



2024/KER/24709

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

WEDNESDAY, THE 27TH DAY OF MARCH 2024 / 7TH CHAITHRA, 1946

WP(C) NO. 12567 OF 2018

PETITIONER/S:

STATE BANK OF INDIA
PALLITHURA BRANCH, TRIVANDRUM
PIN 695 586, REPRESENTED BY THE CHIEF MANAGER.

BY ADVS.
SRI.MANU GEORGE KURUVILLA
SRI.AMAL GEORGE

RESPONDENT/S:

- 1 JESPIN RAJU
KILU COTTAGE, VALIYAVILAKOM PURAYIDAM,
THUMBA, PALLITHURA PO, TRIVANDRUM 695 586.

- 2 KERALA STATE FISHERMEN DEBT RELIEF COMMISSION
T.C.11/683-1 & 29, NALANDA ROAD, NANTHANCODE,
TRIVANDRUM, PIN 695 011, REPRESENTED BY ITS
SECRETARY.

BY ADVS.
SRI.T.B.HOOD
SMT.M.ISHA
SRI.T.G.SUNIL, SC, KSFDRC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 27.03.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**"C.R"****EASWARAN S. , J.****-----
W.P. (C) No.12567 of 2018
-----****Dated this the 27th day of March 2024****JUDGMENT**

Can the Kerala Fishermen Debt Relief Commission interdict a secured creditor from enforcing the security interest created under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the Securitisation Act) is the question before this Court? Petitioner, State Bank of India, challenges Ext.P8 order passed by the Kerala State Fishermen Debt Relief Commission (KSFDRS) wherein the measures under the Securitisation Act is interdicted. The main ground of challenge against Ext.P8 order is that the Securitisation Act overrides the provisions of the Kerala Fisherman Debt Relief Commission Act 2008.

2. The averments in the writ petition shows that by Ext.P1 application dated 19.8.2008, the 1st respondent availed a credit



facility in the form of housing loan. On default, the bank initiated measures under the Securitisation Act on 6.10.2016. Once the measures were initiated, the 1st respondent approached this Court by filing W.P.(C) No.12744 of 2017 which resulted in Ext.P4 judgment wherein, the 1st respondent was given liberty to pay the outstanding amounts in twelve monthly installments. On default, the bank moved the jurisdictional Magistrate under Section 14 of the Securitisation Act and obtained Ext.P5 order appointing a Commissioner for taking physical possession of the secured asset. In the meantime, the 1st respondent seems to have approached the 2nd respondent, the KSFDRC, with an application for waiver on 19.3.2018. By Ext.P7, the bank raised objection and also stated that the issues could be amicably settled. On 04.04.2018, the 2nd respondent issued the impugned order- Ext.P8 by which the secured creditor was directed to hand over the keys of the secured asset to the complainant with a further direction to the petitioner bank not to take coercive steps without the permission of the 2nd respondent. Challenging the aforesaid directions, the petitioner has approached this Court with the present writ petition.



3. I have heard Sri. Amal George, the learned counsel appearing for the petitioner, Sri. T.B. Hood, the learned counsel appearing for the 1st respondent and Sri. T.G. Sunil, the learned Standing Counsel appearing for the 2nd respondent.

4. While deciding the validity of Exhibit P8 order, this Court is called upon to decide the jurisdiction of the 2nd respondent to issue Ext.P8 order.

5. Sri. Amal George, the learned counsel points out that in terms of the provisions contained under Section 35 of the Securitisation Act, the authority of the 1st respondent is ousted. In short, the contention of the petitioner is that the Securitisation Act being a Central Statute and the law enacted by the Parliament, the operation of the Kerala State Fishermen Debt Relief Commission Act, 2008 (Act 18 of 2008) is not applicable. Sri. T.B. Hood, the learned Counsel for the 1st respondent supported the findings of the 2nd respondent in Exhibit P8 order. He would argue that the 1st respondent was justified in moving the 2nd respondent since it has the power under the Act 18 of 2008 to issue directions in respect of loans availed by fisherman in distress.



