

**Ramesh Vs. U.Chitra**

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**SooperKanoon Citation :** [sooperkanoon.com/1168599](http://sooperkanoon.com/1168599)

**Court :** Chennai

**Decided On :** Jun-26-2014

**Judge :** M. Duraiswamy

**Appellant :** Ramesh

**Respondent :** U.Chitra

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED : 26.06.2014  
CORAM THE HONOURABLE MR.JUSTICE S.RAJESWARAN and THE  
HONOURABLE MR.JUSTICE S.VAIDYANATHAN W.P.Nos.27807/2012 and  
31185/2013 and M.P.Nos.1/2012 and 1/2013 W.P.No.27807/2012 Ramesh  
C.Soningara .Petitioner versus 1.U.Chitra 2.Indian Bank, Nandanam Branch, Rep.

By its Branch Manager, Nandanam, Chennai 600 035.

3.M/s.S.B.G.Dresses, Rep.

By its Proprietrix, B.Suseela, No.120, Sannadhi Street, Kundrathur,  
Kancheepuram District.

4.K.N.Bhaskar 5.B.Suseela .Respondents Petition filed under Article 226 of the  
Constitution of India for issuance of Writ of Certiorari, calling for the records  
relating to the impugned order dated 30.08.2012 passed by the Hon'ble Debts  
Recovery Appellate Tribunal, Chennai in M.A.No.609 of 2010 Appeal No.21/2009

in DRC No.44/2007 in O.A.No.494/2007 on the file of Drt-II, Chennai and quash the same as illegal and unconstitutional.

For petitioner : Mr.Kalyan Jabhak for M/s.Surana & Surana For respondents : Mr.N.Doraikannan (For R1) M/s.RRK Associates (For R2 ) No appearance (For R3 to R5) W.P.No.31185/2013 U.Chitra .Petitioner versus 1.Indian Bank, Nandanam Branch, Rep.

By its Branch Manager, Nandanam, Chennai 600 035.

2.The Debts Recovery Tribunal-II at Chennai Through its Registrar, Spencers Towers (Annexe) IV Floor, Chennai-2 3.The Recovery Officer, Debts Recovery Tribunal-II, Spencers Towers (Annexe) IV Floor, Chennai-2The Recovery Officer 4.The Debts Recovery Appellate Tribunal at Chennai, Through its Registrar, IV Floor, Indian Bank Buildings, Ethiraj Salai, Chennai-8.

5.M/s.S.B.G.Dresses, Rep.

By its Proprietrix, B.Suseela, No.120, Sannadhi Street, Kundrathur, Kancheepuram District.

6.B.Suseela 7.K.N.Bhaskar 8.Ramesh C.Sonigara .Respondents Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order dated 30.08.2012 made in M.A.No.609 of 2010 on the file of the 4th respondent, quash Clauses (b) to (d) in the operative portion of the order directing the registry of the 4th respondent Tribunal to transfer the sum of Rs.32,51,000/- deposited by the petitioner to the 3rd respondent with further directions to the said respondent to deal with the said amount and directing the petitioner to approach the said respondent seeking appropriate orders and consequently direct the respondents 1 and 3 to appropriate the sum of Rs.32,51,000/- deposited by the petitioner with the Registry of the 4th respondent Tribunal towards satisfaction of DRC No.44 of 2007 on the file of the 3rd respondent and discharge the property bearing No.,74, Kundrathur Village, Sriperumbudur Taluk, Kancheepuram District measuring 1 acre and 13 cents comprised in S.No.1202/1 from mortgage and return the title deeds pertaining to

the said property to the petitioner.

For petitioner : Mr.N.Doraikannan For respondents R1 : M/s.RRK Associates R2 to R4 : Tribunal R5 to R7 : No appearance R8 : Mr.Kalyan Jabhak for M/s.Surana & Surana COMMON

## ORDER

(Order of the Court was made by S.RAJESWARAN, J.) The issue involved in both the writ petitions and the respondent Bank are one and the same and a common order is being passed to dispose of both the writ petitions.I.W.P.No.27807/2012 2.The case of the writ petitioner as given in the affidavit filed in support of the writ petition is as follows: The petitioner is an auction purchaser of the subject property measuring an extent of 1 acre and 13 cents in the public auction held on 03.08.2006, as per the DRC proceedings in DRC No.331/2000 in O.A.No.1134/1998, conducted by the Recovery Officer of DRT-I (subsequently transferred to DRT-II and re-numbered as DRC No.44/2007 in DRT-II).The petitioner purchased the scheduled property for a sum of Rs.32,51,000/- (Rupees thirty two lakhs fifty one thousand only) and paid 25% of the bid amount on the auction date itself by way of two cheques for Rs.1,10,000/- and for Rs.7,02,750/-.

