Petitioner(s) :1) Sri Mirza Nisar Ahmed Baig
Nizami

Counsel for the Respondents : 1) Ms. V. Dyumani, learned
Standing Counsel for the
Respondent/Bank.
2) Sri Sasanka Bhuvanagiri,
Learned counsel for the
Auction Purchaser.

<Gist :

>Head Note:

? Cases referred:

1)(2014) 5 SCC 610

2) 2019 (1) ALT 698

3) AIR 2022 Punjab and Haryana 23

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

Writ Petition Nos.15580, 15632 & 23932 of 2022

COMMON ORDER:- *(per the Hon'ble Sri Justice C. Praveen Kumar)*

As these three writ petitions are interconnected, the same are disposed of by this common order:-

2. Heard Sri Mirza Nisar Ahmed Baig Nizami, learned counsel for the petitioners, Ms. V. Dyumani, learned Standing Counsel for the respondent/bank and Sri Sasanka Bhuvanagiri, learned counsel for the auction purchaser.

3. W.P.No.15580 of 2022 came to be filed to declare the e-auction dated 24.02.2022, in respect of non-agricultural land admeasuring Ac.17.56 Cents in Survey Nos.1.1, 1.3, 2.1 & 10.1 situated at Myd golam Village, Lepakshi Mandal, Hindupur, for recovery of Rs.2,45,86,880.66 ps., as contrary to the orders passed in W.P.No.3988 of 2022 and to declare the action of the fourth respondent in issuing the undated Notice Memo for execution of warrant as against Section 13(8) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short, "SARFAESI Act"] as bad in law.

4. W.P.No.15632 of 2022 came to be filed to declare the action of respondent nos.1 to 4 in issuing the Sale

Confirmation Letter dated 24.05.2022 pursuant to e-auction dated 24.02.2022 with respect to above land as illegal.

5. W.P.No.23932 of 2020 is filed questioning the action of the respondents in issuing Sale Certificate dated 02.06.2022, in favour of fifth respondent therein in respect of the above property, without adjusting/transferring the amount of Rs.1,38,50,000/- deposited on 31.05.2022 in the two loan accounts, as highly illegal, improper and incorrect.

6. The facts, which lead to filing of the above three writ petitions, are as under:-

(a) The petitioners in all the three writ petitions secured loan from the respondent/bank under two loan accounts. As the petitioners committed default in payment of the amount, both the accounts were declared as Non-Performing Assets [NPA] and the respondent/bank demanded an amount of Rs.2,39,90,868.20 ps. and Rs.5,96,012.46 ps. [totalling to Rs.2,45,86,880.66 ps.] towards outstanding loan amount. At that point of time, the petitioners made an application for One Time Settlement [OTS] *vide* representation dated 15.12.2021. Inaction on the part of the respondent/bank, lead to filing of W.P.No.30522 of 2021. Pending the said writ petition, the respondent/bank issued e-auction Sale Notice for Sale of immovable properties which were mortgaged to the bank. The e-auction notice was challenged in W.P.No.1534 of 2022. However, the auction did not materialize, and as

such, both the writ petitions were dismissed as infructuous on 08.03.2022. Thereafter, a second e-auction notice for sale of immovable properties mortgaged to the bank came to be issued. Challenging the same, the petitioners filed W.P.No.3988 of 2022.

(b) On 23.02.2022, in I.A.No.1 of 2022, this Court passed the following interim order, which is as under:-

“...Taking into consideration the facts in issue, the auction shall go on and the same shall not be finalized for a period of five weeks, subject to petitioners depositing a sum of Rs.1,00,00,000/- to the credit of loan account within a period of four weeks from today, in default, the stay stands vacated automatically and the respondent-Bank can proceed further, in accordance with law.

‘List after five weeks’.

(c) Thereafter, final order came to be passed in W.P.No.3988 of 2022 on 21.04.2022, wherein the petitioner was directed to deposit a sum of Rs.1,00,00,000/- within a period of four (4) weeks and the balance amount with interest and other charges within a period of four (4) weeks thereafter.

(d) The claim of the petitioners is that they approached the respondent/bank on 16.05.2022 and 20.05.2022 to deposit the amount but on both the occasions, the bank officials refused to receive the money, on the ground that they have neither received any order from the High Court nor their Standing Counsel informed them about the order. However, on 23.05.2022, the Registry of the High Court dispatched a copy of the order dated 21.04.2022, which was

received by the bank on 24.05.2022. It is the case of the petitioners that they approached the respondent/bank at Hindupur and offered to pay money enclosing a copy of the order, but since the period of four weeks elapsed by then the bank refused to accept the same.

(e) The petitioners also approached the third respondent-Authorized Officer, Anantapur, but to no avail. Instead the Regional Manager wanted the entire amount to be deposited immediately. While things stood thus, the petitioners received a warrant of execution on 01.06.2022. Left with no other option, the petitioners paid Rs.1,38,50,000/- on 31.05.2022, which is the total amount with accrued interest etc. Infact, the petitioners claim that they have paid more than the demanded amount. *In spite of* the same, the respondent/bank, with the help of Advocate-Commissioner appointed under Section 14 of SARFAESI Act, approached the property in dispute for executing the warrant.

