

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 22ND DAY OF SEPTEMBER 2021 / 31ST BHADRA, 1943

WP(C) NO. 18263 OF 2021

PETITIONER:

M/S SREE SANKARA FUNDS (P) LTD.
REPRESENTED BY ITS AUTHORIZED OFFICER,
G. VISHNU NAMBOOTHIRI, MANAGING DIRECTOR,
THIRUVANANTHAPURAM., REGISTERED OFFICE AT VRINDAVANAM,
T.C. 37/1859, WEST FORT,
THIRUVANANTHAPURAM DISTRICT, PIN - 695 023.
BY ADVS.
RAGHUL SUDHEESH
K.J.GLAXON
SANISH SASI RAJ
J.LAKSHMI
AMAL JEES ALEX
XAVIER THOMAS V.T.

RESPONDENTS:

- 1 THE TAHSILDAR (LAND), KATTAKADA
THIRUVANANTHAPURAM - 695572.
- 2 DEPUTY COLLECTOR
COLLECTORATE, CIVIL STATION,
KUDAPPANAKKUNNU, THIRUVANANTHAPURAM - 695043.
- 3 THE VILLAGE OFFICER
VILAVOORKKAL VILLAGE,
THIRUVANANTHAPURAM - 695573

OTHER PRESENT:

GP. SABEENA.P. ISMAIL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22.09.2021, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R.”

BECHU KURIAN THOMAS, J.

W.P.(C) No.18263 of 2021

Dated this the 22nd day of September, 2021

JUDGMENT

Petitioner's attempt to effect mutation of a property purchased by it was not successful. The application was 'rejected' on the basis of legal opinion obtained by the District Collector. Through Ext.P9, the first respondent has communicated to the petitioner, the nature of the legal opinion. It is stated in Ext.P9 that since petitioner's registration under Section 45-IA(6) of the Reserve Bank of India Act, 1934 (for short 'the Act') has been cancelled with effect from 02-06-2018, the sale deed executed after such date is without authority. Apart from challenging Ext.P9, petitioner has also sought for a direction to the respondents to effect mutation of the property purchased by the petitioner.

2. Petitioner was a Non-Banking Financial Company [for short, 'NBFC'] engaged in the business of providing loans and advances. The certificate of registration (CoR), as an NBFC, is dated 15-12-2000 with No.B-16.00135. While it was carrying on its business as an NBFC, two persons availed loans from the petitioner and created a mortgage over two

immovable properties in the year 2012. Due to default in repayment of the dues, after classifying the account as NPA, proceedings were initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), as is evident from Ext.P1 and Ext.P2 notices dated 18-01-2018, issued under section 13(2) of the SARFAESI Act.

3. While so, petitioner's registration as NBFC was cancelled by the Reserve Bank of India, through Ext.P4 dated 03-07-2018 and directed the petitioner to repay the deposits already accepted by the petitioner so as to bring down the financial assets below 50%. The reason for cancellation of CoR is stated to be the failure of the petitioner to achieve the required net owned fund before 01-04-2017, which was found to be a violation of the directions issued by the Reserve Bank of India. As a matter of fact, Ext.P4 was issued after following the statutory procedure.

4. In the meantime, the security interest created for the loan, which had already fallen as NPA, were brought for sale and petitioner itself bid at the auction held on 28.02.2019. Since petitioner was the highest bidder, the sale was confirmed in its favour, Ext.P6 sale certificate was also issued and the sale certificate was registered on 05.08.2019. However, when the petitioner applied for effecting mutation based upon Ext.P6, the 1st respondent referred the same to the 2nd respondent for legal advice and

thereafter the 2nd respondent issued Ext.P9 stating that since RBI had cancelled the certificate of registration of the petitioner as an NBFC with effect from 02.06.2018 and the sale certificate was registered subsequent to the said date, petitioner had no authority to execute the deed. This writ petition has been filed in the above circumstances.

5. Adv. Sabeena P. Ismail, the learned Government Pleader submitted upon instructions that, the refusal to effect mutation was based upon the cancellation of certificate of registration and that the 1st respondent received the opinion from the 2nd respondent stating that the deed could not have been executed by the petitioner and that they have acted in accordance with the directions issued.