6. On consideration of the points raised in the writ petition, I find substantial force in the contentions of the learned counsel appearing for the petitioner.

7. Section 35 of the Securitisation Act specifically provides that the Act shall have overriding effect over other laws for the time being in force. The provisions under Section 35 of the Securitisation Act opens with a non obstante clause. The effect of non obstante clause in a statute came up for consideration before this Court in the decision rendered in **Rajan P Kuttan and another vs State of Kerala 2021(6) KHC 513** wherein it was held by the Division Bench of this court as follows:

“ A non obstante clause is generally appended to the section to give enacting part of the section, in case of conflict an overriding effect over the provisions in the same or Rule framed thereunder or any other Act mentioned in the non obstante clause. In other words, this clause empowers the legislation or a provision to override the effects of any other legal provisions contrary to this under the same law or any other law.”

8. A reading of Section 13(1) of the Securitisation Act shows that it begins with a non obstante clause which provides that notwithstanding anything contained in any other provisions



of law of Sections 69 and 69A of the Transfer of Property Act, the secured creditor is entitled to take such measure without the intervention of the Court or tribunal for enforcement of the security interest. Further more, any person aggrieved by such action can move the Debt Recovery Tribunal under Section 17 of the Act by an application.

9. Therefore, can it be said that the 1st respondent was justified in moving the 2nd respondent with an application under the Act 18 of 2008 with an application seeking for intervention.

10. The answer lies in analysing the effect of the Securitisation Act 2002 qua the Kerala Fisherman Debt Relief Commission Act 2008.

11. When one reads the provisions of Section 35 of the Securitisation Act it gives a plain impression that the Act overrides the provisions of any other law for the time being in force. Furthermore, the Securitisation Act was enacted by virtue of the powers vested on the Parliament under Entry 45 List 1 Schedule VII of the Constitution of India which provides for the matters relating to banking. On the other hand, a cursory



glance on the enactment of the Kerala State Fishermen Debt Relief Commission Act, 2008 shows that it is intended to provide for benefit entirely different from the purpose for which the Securitisation Act is enacted. The preamble of the Kerala State Fishermen Debt Relief Commission Act, 2008 shows that it is intended to provide urgent relief to the fishermen who are in distress due to indebtedness, by constituting a committee for recommending the relief measures. Under no stretch of imagination, it could be construed that the Commission constituted under the Kerala State Fishermen Debt Relief Commission Act, 2008 would get the authority to interdict the secured creditor acting in terms of the provisions of the Securitisation Act to restrain the secured creditor from taking measures for enforcement of the security interest.

12. Still further, it is to be noted that under Article 246 of the Constitution of India, the law enacted by the Parliament has to be given primacy over the State laws.

13. Article 246 of the Constitution of India relates to the federal supremacy of the law enacted by the Parliament. In the light of the provisions contained in the Constitution and also the



power traceable to Entry 45 List I of the Schedule VII of the Constitution of India, while enacting the Securitisation Act, this Court finds that the Securitisation Act will definitely have predominance over the Kerala State Fishermen Debt Relief Commission Act, 2008. Therefore on a conjoint application of Article 246 of the Constitution of India and Section 35 of the Securitisation Act, this Court has no hesitation to hold that the Securitisation Act definitely has primacy over the Kerala Fisherman Debt Relief Commission Act 2008.

