



WEB COPY

1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2015

CORAM:

THE HONOURABLE DR. JUSTICE S.TAMILVANAN
and

THE HONOURABLE MR. JUSTICE V.S.RAVI

W.P. (MD) No. 859 of 2015

and

M.P. (MD) Nos. 1 and 2 of 2015

Pandiya Prabakaran

... Petitioner

Vs.

1. The Union of India,
Rep. by Ministry of Finance,
Through Finance Secretary,
Thodi Road, New Delhi.

2. The Branch Manager,
State Bank of India,
Dindivanam Branch,
Villupuram District.

3. Srinivasan

... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for all the records of the possession notice dated 16.12.2015 issued by the second respondent under Section 13(2) r/w Rule 3 of SARFAESI Act and quash the same.

For Petitioner : Mr. M. Sankar

ORDER

(Order of this Court was made by **S. TAMILVANAN, J.**)

Heard the learned counsel appearing for the petitioner.

2. The Writ petition has been filed invoking Article 226 of the Constitution of India, seeking an order in the nature of Writ of Certiorari to call for the records of the possession notice dated 16.12.2015 issued by the second respondent under Section 13(2) r/w Rule 3 of SARFAESI Act and quash the same.

3. As per the averments made in the accompanying affidavit, the third respondent obtained loan from the second respondent / State Bank of India and that was not repaid. In view of the same, the second respondent took action against the property belonging to the third respondent under SARFAESI proceedings.

<https://hcservices.ecourts.gov.in/hcservices/>

4. Learned counsel appearing for the petitioner submitted that there is an independent lease agreement entered into between the petitioner and



the third respondent and a petition in R.C.O.P.No.3 of 2014 was filed by the petitioner before the District Munsif Court at Nilakottai. Learned counsel further stated that the third respondent was working as a Branch Manager in second respondent, State Bank of India and also availed loan to the tune of Rs.22,48,936/- by mortgaging the property. Learned counsel also stated that the property was a vacant site having super structure with compound wall.

5.It is well settled that this Court cannot go into disputed question of facts. Here the petitioner says that he has independent right over the property and his landlord is the third respondent, who is the borrower and also the employee of the second respondent, State Bank of India. Whether the claim of the petitioner is bona fide and the genuineness of the R.C.O.P.No.3 of 2014 pending between the petitioner and the third respondent, are the matters to be decided by way of appreciation of evidence and the same cannot be decided by any Writ Court. If the petitioner has any other right or claim over the property either lease hold right or tenancy right, it is open to him to approach the appropriate Civil Court having jurisdiction. The petitioner cannot file a Writ petition, seeking an order against the proceedings initiated under Section 13(2) r/w Rule 3 of the SARFAESI Act. As there is efficacious alternative remedy available to the petitioner, he cannot approach this Court by way of filing Writ petition invoking Article 226 of the Constitution of India.

6.As per the averments made in the accompanying affidavit that the relief sought for in the Writ petition is based on disputed question of facts. Hence, it is open to the petitioner to approach the appropriate forum having jurisdiction, to decide the issue.

7.On the aforesaid facts and circumstances of the case, we are of the view that the Writ petition is not legally maintainable. Accordingly, the Writ petition is dismissed. No costs. Consequently, connected M.Ps.are closed.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To

1.The Ministry of Finance, Finance Secretary,
The Union of India, Thodi Road, New Delhi.

2.The Branch Manager, State Bank of India,
Dindivanam Branch, Villupuram District.

+1cc to Mr. M.Sankar, Advocate in SR.No. 3776

TS/19.02.2015/2P-4C

W.P. (MD) No.859 of 2015