Thereafter, he went to the revenue authorities to verify about the land purchased by him in the above said auction sale.

To his surprise he found from the revenue records that 11 cents of the land out of the total extent of 1 acre and 13 cents, was acquired by the Chennai Metropolitan Development Authority (CMDA) much before the auction held and the land available was only to an extent of 1 acre and 2 cents, as against that of 1 acre and 13 cents purchased by the petitioner in the auction sale.

Therefore, immediately he gave instruction for stop payment to his bankers for the payment of Rs.7,02,750/- and informed the same to the Recovery Officer also.

3.Thereafter, he wrote a letter to the Recovery Officer to reduce the sale consideration proportionately to the extent of 1.02 acres only, which was actually in existence.

At the request of the Recovery Officer, he paid the sum of Rs.7,02,750/- by way of a Pay Order on 10.08.2006 under protest along with a letter dated 10.08.2006, enclosing a copy of the revenue records about the acquisition by CMDA.

Thus, the petitioner had paid 25% of the total sale consideration to the Recovery Officer.

The Recovery Officer has also requested the Tahsildar by way of a letter to measure the land with the help of a town surveyor and to file a report to him so that appropriate orders would be passed in the matter.

But, without any steps having been taken in this regard, the Recovery Officer of the DRT-II insisted on him to pay the balance sale consideration, for the refund of the balance amount due to him for the reduction in the extent of land.

Accordingly, on 29.08.2007, he wrote a letter to the recovery officer of DRT-II enclosing a pay order for a sum of RS.24,70,770/- being the total consideration for the entire extent of 1.13 acres with the request for the refund of a sum of Rs.3,19,634/-, being the value of the land to an extent of 11 cents which was acquired by CMDA.

After issuance of the sale certificate, he filed an application for refund of the said sum being the excess amount paid to the Recovery Officer and the said application was later on withdrawn by him.

On 10.10.2007, the Recovery Officer, DRT-II issued a sale certificate in his name with the S.No.1201/1, measuring an extent of 1.13 acres and the same was informed to the Sub Registrar for registration.

On receipt of the sale certificate, he wrote a letter dated 11.06.2008 to the respondent bank for releasing the parent document in his favour and accordingly, the parent documents were released in his favour and he has been in possession of the original title deed.

The subject land being a vacant land, he took possession of the same on 12.06.2009 itself.

Subsequently, it was found that the sale certificate issued by the DRT-II contains a wrong S.No.1201/1 instead of 1202/1.

Hence he filed an application in M.A.No.37/10 before the DRT-II for correcting the Survey Number in the sale certificate by the Recovery Officer of DRT-II.

On allowing such an application on 13.04.2010, a fresh sale certificate was issued on 23.04.2010 with the correct S.No.1202/1 in his favour and the same was registered as Doc.No.4682/10 at the office of the SRO, Kundrathur, Chennai.

The revenue records were accordingly mutated on 12.08.2010.

He also requested the Tahsildar to measure the land with the help of a town surveyor and to mark the boundaries as there were certain encroachments over the land.

A police complaint was also given on 30.08.2010 before the Commissioner of Police, Madras to remove such encroachments.

The petitioner has also paid the land tax up to this date.

Thus, the petitioner is the absolute owner of the subject property and he has been in peaceful possession and enjoyment of the same.

4.The subject property was mortgaged with the bank on 04.10.1994 by the respondents 3 and 4 over the financial facilities availed by them and due to the default committed by them, the bank had filed O.A.No.1134/1998.

The fiRs.respondent herein had purchased the property on 24.11.1999 after giving the paper publication on 14.11.1999.

Thus, the property was purchased by the fiRs.respondent only after the mortgage.