14. The effect of Article 246 of the Constitution of India on the State law issue came up for consideration before the Apex Court in **State Bank of India Vs. Santhosh Gupta and Another** [2017 (2) SCC 538], wherein the inter play between the Securitisation Act and the Jammu and Kashmir Transfer of Property Act was considered by the Honourable Supreme Court. The Honourable Supreme Court, referring to Article 246 of the Constitution of India held that the provisions of the Securitisation Act will act as a predominance over the operation of the State laws . I am thus guided by the principles laid down by the Honourable Supreme Court in the aforesaid judgment



15. There is yet another reason for interdicting Exhibit P8 order of the 2nd respondent. It is clear from Ext.P4 judgment of this Court that the 1st respondent was given liberty to clear off the debt. Admittedly, the said directions have not been complied with. Therefore the 2nd respondent could not have passed an order contrary to the directions of this Court under Exhibit P4 Judgment. On this count also, the order impugned in the writ petition is liable to be set aside.

16. Even if it assumed for a moment that the Act 18 of 2008 applies on facts of the case, even the order impugned cannot be sustained. A reading of Section 5 of the Act 18 of 2008 shows that the powers and duties of the Commission are well defined. Section 5(b) provides the power to the Commission to determine in case of creditors **other than institutional creditors** (emphasis supplied) to determine the fair rate of interest and an appropriate level of debt the fisherman is liable to pay. Section 5(2) further provides power of the Commission to issue orders keeping in abeyance the repayment of all debts of fisherman in the disaster affected areas to the creditors other



than to institutional creditors. Hence it is to be presumed that the State Legislature was aware of the its limitation in the matter of recovery measures of an institutional creditors and wanted the Act 18 of 2008 to be taken out of the purview of cases covering Institutional Creditors. Though Sub Section (3) of Section 5 of the Act 2008 opens with a non obstante clause, this Court is firm in its view that when the said non obstante clause is pitted against a central Legislation, there would be a direct conflict between the Central Law and the State Law giving way for operation of Article 246 of the Constitution of India and thus the provisions of Securitisation Act will override the provisions of Kerala Fisherman Debt Relief Commission Act 2008.

17. In the light of the aforesaid principles, I find that the 2nd respondent assumed jurisdiction over the subject matter which it had none and completely went wrong in directing the petitioner bank to refrain itself from proceeding under the provisions under the Securitisation Act. It also completely went wrong in directing the bank to hand over the possession of the secured assets. These directions were however stayed by this Court while admitting the present writ petition. It was done



rightly so.

In the result, the writ petition is allowed. It is declared that the 2nd respondent has no jurisdiction to interfere with the recovery proceedings against the 1st respondent under the Securitisation Act and the application filed by the 1st respondent before the 2nd respondent is held to be not maintainable. Resultantly, Exhibit P8 order is set aside. The petitioner bank is at liberty to proceed with the recovery measures in accordance with the provisions of the Securitisation Act.

**Sd/-
EASWARAN S.
JUDGE**

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APPENDIX OF WP(C) 12567/2018

PETITIONER EXHIBITS :

- EXT.P1 TRUE PHOTOCOPY OF THE APPLICATION FOR MORTGAGE LOAN SUBMITTED BY THE 1ST RESPONDENT AND HER HUSBAND ON 19/08/2008.
- EXT.P2 TRUE PHOTOCOPY OF THE NOTICE UNDER SECTION 13 (2) OF THE SARFAESI ACT DATED 06/10/2016.
- EXT.P3 TRUE PHOTOCOPY OF THE REPRESENTATION SENT BY THE 1ST RESPONDENT BEFORE THE PRESIDENT DATED 29/03/2017.
- EXT.P4 TRUE PHOTOCOPY OF THE JUDGMENT IN WPC.NO.12744/2017 DATED 10/04/2017.
- EXT.P5 TRUE PHOTOCOPY OF THE COURT ORDER DATED 15/02/2017.
- EXT.P6 TRUE PHOTOCOPY OF THE COMMUNICATION BY THE SECOND RESPONDENT DATED 19/03/2018.
- EXT.P7 TRUE PHOTOCOPY OF THE REPLY SENT TO THE SECOND RESPONDENT DATED 23/03/2018.
- EXT.P8 TRUE PHOTOCOPY OF THE ORDER PASSED BY THE 2ND RESPONDENT DATED 04/04/2018.