



W.P (C) No.15010/2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 21ST DAY OF FEBRUARY 2025 / 2ND PHALGUNA, 1946WP(C) NO. 15010 OF 2024PETITIONER/S:

HDB FINANCIAL SERVICES LIMITED,
1ST AND 2ND FLOOR, WILSON HOUSE, OLD NAGARDAS ROAD, NEAR
AMBOLI SUBWAY, ANDHERI (EAST), MUMBAI 400 069 AND HAVING ITS
BRANCH OFFICE AT 2ND FLOOR, THE ART OF LIVING TOWER, 13
CROSS ROAD, SBT AVENUE, NEAR PASSPORT OFFICE, PANAMPILLY
NAGAR, ERNAKULAM. THE PETITIONER COMPANY IS REPRESENTED BY
ITS AUTHORISED OFFICER MR. RAJ C.R, PIN - 682036

BY ADVS.
P.PAULCHAN ANTONY
SREEJITH K.

RESPONDENT/S:

- 1 THE SUB REGISTRAR
SUB REGISTRAR OFFICE, CHALAI KILLI BRIDGE,
KILLIPALAM, KARAMANA, THIRUVANANTHAPURAM, PIN - 695002
- 2 THE VILLAGE OFFICER
MANACAUD VILLAGE OFFICE ATTUKAL,
THIRUVANANTHAPURAM, PIN - 695009
- 3 R. SHANAVAS
S/O RASHEED THUSHARA, MANJUMMAL POST KADAVOOR VIA,
TRIVANDRUM, PIN - 695313
- 4 ADDL.R4. THE DEPUTY SUPERINTENDENT
CRIME BRANCH, ECONOMIC OFFENCE, THIRUVANANTHAPURAM.
(ADDL.R4 IMPEADED VIDE ORDER DATED 03-07-2024 IN IA NO 4/24
IN WP(C)15010/24.)

SRI. P.S. APPU, GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09.04.2024, THE COURT ON 21.02.2025 DELIVERED THE FOLLOWING:



C.R.

J U D G M E N T

The petitioner, a Non-Banking Financial Company, has approached this Court seeking a writ of *mandamus* directing the 2nd respondent to register Ext.P3 sale certificate issued by it in terms of the provisions contained in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act) and consequently for a direction to the revenue authorities to carry out the mutation of the property covered by Ext.P3 Sale Certificate.

The brief facts:-

2. One Rajeev A.R and one Sunitha Kumari S.R (the borrowers) availed loans from the petitioner-financial institution by mortgaging all pieces and parcels of the land having an extent of 01.69 Ares in Re-Survey No. 4/149 along with a building bearing No. TC 69/123(2) of Manacaud Village in Thiruvananthapuram Taluk. The borrowers defaulted on loan repayment, prompting the petitioner to initiate proceedings under the SARFAESI Act. Physical possession of the property was taken on 05.12.2023. Thereafter, the property was put up for auction and sold to the 3rd respondent for a sum of Rs. 56,10,443/-. However, when the 3rd respondent attempted to register the sale certificate, it was informed that the 4th respondent has issued a



communication (viz Communication No. 253/GL/CB-EOW/TVPM Unit/2023) dated 27.02.2023 to the 1st respondent, restraining the transfer of the property. According to the 4th respondent, FIRs were registered against the aforesaid Rajeev A.R as FIR No. 1266/2022 of Vanchiyoor Police Station and FIR No. 81/2023 dated 31.01.2023 was registered by the State Crime Branch for misappropriating amounts of the BSNL Engineers Co-operative Society. During the course of the investigation, certain offences under the ***Banning of Unregulated Deposit Schemes Act, 2019*** (hereinafter referred to as the '***BUDS Act***') were also incorporated.

3. Sri. Paulo Chan Antony P., the learned counsel appearing for the petitioner, submits that the proceedings under the BUDS Act have no bearing on those initiated under the SARFAESI Act. He submits that Sections 12 and 13 of the BUDS Act start with the expression '***Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) or the Insolvency and Bankruptcy Code, 2016 (31 of 2016)***', and therefore, the proceedings under the SARFAESI Act and the Insolvency and Bankruptcy Code (IBC) are saved from the operation of the provisions in the BUDS Act. Therefore, it is his submission that Ext.P4 communication of the 4th respondent cannot interfere with the proceedings initiated under the SARFAESI Act. He also



refers to the judgment of the Supreme Court in ***Central Bureau of Investigation v. State of Bihar and Others; 2010 (5) SCC 1*** in support of his contention.

4. Sri. Appu P.S, the learned Government Pleader appearing for official respondents No. 1, 2 and 4, opposes the grant of any relief to the petitioner. He submits that Section 8 of the BUDS Act constitutes a Designated Court exclusively for trying the cases under the BUDS Act while Section 18(1)(c) empowers the competent authority to take possession of any asset belonging to the deposit taker and sell, transfer or release the attached asset. He further contends that any person aggrieved by an order of the Designated Court can prefer an appeal before the High Court within the stipulated time under Section 19 of the Act. Therefore, considering the availability of an alternative remedy, the discretionary jurisdiction under Article 226 of the Constitution of India may not be invoked. Moreover, he also refers to Sections 5, 12 and 13 of the BUDS Act to contend that depositors have a right to restitution and the order of provisional attachment shall have precedence and priority to the extent of the claims of the depositors, over any attachment by any other authority competent to attach property for payment of any debts etc. He also submits that a similar issue has been referred to the Full Bench by virtue of a reference order in Writ Appeal No. 1087/2024, and this writ petition can



either be heard after Writ Appeal No. 1087/2024 is decided or it can be referred and adjourned to be heard along with Writ Appeal No. 1087/2024.