6. I have heard Adv.Glaxon K.J., the learned counsel for the petitioner as well as Adv.Sabeena P. Ismail, the learned Government Pleader for the respondents.

7. The question to be considered is whether the cancellation of registration as an NBFC will render the petitioner disabled to execute a sale deed?

8. An NBFC is defined in section 45-I(f) of the Act as a Company, which has, as its principal business, the receiving of deposits, under any scheme or arrangement or in any other manner; or lending in any manner. Section 45-IA of the Act, deals with the requirement of registration and net

owned fund for commencement or carrying on the business of an NBFC. It states that no NBFC shall commence or carry on the business of NBFC without a certificate of registration and without having the net owned fund of a minimum amount. Section 45-IA(6) of the Act provides for cancellation of a CoR. Once the CoR is cancelled under the provisions of Section 45-IA(6) of the Act, the NBFC is not entitled to function as an NBFC thereby disabling it to accept deposits from the public or carry on any other function in the nature of banking activities as contemplated under the Act.

9. Certificate of registration as an NBFC is different from the certificate of registration as a company. As can be seen from Section 45-I(f) of the Act, an NBFC is primarily a Company. One of the prerequisites of being an NBFC is that of it being a company. An entity is formed as a company under the provisions of the Companies Act, 1956 or the Companies Act of 2013 (for short 'the Companies Act'), as the case may be. Once an entity becomes a company, if it has the objects as contemplated under the Companies Act, it can apply to register as an NBFC.

10. Registration as a Company and registration as an NBFC are under different and distinct statutes. A company registered under the Companies Act, is a legal entity by itself. The existence of a company is determined by the registration under the Companies Act, while registration

as an NBFC determines different type of activities, such a registered company can indulge in. Petitioner's registration as a private limited company under the Companies Act has not been cancelled under any known provisions of law. Petitioner has not been subjected to any winding up proceedings in any competent Court of law. When the petitioner's existence as a company is not in dispute, it is entitled to acquire properties and continue its legal existence. Merely because the CoR to function as an NBFC is cancelled, that will not deprive the petitioner of its legal character as a company. Petitioner's existence as a legal entity capable of holding properties remain unscathed, in spite of the cancellation of its registration as an NBFC. In the said circumstances, petitioner is entitled to buy, hold and own properties *de hors* its cancellation of certificate of registration as an NBFC. Ext.P9 is, therefore, contradictory to law, to that extent.

11. In this context, it may be apposite to mention that any secured creditor may enforce a security interest created in its favour by recourse to the provisions of the SARFAESI Act as per Section 13. Secured Creditor as defined under section 2(zd) of the SARFAESI Act includes a financial institution and as per section 2(m) a financial institution includes an NBFC. Petitioner had, as is evident from Ext.P1, initiated proceedings under the SARFAESI Act by issuing notice under section 13(2) at a time prior to the cancellation of the certificate of registration as an

NBFC. The period of sixty days expired and the right of the secured creditor to have recourse to the measures under section 13(4) also got crystalized at a time when the petitioner was an NBFC. Once the proceedings have been initiated, it is necessary in the interest of justice that the same continues, till the proceedings reach a logical conclusion, as otherwise, irreparable injustice and prejudice will be caused to such an entity.

12. Cancellation of registration as an NBFC, midway during the securitisation proceedings, will not result in the entity losing the opportunity to continue the proceedings under the SARFAESI Act to recover amounts due to it. I am fortified in my conclusion by virtue of the fact that due to the cancellation of CoR, petitioner is refrained only from acting as an NBFC, any further, for the purpose of collecting deposits from the public. However, it does not detract from the right of the entity to recover the debts owed to it by continuing the proceedings initiated nor does it destroy the rights that accrued to it already. Initiating proceedings under the SARFAESI Act is the right of a secured creditor. Once proceedings are initiated under the Act, they cannot be interrupted abruptly and be kept in a fluid state. If the proceedings under the SARFAESI Act that have already been initiated, are made to depend on the cancellation or otherwise of the CoR, it will lead to an anomalous situation where the rights of the secured creditor will be

fluctuating depending on a variety of factors. Thus, in order to have certainty, to both the secured creditor as well as the borrower, it is necessary to hold that once proceedings have been initiated under the SARFAESI Act, the same can continue irrespective of the cancellation of the certificate of registration as an NBFC. Therefore, the conclusion in Ext.P9 to the contrary is incorrect.