The schedule property was attached on 11.10.2001, based on the final orders passed by the DRT-I in O.A.No.1134/1998.

When the property was about to be sold in the public auction, the fiRs.respondent herein alleging to be the purchaser of the said property subsequent to the

mortgage approached the Recovery Officer, stating that she was the bonafide purchaser and she was cheated by her vendor by suppressing the existence of a mortgage in favour of the respondent bank.

It was also stated by the fiRs.respondent that their vendor represented that he had lost the title deed of the property and only after due publication was made by the vendor on 14.11.1999, the fiRs.respondent had purchased the property on 26.11.1999.

The fiRs.respondent thereafter did not redeem the property by paying the total outstanding dues to the bank.

But, the fiRs.respondent filed an application before the Recovery Officer in M.A.No.1/06, challenging the sale proclamation dated 19.01.2006 and obtained an interim order.

The fiRs.respondent has not taken any steps against the vendor for having cheated her.

This is nothing but a collusion between the fiRs.respondent and the vendor to defeat the rights of the respondent bank.

An application in M.A.No.1/06 was filed by the fiRs.respondent and the same was dismissed by the Recovery Officer on 28.03.2006.

Thereafter only the fresh sale proclamation was issued on 01.07.2006 fixing the date of auction as 03.08.2006, on which date, the petitioner had purchased the property.

Till mid 2008, no step was taken by the fiRs.respondent.

The fiRs.respondent filed an application before the DRT-II to set aside the sale dated 03.08.2006.

The said application was returned by DRT-II on the ground of maintainability.

Thereafter, the fiRs.respondent instead of following the due process of law, filed an appeal in AP No.21/09 before the DRT-II on 09.06.2008, challenging the order passed by the Recovery Officer.

But the said appeal was dismissed on 26.02.2010, as the sale was not challenged following the due process of law, viz., Rule 60 & 61 of the Second Schedule to Income Tax Act.

To challenge the said order, the fiRs.respondent filed an appeal in M.A.NO.609/10 before DRAT, Chennai and DRAT allowed the appeal on 30.08.2012 and set aside the sale dated 03.08.2006 conducted by the Recovery Officer.

The said order has been challenged by the petitioner in this writ petition.

5.On 10.12.2012, this Court granted an interim stay of the operation of the impugned order dated 30.08.2012 passed by the DRAT, Chennai, in MA No.609/2010 in Appeal No.21/2009 in DRC No.44/2007.

II.

W.P.No.31185/2013: 6.This writ petition has been filed by the fiRs.respondent in W.P.No.27807/2012.

The case of the petitioner as given in the affidavit filed in support of the writ petition is as follows: During November, 1999, the 7th respondent in this writ petition (K.N.Baskar) approached the petitioner and offered to sell his property measuring an extent of 1 acre and 13 cents comprised in S.No.1202/1 Kundrathur Village, Sriperumbudur Taluk, Chennai MGR District (which is the very same subject property in the other writ petition).After considering the proposal, she along with her son purchased the property for a total consideration of Rs.3 lakhs and the said sale was registered under a Sale Deed as Doc.No.599/00 dated 26.11.1999 on the file of SRO, Kundrathur.

At the time of sale, the vendor, viz., the 7th respondent herein, had represented that he had lost the original will executed by his father, Late T.M.Nagalingam and hence, produced a certified copy of the Will, through which, he inherited the

subject property.

He also assured that there was no encumbrance in the said property.

On verification, she also found that there was no encumbrance.

Hence, she purchased the property along with her son and the sale deed was executed through the power agents of the vendor.

Before purchase, she had issued a public notice through her advocate in News Today on 14.11.1999, informing the public about her intention to purchase the subject property and invited objections, if any, from those who were interested in the property.

Since no objection whatsoever was received from any quarter, she purchased the property along with her son.

Thus, she and her son are the bonafide purchasers for a valid consideration.

The possession of the property was also handed over to them soon after the sale and since then, they have been in possession and enjoyment of the same.

7.While so, she was surprised to find an Auction Sale Notice in Indian Express published on 18.01.2006 at the instance of the third respondent/Recovery Officer/DRT-II, stating that Late T.M.Nagalingam, the father of the 7th respondent (K.N.Baskar) had mortgaged the property with the fiRs.respondent Indian Bank and the property was brought for sale in execution of the recovery certificate issued by the second respondent in favour of the fiRs.respondent under RDDB&FI Act.