5. Having heard the learned counsel appearing for the petitioner and the learned Government Pleader appearing for respondents 1, 2 and 4, I am of the view that the petitioner is entitled to succeed. The relevant portion of Section 13 of the BUDS Act reads thus:

“Section 13. Precedence of attachment.--

(1) Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) or the Insolvency and Bankruptcy Code, 2016 (31 of 2016), an order of provisional attachment passed by the Competent Authority, shall have precedence and priority, to the extent of the claims of the depositors, over any other attachment by any authority competent to attach property for repayment of any debts, revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority.

(2) - (5).....”

Section 13 (1) of the BUDS Act clearly provides that the precedence under the BUDS Act will be “*Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,*



2002 (54 of 2002) or the Insolvency and Bankruptcy Code, 2016 (31 of 2016)". The Supreme Court, in **Central Bureau of Investigation** (supra) held:

"45. The main object and legislative intent by the opening words—"save as otherwise provided in sub-section (2)"— in sub-section (1) of Section 378 being clear i.e. to fetter the general power given to the State Government in filing appeal from the order of acquittal in two types of cases stated in sub-section (2), the use of word "also" in sub-section (2) does not make any sense. The word "also" in sub-section (2), if construed in the manner suggested by the State Government, may result in reducing the opening words in sub-section (1) a nullity and will deny these words their full play. Since exception (clause) in the beginning of sub-section (1) has been expressly added in Section 378 and it is not possible to harmonise the word "also" occurring in sub-section (2) with that, it appears to us that no sensible meaning can be given to the word "also" and the said word has to be treated as immaterial. We are not oblivious of the fact that to declare "also" enacted in sub-section (2) immaterial or insensible is not very satisfactory, but it is much more unsatisfactory to deprive the words—"save as otherwise provided in sub-section (2)"— of their true and plain meaning. In order



that the exception (clause) expressly stated in the opening words of sub-section (1) might be preserved, it is necessary that word “also” in sub-section (2) is treated as immaterial and we hold accordingly. The phrase “in any case” in sub-section (1) of Section 378, without hesitation, means “in all cases”, but the opening words in the said section put fetters on the State Government in directing appeal to be filed in two types of cases mentioned in sub-section (2).”

Therefore, it is clear that the expression ‘Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) or the Insolvency and Bankruptcy Code, 2016 (31 of 2016), can only mean that any action/proceeding under the SARFAESI Act and the IBC is saved from the provision providing precedence to the BUDS Act.

6. The submission of the learned Government pleader that this matter is identical to the one referred to in the reference order in Writ Appeal No. 1087/2024 cannot be accepted, as that case pertains to the High Court's power under Article 226 to efface an attachment ordered by a Court without approaching the competent Court and is unrelated to the present issue.



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Therefore, this Writ Petition is allowed, directing the competent among the respondents to forthwith register the sale certificate issued by the petitioner in favour of the third respondent in accordance with the law. The petitioner shall deposit the excess amount received by it, after setting off the liability, before the competent authority under the BUDS Act within a period of four weeks from today.

Sd/-
GOPINATH P.
JUDGE

AMG



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APPENDIX OF WP(C) 15010/2024

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE COMPUTER PRINT OUT OF THE ORDER
IN MC 728/2023 OF CHIEF JUDICIAL MAGISTRATE COURT,
THIRUVANANTHAPURAM DATED 29.09.2023
- Exhibit P2 TRUE OF THE PAPER PUBLICATION DATED 12.01.2024
'INDIAN EXPRESS'
- Exhibit P3 TRUE COPY OF THE SALE CERTIFICATE DATED 03.04.2024
- Exhibit P4 TRUE COPY OF THE COMMUNICATION GIVEN BY THE
DYSP ,ECONOMIC OFFENCES WING, CRIME BRANCH COPY OF
THE COMMUNICATION NO 253/GL/CB-EOW/TVPMUNIT /2023
DATED 28.02.2023

RESPONDENT EXHIBITS

- Exhibit R4(a) TRUE COPY OF THE ORDER NO. SC. 03/80/2023/HOME
DATED, 19.05.2023
- Exhibit R4(b) TRUE COPY OF THE LOCATION SKETCH DATED, 10.08.2023
- Exhibit R4(c) TRUE COPY OF THE THANDAPER ACCOUNT NO. 26070
DATED, 29.11.2023
- Exhibit R4(d) COPY OF REPORT DATED, 19.06.2023 SUBMITTED BEFORE
THE ADDITIONAL DISTRICT AND SESSIONS COURT V,
THIRUVANANTHAPURAM
- Exhibit R4(e) TRUE COPY OF REPORT DATED, 14.09.2023 SUBMITTED
BEFORE THE ADDITIONAL DISTRICT AND SESSIONS COURT
V, THIRUVANANTHAPURAM