(f) At that stage, the petitioners filed W.P.No.15580 of 2022 before this Court and *vide* order dated 02.06.2022, this Court *stayed* the order of Principal Senior Civil Judge, Anantapur. Thereafter, W.P.No.15632 of 2022 came to be filed, questioning the Sale Confirmation letter issued on 24.05.2022, wherein this Court ordered *status-quo* as on that day to be maintained with regard to issuance of Sale

Certificate. *In spite* of the above orders, the Sale Certificates came to be issued ante-dating the day, which lead to filing of W.P.No.23932 of 2022. Not only the Sale Certificate was issued but the 75% of the auction amount was accepted from the auction purchaser on 01.06.2022.

7. A counter came to be filed by the respondent/bank disputing the averments made in the affidavit filed in support of the writ petitions. The averments in the counter would indicate that since the petitioners have not complied with the order dated 21.04.2022, passed in W.P.No.3988 of 2022, namely depositing of Rs.One Crore within four (4) weeks from the date of the order, the respondent/bank was constrained to issue Sale Confirmation letter on 24.05.2022 in favour of the highest bidder and thereafter the Sale Certificate, after accepting the amount on 01.06.2022. The auction purchaser also submits that since the amount has been paid by him within the time fixed by the bank, he is entitled for the property in dispute.

8. The point that arises for consideration is, ***whether the respondent/bank was right in issuing the Sale Certificate in favour of the auction purchaser though the petitioners have deposited the entire amount prior to the date on which the auction purchaser has deposited the amount?***

9. The principal question that arises for consideration is, ***till what time or date can the right of redemption of the mortgage be exercised by the mortgagers/borrowers in the light of the amendment to Section 13(8) of the SARFAESI Act?***

10. In order to appreciate the arguments advanced, it would be appropriate to extract Section 13(8) of SARFAESI Act, before and after its amendment.

11. Section 13(8) of the SARFAESI Act before amendment, reads as under:—

“Sec.13. ...

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.”

The law relating to the availability of right of redemption after the amendment to Section 13(8), was enacted in 2016 w.e.f. 01.09.2016, and the same reads as under:-

“Sec.13 ...

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,— (i) the secured assets shall not be

transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.”

12. A reading of the amended Section 13(8) of the SARFAESI Act *vis-à-vis* the report of the Joint Committee on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016, which was made the basis to amend Section 13(8) of the SARFAESI Act, makes it clear that the legislature did not have any intention to deal with the right of mortgagor to redeem the mortgage, when they amended Section 13(8) or to modify it in any manner; and amendment cannot be said to have intended to modify the existing law which continued even when the un-amended Section 13(8) of the SARFAESI Act was in force. The amended Section 13(8) of the SARFEASI Act was intended only to deal with the date when the secured creditor’s right to transfer the secured asset should stop and nothing more.

13. In order to appreciate the effect of amendment, it will be appropriate to refer to the judgment of Hon’ble Supreme Court in ***Mathew Varghese vs. M. Amritha Kumar and others***¹, wherein the Hon’ble Supreme Court has held that

¹ (2014) 5 SCC 610

the right of redemption of the mortgagor/borrower is not extinguished until the sale certificate is issued and the sale is registered in favour of the auction purchaser even where the sale is held under the SARFAESI Act. It does not get extinguished on the date fixed for sale, i.e. the date of public auction/e-auction.

14. Similarly, the Division Bench of High Court of Telangana in **Concern Readymix, rep. by its Proprietor, Smt. Y. Sunitha Reddy and another vs. Authorised Officer, Corporation Bank, Hyderabad and another²**, observed the difference between the unamended Section 13(8) and amended Section 13(8) of the SARFAESI Act, and held as under:-

“10. The first distinction between the unamended and amended sub-section (8) of Section 13 is that before amendment, the facility of repayment of the entire dues along with the costs, charges and expenses, was available to the debtor at any time before the date fixed for the sale or transfer. But after the amendment, the facility is available upto the time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty. The second distinction is that the unamended sub-section (8) did not provide for the contingency when the dues are tendered by the borrower before the date of completion of the sale or lease but after the issue of notice. But the amended sub-section (8) takes care of the contingency where steps have already been taken by the secured creditor for the transfer of the secured asset, before the payment was

² 2019 (1) ALT 698

made. Except these two distinctions, there is no other distinction.

x x x x

13. What is important to note both from *the amended and unamended provisions of Section 13(8) and Rule 9(1)* is that both of them do not speak in express terms, about the equity of redemption available to the mortgagor. The amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale. A restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor. The payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Securitisation Act, 2002. Redemption comes later. But unfortunately, some Courts, on a wrong reading of the decision of the Supreme Court in *Mathew Varghese v. M. Amritha Kumar*³, have come to the conclusion as though Section 13(8) speaks about the right of redemption. *The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects.* But in law it is not. It may be seen from paragraphs-34 to 36 of the decision of the Supreme Court in *Mathew Varghese* that the Supreme Court took note of Section 60 of the Transfer of Property Act and *the combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act to come to the conclusion that the extinction of the right of redemption comes much later than the sale notice.* Therefore, we should first understand that the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted.