She had checked with the fiRs.respondent bank and on coming to know about the existing mortgage, on 19.01.2006 she addressed a letter to the fiRs.respondent, Indian Bank, expressing her willingness to pay the loan dues of M/s.SBG Dresses, the 5th respondent in the writ petition and requested the said respondent to release the property from the mortgage.

The letter and the subsequent reminder sent by her did not evoke any response from the fiRs.respondent bank.

It was found that on 19.04.2006, the dues payable by the 7th respondent (K.N.Baskar) was only a sum of Rs.12,20,670.50 and she expressed her willingness to pay the same to the fiRs.respondent bank.

But her request was not considered by the fiRs.respondent bank.

The 7th respondent (K.N.Baskar) suppressing the earlier mortgage with the fiRs.respondent, sold the property to the petitioner.

In fact, to the public notice effected by her before purchasing the property, she did not receive any objection about her purchase.

Only after the sale notice was issued by the third respondent, the petitioner and her son made enquiries and came to know that the 5th respondent (M/s.SBG Dresses) availed certain credit facilities from the fiRs.respondent bank in the year 1994, to which, the property in question was given as a security by the father of the petitioner's vendor i.e., the 7th respondent and as the borrower company had defaulted in making the payments to the fiRs.respondent bank, the bank filed O.A.No.1134/1998 before the DRT, for the recovery of RS.21,17,337.59, against the respondents 5 to 7.

Based on the final order passed by the Tribunal, a Recovery certificate was issued in DRC No.331/2000 in the Original Application which was re-numbered as DRC No.44/2007 and the third respondent brought the property for auction sale.

As bonafide purchasers for a valid consideration, the petitioner and her son are entitled to be heard, but, the fiRs.respondent deliberately did not take steps to implead the petitioner and her son in the said recovery proceedings.

Further, the third respondent without verifying the encumbrance records, brought the property for sale without issuing any notice to her now to her son under Income Tax Certificate Proceeding Rules.

8.The petitioner and her son are the owners of the property, having purchased the same for a value without notice of the prior encumbrance.

In fact, out of the property measuring an extent of 1 acre and 13 cents, a portion viz., 11 cents were acquired by the CMD.for the development of a 400 road and a compensation amount of Rs.11,983/- was received by her and her son on 26.07.2005.

Without even verifying these facts, the 3rd respondent, Recovery Officer of DRT-II brought the entire property measuring about 1 acre and 13 cents for sale without complying with the procedures laid down under Schedule-II of the Income Tax Act.

9.By sale notice dated 18.01.2006, the third respondent brought two items of the said property for sale in DRC NO.331/2000 (later re-numbered as DRC No.44/2007) out of which, one of the properties belonged to the petitioner and her son.

Therefore, the petitioner filed a petition under Rule 11 of Schedule-II to the Income Tax Act before the third respondent on 21.02.2006 bearing MA No.1/2006 to terminate the Auction Sale scheduled on 22.02.2006.

Even though auction was deferred initially, later, by its order dated 28.03.2006, the third respondent rejected the petitioner's application on an erroneous ground and again brought the properties for sale on 03.08.2006.

In the said sale, the 8th respondent (writ petitioner in W.P.No.27807/2012) became the successful bidder in respect of her property.

It is pertinent to mention that the Schedule-II to the Income Tax Act mandates the deposit of the entire bid amount within 15 days from the date of auction.

But, the purchaser/8th respondent failed to pay the amount within 15 days, because of which, the sale was liable to be cancelled.

In this case, though the auction was held on 03.08.2006 itself, the 8th respondent herein deposited the sale consideration only on 29.08.2007 i.e., nearly after one year in violation of the prescribed statutory period of 15 days.

Further, it has come to her notice that even the 25% of the bid amount was not paid immediately i.e., on the date of the auction i.e.03.08.2006 itself.

Rules and the Sale Notice contemplate the 25% of the bid amount to be deposited immediately of knocking down of the sale in favour of the purchaser.

