

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HON'BLE DR.JUSTICE P. DEVADASS

W.P. No.33951 – 33953 of 2015 and M.P. Nos.1 & 2 of 2015

Navitha Babu Rajan

S. Alamelu

V.S. Indumathi

Petitioner in WP No.33951 of 2015

Petitioner in WP No.33952 of 2015

Petitioner in WP No.33953 of 2015

vs.

1 The District Collector
Collectorate
Kancheepuram District
Kancheepuram – 631 501

2 The Tahsildar
Office of the Tahsildar
Sozhinganallur, Kancheepuram District

3 The Authorised Officer
United Bank of India
Southern Region
184/132, Ramakrishna Math Road
Mandaveli, Chennai 600 028

4 R.M. Ramanathan

5 R. Arumugasamy
Managing Director of
R.A. Samy Trading Pvt. Ltd.
No.72/2, Kazura Gardens
East Coast Road
Neelankarai, Chennai 600 041

Respondents in all the WPs

Prayer in W.P. No.33951 of 2015:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the proceedings No.Rc.M3/12180/2014 dated 24.09.2015 on the file of the first respondent and quash the same as illegal and to direct the first and second respondents to hand over possession of the shop No.1, 72/2 in R.K. Building Kazura Gardens, East Coast Road, Neelankarai, Chennai 600 041 to the petitioner by removing the seal and lock put forth by the second respondent.

Prayer in W.P. No.33952 of 2015:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the proceedings No.Rc.M3/12180/2014 dated 24.09.2015 on the file of the first respondent and quash the same as illegal and to direct the first and second respondents to hand over possession of the shop No.F2, 72/2 in R.K. Building Kazura Gardens, East Coast Road, Neelankarai, Chennai 600 041 to the petitioner by removing the seal and lock put forth by the second respondent.

Prayer in W.P. No.33953 of 2015:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the proceedings No.Rc.M3/12180/2014 dated 24.09.2015 on the file of the first respondent and quash the same as illegal and to direct the first and second respondents to hand over possession of the shop Nos.G1 and G2, 72/2 in R.K. Building Kazura Gardens, East Coast Road, Neelankarai, Chennai 600 041 to the petitioner by removing the seal and lock put forth by the second respondent.

For petitioner
in all the WPs

Mr. S. Sethuraman

For RR 1 & 2
in all the WPs

Mr. P.S. Sivashanmugasundaram
Spl. Government Pleader

For R3 in
all the WPs

Mr.A.R.L.Sundaresan
Sr. Counsel
for Mr.P.S.Ganesh
representing
M/s. Kurian & Associates

COMMON ORDER

(delivered by **SATISH K. AGNIHOTRI, J.**)

With the consent of the learned counsel for the parties, the writ petitions are taken up for final disposal. In view of commonality of the issue involved, the writ petitions are considered and decided by this common order.

2 Questioning the justifiability of the orders dated 24 September 2015 passed by the first respondent, viz., the District Magistrate and District Collector, Kancheepuram, in exercise of his power under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"), at the instance of the third respondent bank, whereby and whereunder, the Tahsildar, Shonlinganallur, is authorised to take possession of the properties in question and hand

over the same to the third respondent bank, the petitioners have preferred the instant writ petitions. Consequentially, a direction to the first and second respondents, to hand over possession of respective shops to the petitioners by removing the seal and lock affixed by the second respondent, *viz.*, the Tahsildar, Sholinganallur, on 07 October 2015, is also sought.

3 The incontrovertible facts, as projected by the petitioners, are that on the strength of respective lease deeds, they occupied the premises in question as tenants. In the meantime, without affording an opportunity of hearing to them, who are in possession of the properties in question, the second respondent had taken steps with police protection to seal the premises in question. Hence, the present writ petitions for the aforestated relief.

4 The sole contention of the petitioners is that they were not afforded an opportunity of hearing before the impugned orders came to be passed. Thus, the impugned orders deserve to be set aside with a direction to the first respondent to consider the matter, after affording an opportunity of hearing to them.

5 Before going into the issue as to whether the petitioners deserve an opportunity of being heard, it is worth looking into the factual matrix of each of the cases.