13. There is yet another infirmity in Ext.P9. It is a settled proposition that transfer of registry or mutation carried out in the revenue records, does not determine title to a property and they only enable the person in whose favour the mutation is recorded to pay the land revenue for the property in question. (see **Prahlad Pradhan and Others v. Sonu Kumhar and Others** [(2019) 10 SCC 259]. The title to a property is determined by the title deeds. Under section 3(3) of the Kerala Land Tax Act, 1961, a landholder is defined as including a registered holder for the time being in force. The registration of the sale certificate, as is evident from Ext.P6, is sufficient to clothe the petitioner with the nomenclature 'landholder'. The revenue authorities cannot adjudicate on the validity or otherwise of the title deeds. Further, none has raised any question on the validity of the title deed of the petitioner-not even the borrowers. In such circumstances, the revenue authorities are not entitled to question the validity of the registered sale certificate.

14. In the result, petitioner being the registered owner of the property, is entitled, under law, to have transfer of registry carried out in its name. Accordingly there will be a direction to respondents 1 to 3 to effect transfer of registry of the property covered by Ext.P6 sale certificate in the name of the purchaser shown in the said certificate.

The writ petition is allowed as above.

Sd/-

**BECHU KURIAN THOMAS,
JUDGE**

APPENDIX OF WP(C) 18263/2021

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE PAGE OF THE MALAYALAM DAILY "DEEPIKA" DATED 18.01.2018 CONTAINING THE DEMAND NOTICE DATED 17.01.2018.
Exhibit P2	TRUE COPY OF THE PAGE OF THE ENGLISH DAILY, "THE NEW INDIAN EXPRESS" DATED 18.01.2018 CONTAINING THE ABOVE SAID DEMAND NOTICE DATED 17.01.2018.
Exhibit P3	TRUE COPY OF THE BOARD RESOLUTION DATED 29.03.2018 AUTHORISING MR. VISHNU NAMBOOTHIRI GOVINDAN AS AUTHORISED AGENT OF THE PETITIONER.
Exhibit P4	TRUE COPY OF THE ORDER BEARING NO.DNBS (T) NO.11/02.03.099/2018-19 DATED 03.07.2018 ISSUED BY RESERVE BANK OF INDIA TO THE PETITIONER CANCELLING ITS CERTIFICATE OF REGISTRATION (COR) BEARING NO.B-16.00135 DATED 15.12.2000.
Exhibit P5	TRUE COPY OF THE BOARD RESOLUTION DATED 05.01.2019 AUTHORISING MR. CHELLAPPAN PILLAI AS THE AUTHORISED AGENT OF THE PETITIONER.
Exhibit P6	TRUE COPY OF THE SALE CERTIFICATE NO.2160/2019 DATED 05.08.2019 IS ISSUED AND REGISTERED IN FAVOUR OF THE PETITIONER.
Exhibit P7	TRUE COPY OF THE LETTER NO.G1/17031/19 DATED 12.10.2020 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.
Exhibit P8	TRUE COPY OF THE APPLICATION DATED 01.12.2020 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT FOR MUTATION OF THE SECURED PROPERTIES IN ITS NAME.
Exhibit P9	TRUE COPY OF THE LETTER NO.I/46986/2021 DATED 26.04.2021 ISSUED BY 2ND RESPONDENT TO THE 1ST RESPONDENT STATING THAT THE RESERVE BANK OF INDIA HAD CANCELLED THE COR OF THE PETITIONER WITH EFFECT FROM 02.06.2018 AND THE SALE CERTIFICATE WAS REGISTERED SUBSEQUENT TO THE SAID DATE AND THEREFORE, THE PETITIONER DID NOT HAVE ANY AUTHORITY FOR THE SAME.
Exhibit P10	TRUE COPY OF THE JUDGMENT DATED 13.12.2018 PASSED BY THIS HON'BLE COURT IN MARUNNOLI VIJAYALAKSHMI AND OTHERS V. TAHSILDAR, KOYILANDI TALUK CIVIL STATION AND OTHERS (REF : 2019(1) KHC 1421.