However, 25% of the bid amount less the EMD was tendered by the auction purchaser, by way of a cheque on 03.08.2006 which was returned dishonoured due to 'stop payment' instructions given by the purchaser/the 8th respondent herein.

Though cheque payment is not permissible either under the Rules nor under the Terms of the Sale Notice, the 3rd respondent curiously accepted the cheque payment.

Anyway, after the cheque got dishonoured, the third respondent ought to have cancelled the sale and forfeited the EMD.However, for the reasons best known to the 3rd respondent, the sale was not cancelled by them.

25% of the bid amount was paid only on 10.08.2006.

10.Aggrieved by the action of the third respondent in confirming the sale, the petitioner filed an application to set aside the sale before the 2nd respondent, DRT-II at Chennai vide SR NO.2333 and 2334.

However, the 2nd respondent returned the application on the ground of maintainability observing that the petitioner has a remedy of filing an appeal against the order of the Recovery Officer.

Hence, she filed an appeal under Section 30(1) of RDDB&FI Act, 1993, challenging the order passed by the 3rd respondent MA.No.1/2006 in DRC No.331/2000 on 28.03.2006, before the second respondent.

Since there was a delay in filing the appeal, an application was filed to condone the delay in filing the appeal, and the delay was also condoned and the appeal was taken on file vide AP No.21/2009 on the file of the 2nd respondent.

It was later dismissed on an erroneous appreciation of the facts and law on 26.02.2010.

the said order has been challenged before the 4th respondent by filing an appeal bearing MA No.609/2010.

11.In the meantime, the 3rd respondent issued a sale certificate to the 8th respondent on 26.04.2010.

According to the petitioner, the said sale certificate dated 26.04.2010, issued in favour of the 8th respondent, was ex-facie illegal and null and void.

Armed with such illegal certificate, the 8th respondent threatened to evict the petitioner and her son from the property.

Hence, the petitioner filed W.P.No.11016/2010 before this Court, praying to direct the respondents 1 and 3 to receive the sum of Rs.32,51,000/- which is equivalent to the sale consideration paid by the 8th respondent/auction purchaser, from her and to discharge the mortgage.

The respondents 1 to 3 and the respondents 5 to 8 were parties to the said writ petition.

The respondents entered appearance and after hearing the arguments, this Court disposed of the writ petition with the following direction and observation: However, in the case on hand, the intention of the petitioner is only to set aside the sale notice in respect to one item of the property.

Therefore, it is a matter to be considered only by the appellate authority.

It is open to the petitioner to approach the Appellate Tribunal with a request to deposit the proportionate amount, taking note of the amount offered by the 7th respondent in respect of the property in S.No.1201/1 of Kundrathur Village and we are sure that such application will be considered by the DRAT on merits and as per law. 12.Her appeal was taken up on file by the 4th respondent vide MA No.609/2010 and an order of stay of further proceedings of the 3rd respondent and an order of interim injunction against the 8th respondent from disturbing her

possession and enjoyment of the property were granted on 11.10.2010.

Thereafter, the appeal was taken on file for further disposal.

In between, the petitioner had deposited a sum of Rs.32,51,000/- with the Registry of the 4th respondent Tribunal and prayed for setting aside the order dated 26.2.2010 in Appeal No.21 of 2009, on the file of the 2nd respondent and to cancel the Sale Certificate dated 20.6.2006, issued in favour of the 8th respondent which was re-issued on 26.4.2010.

Producing the order dated 12.10.2012, the petitioner also prayed for a direction to the 1st and 3rd respondents to accept and adjust the sum of Rs.32,51,000/- paid by the petitioner and to release the property in question to her.

13.The petitioner submitted before the 4th respondent that the procedure laid down to Schedule-II to Income Tax Act was violated as no notice was issued to her by the 3rd respondent either demanding money payable under the Recovery Certificate or while attaching the property or at the time of drawing up proclamation of sale.

The petitioner produced documents and established before the 4th respondent that the alleged sale in favour of the 8th respondent is a nullity as he had not paid the 25% of the bid amount immediately on knocking down the sale in his favour and as he had not paid 75% of the balance sale consideration also within 15 days and in fact paid the same only after a year.