6 The petitioner in W.P. No.33951 of 2015 has enclosed in the typed set of papers, the lease deed 23 April 2004 entered into by her with the fifth respondent on 01 August 2004, commencing from 01 August 2004 valid for eleven months. Albeit subsequent lease deeds enclosed in the typed set of papers are not executed between the petitioner and the fifth respondent (the landlord).

7 In W.P. No.33952 of 2015, albeit one lease deed dated 23 April 2004 commencing from 01 August 2004 valid for eleven months and another lease deed dated 04 March 2012 commencing from 15 April 2012 valid for eleven months, are enclosed in the typed set of papers, they are not in the name of the petitioner. However, the petitioner has enclosed the lease deed dated 05 June 2013 commencing from 01 June 2013, valid for a period of nine years. Yet, the same is not a registered document.

8 Coming to W.P. No.33953 of 2015, except the lease deed

dated 04 March 2012 commencing from 15 April 2012, valid for eleven months, the other lease deeds are not entered into by the petitioner with the fifth respondent.

9 Thus, the petitioners in W.P. Nos.33951 and 33953 of 2015 cannot be termed as lawful tenants for the reason that the lease deeds relied on by them are not in their name. Likewise, in the case of the petitioner in W.P. No.33952 of 2015, albeit the lease deed is in her name and subsisting, it is not a registered one, not a valid lease.

10 On the question of validity of lease sans registration of lease deed, the Supreme Court, in *Harshad Govardhan Sondagar* (supra), examined the issue at length and came to the conclusion that a lessee is entitled to possession of secured asset only on production of proof for execution of registered instrument in his favour. It is beneficial to extract the relevant paragraph of the aforesaid judgment as under:

"36. We may now consider the contention of the respondents that some of the appellants have not produced any document to prove that they are bona fide lessees of the secured assets. We find that in the cases before us, the appellants have relied on the written instruments or rent receipts issued by the landlord to the tenant. Section 107 of the Transfer of Property Act provides that a lease of immovable property from year to year, or for any term exceeding one year or reserving a

yearly rent, can be made "only by a registered instrument" and all other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Hence, if any of the appellants claim that they are entitled to possession of a secured asset for any term exceeding one year from the date of the lease made in his favour, he has to produce proof of execution of a registered instrument in his favour by the lessor. Where he does not produce proof of execution of a registered instrument in his favour and instead relies on an unregistered instrument or oral agreement accompanied by delivery of possession, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, will have to come to the conclusion that he is not entitled to the possession of the secured asset for more than a year from the date of the instrument or from the date of delivery of possession in his favour by the landlord."

11 For the reasons mentioned hereinabove, as indisputably, the petitioners are in possession of the premises in question as tenants on the basis of invalid lease deeds, they are not entitled to continue therein or any protection under the said lease deeds.

12 However, today, when the matters are taken up for hearing, the learned counsel for the petitioners seeks time for producing certain relevant documents. According to the learned counsel, the petitioner is in possession of the aforestated premises. He further submits that the petitioners are willing to vacate the premises and hand-over the same to the respondent Bank. Thus, some time may be granted to the petitioners, subject to their giving an undertaking to the 3rd respondent-Bank to vacate the premises peacefully, without creating encumbrance or alienation.

13 Learned Senior Counsel appearing for the 3rd respondent-Bank fairly submits that since the petitioners are already in possession of the premises in question, some time may be given to them, subject to them submitting an usual undertaking.

14 Accordingly, we grant eight weeks' time to the petitioners to vacate the premises in question occupied by them and handover the possession of the same to the third respondent bank, peacefully, without creating any encumbrance or alienating the property to any third party, subject to filing of an undertaking within a period of one week. In the mean time, the petitioners shall pay the amount to the Bank for the use and occupation of the premises.

The writ petitions stand disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

(SATISH K. AGNIHOTRI, J.) (P. DEVADASS, J.)
01 December 2015

cad

To

- 1 The District Collector
Collectorate
Kancheepuram District
Kancheepuram – 631 501
- 2 The Tahsildar
Office of the Tahsildar
Sozhinganallur
Kancheepuram District
- 3 The Authorised Officer
United Bank of India
Souther Region
184/132
Ramakrishna Math Road
Mandaveli, Chennai 600 028

SATISH K. AGNIHOTRI, J.

and

P. DEVADASS, J.

cad

Common order in
W.P. Nos.33951 – 33953 of 2015

01.12.2015