14. Perhaps the Courts were tempted to think that Section 13(8) speaks about redemption, only on account of what is found in Rule 3(5) of the Security Interest (Enforcement) Rules, 2002. Rule 3(5) inserted by way of amendment with effect from 04-11-2016 states that the demand notice issued under Section 13(2) should invite the attention of the borrower to the provisions of Section 13(8), in respect of the time available to the borrower to redeem the secured assets. *Today, it may be convenient for one borrower to contend that the right of redemption will be lost immediately upon the issue of notice under Rule 9(1). But if it is held so, the same would tantamount to annulling the relevant provisions of the Transfer of Property Act, which do not stand expressly excluded, insofar as the question of redemption is concerned.*

15. The issue identical to the case on hand came up for consideration before Punjab and Haryana High Court in ***M/s.Pal Alloys and Metal India Private Limited and others vs. Allahabad Bank and others***³, wherein the Division Bench of the High Court after referring to the authorities on the subject held as under:-

“91. Keeping in mind (i) the Report of the Joint Committee on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 discussed above, (ii) the law laid down by the Supreme Court in Mathew Varghese (supra) and (iii) the decision in M/s. Concern Readymix (7 supra) of the Telangana and Andhra Pradesh High Court, with which we respectfully agree, we hold that the amended Section 13(8) of the SARFAESI Act merely prohibits a secured creditor from proceeding further with the transfer of the secured asset by way of lease, assignment or sale; a restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor; the payment of the amount mentioned in Section

³ AIR 2022 Punjab and Haryana 23

13(8) of the SARFAESI Act ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Act; that redemption comes later; extinction of the right of redemption comes much later than the sale notice; and the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted. We also hold that such a right would continue till the execution of a conveyance i.e. issuance of sale certificate in favour of the mortgagee. A similar view has been taken by this Bench in M/s.Hoshiarpur Roller Flour Mill Private Limited and another vs. Punjab National Bank. CWP No.14440 of 2021, decided on 10.12.2021 (AIR Online 2021 P & H 1985).

16. Keeping in view the law laid down in judgments referred to above, we shall now proceed to deal with the case on hand. As seen from the narration of events, in the instant case, undoubtedly, there is some delay i.e. a delay of three or four days in paying the amount by the petitioners. The reason given by the petitioners is that though the order was passed by the High Court on 21.04.2022, giving four (4) weeks time to deposit Rs. One Crore, the bank did not act on their representation and insisted for a certified copy of the order, which, the petitioner could secure only on 23.05.2022. Within two days thereafter, they offered to pay the entire amount and in fact the petitioners deposited the entire amount on 31.05.2022. The petitioners not only deposited the entire loan amount but also interest and other charges that got accrued till then. In fact, the claim of the petitioners appears to be that they paid more than the required amount. The delay of three days which occurred cannot be attributed

to the petitioners, for the reason that the certified copy of the order was given at a little belated stage. Apart from that, the petitioners paid the entire loan amount on 31.05.2022 itself. Having accepted the amount on 31.05.2022, strangely, the bank deposited the amount in the current account of the petitioners, without adjusting it to the loan account, though the petitioners paid the amount for clearing the two loan accounts. After depositing the amount in the current account of the petitioners on 31.05.2022, the respondent bank accepted 25% of the bid amount from the auction purchaser on 01.06.2022 and issued the sale certificate on 02.06.2022, which is after accepting the amount from the petitioners.

17. The payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Securitisation Act, 2002. Redemption comes later. Extinction of the right of redemption comes much later than the sale notice and the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted.

18. It would be appropriate to refer to Section 13(8) of SARFAESI Act, which reads as under:-

“Sec.13 ...

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,— (i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.”

19. Having regard to the above, the right to redeem the property mortgaged to the bank survives and accordingly the Sale Certificate and Sale Confirmation Letter issued by the respondent/bank in favour of the auction purchaser shall stand cancelled. Further, the amount paid by the petitioners shall be adjusted to the two loan accounts and the amount paid by the auction purchaser shall be returned to the auction purchaser in accordance with law. Accordingly, the three writ petitions are **allowed**. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE TARLADA RAJASEKHAR RAO

Date: 26.08.2022

Note: LR copy to be marked.
B/o.MS

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

Writ Petition Nos.15580, 15632 & 23932 of 2022
(per the Hon'ble Sri Justice C. Praveen Kumar)

Date: 26.08.2022

MS