14.After hearing the arguments, the 4th respondent found that the 3rd respondent had violated Rule 57(1) and (2) of the Schedule-II to Income Tax Act and consequently, by its order dated 30.08.2012, set aside the sale held in favour of the 8th respondent.

However, as regards to her prayer for a direction to the 1st and 3rd respondents to adjust the sum of Rs.32,51,000/- towards the Certificate dues and release the property was concerned, the 4th respondent directed the Registry to transmit the amount deposited by the petitioner to the 3rd respondent and directed him to pass appropriate orderRs.The said order is not in tune with the order dated 06.08.2010

made in W.P.No.11016 of 2010.

Hence, aggrieved by the said portion of the order dated 30.08.2012, the above writ petition has been filed for the aforesaid prayer.

15.This Court, on 19.11.2013, as the issue involved in this writ petition is also connected with the issue involved in the W.P.No.27807 of 2012, directed the Registry to post both the writ petitions together for a common hearing.

Accordingly, both the writ petitions are listed today for a common hearing.

16.Heard Mr.M.S.Krishnan, the learned Senior Counsel representing M/s.Surana and Surana for the petitioner in W.P.No.27807 of 2012 and Mr.Duraikannan, the learned counsel appearing for the petitioners in W.P.No.31185 of 2013 and the learned counsel appearing for the respondent Bank.

We have also gone through the documents made available on record.

17.The learned senior counsel appearing for the petitioner in W.P.No.27807 of 2012 submits that the petitioner in W.P.No.27807 of 2012 purchased the property in an Auction sale conducted by the Recovery Officer, whereas the writ petitioner in W.P.No.31185 of 2013 purchased the property on 26.11.1997 much after the mortgage of the property with the bank.

He pointed out that even though it has been claimed that the writ petitioner in W.P.No.31185 of 2013 and her son were cheated by Mr.K.N.Baskar, who sold the property to them, they did not bring any criminal action against the vendor which will go to show that they are in collusion with each other.

He further pointed out that 25% of the bid amount was immediately paid by issuing a cheque on the very same day and the same was instructed to be stopped for payment for valid reasons.

Further, the balance sale consideration was also deferred due to administrative reasons like transfer of the proceedings from DRT-I to DRT-II, etc.The lesser extent of available land is also yet another reason for justifying the delay in payment of the balance sale consideration.

If these reasons are properly considered, then, the delay is justified which was not properly considered by the Appellate Authority.

The learned senior counsel further submits that the writ petitioner in W.P.No.27807 of 2012 has in fact paid the bid amount for an extent of 1 acre and 13 cents, when the available land is only 1 acre and 2 cents.

The learned senior counsel finds fault with the order of the Appellate Tribunal that Rules 57 and 58 of the Schedule-II to Income Tax Act has not been followed and according to him, Rule 57 and 58 are applicable only when the sale is challenged under Rule 60 and 61 of the Schedule-II to Income Tax Act.

As there is no challenge to the sale, the Appellate Tribunal has erred in its findings in this regard.

18.The learned senior counsel wound up his arguments by submitting that at the time of filing of Appeal in Appeal No.21 of 2009 before the Debts Recovery Tribunal-II, the sale has already been conducted, sale certificate has already been issued by the Recovery Officer, but, still the writ petitioner in W.P.No.31185 of 2013 has not chosen to challenge the sale as per law.

19.Per contra, the learned counsel for the writ petitioner in W.P.No.31185 of 2013 submits that the writ petitioner is aggrieved by the portion of the order, directing the petitioner to approach the Recovery Officer, seeking appropriate orders with regard to the amount deposited by her.

He points out that the writ petitioner in W.P.No.31185 of 2013 deposited a sum of Rs.32,51,000/- with the Registry of the Tribunal pursuant to the order passed by this Court in W.P.No.11016 of 2010 and this Court in the order dated 06.08.2010 specifically directed the DRAT to consider the request of the petitioner on merits and in accordance with law.

Therefore, the learned counsel contends that the Debts Recovery Appellate Tribunal has erred in law and on facts by relegating the matter to the Recovery Officer instead of deciding the issue by itself, as directed by this Court.

Therefore, he submits that the said portion of the order is not in consonance with the order dated 06.08.2010 passed by this Court.

20.The learned counsel appearing for the petitioner in W.P.No.31185 of 2013 submits that in all other aspects, supports the order passed by the DRAT, as the sale held in favour of the 8th respondent (Mr.Ramesh C.

Sonigara).the writ petitioner in W.P.No.27807 of 2012 is a nullity and after setting aside the sale, there is no fetter on the part of the DRAT to direct the Recovery Officer and the Bank to appropriate the sum of Rs.32,51,000/- towards part satisfaction and release the property in question to the petitioner after discharging the mortgage.

Hence, the learned counsel prays for a direction, directing the DRAT to transmit the sum of Rs.32,51,000/- deposited by the writ petitioner in this Writ Petition and consequently direct the bank to discharge the said property from mortgage and return the title deeds pertaining to the said property after appropriating the said sum of Rs.32,51,000/-.

21.In support of his submissions that the sale held in favour of the writ petitioner in W.P.No.27807 of 2012 is a nullity in the eye of law, he relied on the following decisions: 1.Unreported Judgment in Civil Appeal No.154 of 2013 dated January 19, 2013 (C.N.Paramasivam and another versus Sunrise Plaza TR partners and otheRs.2.2011 (6) CTC369(P.Kumaran versus The Debts Recovery Appellate Tribunal, No.55, Ethiraj Salai, Chennai -8 and otheRs.3.2010 (3) CTC372(C.N.Paramasivam and another versus Sunrise Plaza Through its Partner and otheRs.4.1998 3 SCC272(Deccan Sugar & Abkari Co.LTD.versus Commissioner of Excise, A.P.) 5.1995 (3) SCC579(Nani Gopal Paul versus T.Prasad Singh) 6.2007 (12) SCC165(Shipa Shares and Securities and others versus National Co-operative Bank Ltd., and otheRs.7.2013 (9) SCC460(C.N.Paramasivam and another versus Sunrise Plaza Through Partner and otheRs.22.We have considered the rival submissions carefully with regard to the facts and the citations.

23. After hearing the arguments and perusing the records, we are of the opinion that the sale confirmed in favour of the writ petitioner in W.P.No.27807 of 2012 is absolutely illegal, as the writ petitioner in W.P.No.27807 of 2012 has neither paid the 25% of the bid amount on the date of purchase nor paid the balance 75% of the balance sale consideration within 15 days from the date of the sale.

Though a cheque was issued by him towards 25% of the bid amount, later, the same was stopped on instructions from the person and it is also not in dispute that the balance amount was also not paid within 15 days from the date of sale.

Hence, we do not find any reason to interfere with that portion of the order passed by the DRAT in so far as setting aside the sale conducted by the Recovery Officer, DRT-II, Chennai on 3.8.2006 is concerned.

24. When we indicated our mind with regard to our concurrence with the order passed by the DRAT in so far as setting aside the sale conducted on 3.8.2006 is concerned, the learned senior counsel for the petitioner in W.P.No.27807 of 2012, made a submission, that too, after consulting the writ petitioner through his instructing counsel (Mr.Kalyan Jabhak of M/s.Surana and Surana).who was standing behind him, at the time of his arguments, that the writ petitioner would be satisfied if the money paid by them is returned with interest.

This Court, while appreciating the learned senior counsel's submission in so far as the return of the amount deposited by the auction purchaser / the writ petitioner in W.P.No.27807 of 2012, also indicated that no interest can be paid for the default committed by the auction purchaser.

25. This Court further pointed out to the learned senior counsel that this submissions in this regard would be considered at the time of passing of final orders in the writ petitions and orders were reserved by this Court on 28.04.2014.

26. On 29.04.2014, the next day, the writ petitioner in W.P.No.27807 of 2012, Mr.C.Ramesh Sonigara appeared in person before us and mentioned that they did not accept for the refund of the money deposited by them and the submission made by the learned senior counsel who appeared on his behalf, the previous day,

was not correct and hence, he wanted this Court not to consider the same and to re-hear the matter.

27.This Court frowns upon such indecent and unwarranted conduct by a litigant who accepts and admits one thing in the Court through his counsel, but later on, disowns the same by finding fault with the counsel who makes such submissions, only after getting the consent and concurrence of the litigant.

We deprecate such conduct and practice of the litigant and however, this Court made it very clear to him that notwithstanding his abominable behaviour, this Court will consider all the submissions and pass orders on merits and in accordance with law only.

28.As observed by us in the previous paragraphs, the DRAT has rightly concluded that the sale confirmed in favour of the writ petitioner in W.P.No.27807 of 2012 is illegal and all the decisions relied on by the learned counsel appearing for the petitioner in W.P.No.31185 of 2013 support this proposition.

In fact, no citation is necessary for deciding this issue, as the law is very clear that it is mandatory on the part of the auction purchaser to deposit 25% immediately and the balance 75% within 15 days.

It is not in dispute that the writ petitioner in W.P.No.27807 of 2012, the auction purchaser, did not comply with the time limit and the reasons canvassed before us are all after thoughts and they can never be an excuse to condone the delay, which is in fact, mandatory and not relaxable.

Therefore, this Court has no hesitation in upholding the order of the DRAT in so far as setting aside the sale conducted by the Recovery Officer on 3.8.2006 with respect to the subject property of the writ petitions is concerned.

29.With regard to the other portion of the order of the DRAT, directing the Recovery Officer to take steps to deal with the bid amount and the direction given to the writ petitioner, who filed W.P.No.31185 of 2013 to approach the Recovery Officer for the sum of Rs.32,51,000/-, we are of the view that this portion is not definitely in consonance with the orders passed by this Court on 06.08.2010 and

the Division Bench of this Court directed the Appellate Authority i.e.the Appellate Tribunal to consider the entire issue on merits.

If that being so, it is not open to the Appellate Tribunal i.e.the DRAT to relegate the matter back to the Recovery Officer especially when the facts are not disputed and there is a clear direction by this Court to decide the issue by the Tribunal itself.

Instead of relegating the matter to the Appellate Tribunal, ought to have addressed to the entire issue and given a quietus to the matter.

In normal circumstances, we would remand the matter for fresh consideration, but, considering the totality of the facts and circumstances of the case, we deem it fit and proper to pass the following order in the interest of justice: 1.The sale conducted by the Recovery Officer of the DRT-II on 03.08.2006 is illegal and has been correctly set aside by the DRAT in the order dated 30.08.2012 in M.A.No.609 of 2010; 2.The proper authority/officer concerned is directed to refund the entire amount deposited by the writ petitioner in W.P.No.27807 of 2012 (C.Ramesh Sonigara).the 8th respondent in W.P.No.31185 of 2013; 3.The Recovery Officer, DRT-II is directed to take steps to recover the amount of Rs.32,51,000/- deposited by the writ petitioner in W.P.No.31185 of 2013 with the Tribunal along with interest and adjust and appropriate the same towards DRC NO.44 of 2007 and take further steps to cancel the mortgage and return the title deeds pertaining to the subject property and discharge the property bearing No.74, Kundrathur Village, Sriperumbudur Taluk, Kancheepuram District, measuring 1 acre and 02 cents comprised in S.No.1202/1 to the writ petitioner in W.P.No.31185/2013 within three weeks from the date of receipt of a copy of this order.

30.In the result, both the writ petitions are disposed of in the above terms.No costs.

Consequently, connected miscellaneous petitions are closed.

(S.R.,J.) (S.V.N.,J.) 26.06.2014 Index : Yes Internet: Yes cse Note: Issue order copy on 27.06.2014 To 1.Indian Bank, Nandanam Branch, Rep.

By its Branch Manager, Nandanam, Chennai 600 035.

2.The Debts Recovery Tribunal-II at Chennai Through its Registrar, Spencers Towers (Annexe) IV Floor, Chennai-2 3.The Recovery Officer, Debts Recovery Tribunal-II, Spencers Towers (Annexe) IV Floor, Chennai-2The Recovery Officer  
4.The Debts Recovery Appellate Tribunal at Chennai, Through its Registrar, IV Floor, Indian Bank Buildings, Ethiraj Salai, Chennai-8.

**S.RAJESWARAN,J.**

**AND S.VAIDYANATHAN, J.**

cse Pre-delivery order made in W.P.Nos.27807/2012 and 31185/2013 and M.P.Nos.1/2012 and 1/2013 26.06.2014

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