

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K.AGNIHOTRI
and
THE HON'BLE MR. JUSTICE V. BHARATHIDASAN

W.P. No.16609 of 2016

R. Bhavani

Petitioner

vs.

- 1 The District Collector and District Magistrate
Collector Office
Kancheepuram District - 631 501
- 2 The Managing Director & CEO
Kotak Mahindra Bank Ltd.
Corporation Office
No.5C/11, Mittal Court
No.224, Nariman Point, Mumbai 400 021
- 3 The Authorised Officer
Kotak Mahindra Bank Ltd.
No.3, Dass India Tower
II Floor, Second Line Beach
Parrys, Chennai 600 001

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the second and third respondents to stop illegal action of vacating the petitioner and his family from the leased house building premises at Door No.48, Old No.68, Kamarajar Salai, Anakaputhur, Chennai 600 070 as stated on the petitioner's representation dated 17.03.2016.

For petitioner Mr. R. Kumaravel

For R1 Mrs. A. Srijayanthi, Spl. Govt. Pleader

ORDER

(delivered by SATISH K.AGNIHOTRI, J.)

Mrs. A. Srijayanthi, learned Special Government Pleader, accepts notice for the first respondent. Notice to the other

respondents is dispensed with at this stage, inasmuch as no order prejudicial to their interest, is passed in this writ petition.

2 This writ petition is filed seeking a writ of mandamus directing the second and third respondents to stop illegal action of vacating the petitioner and her family from the leased house building premises at Door No.48, Old No.68, Kamarajar Salai, Anakaputhur, Chennai 600 070 as stated in the petitioner's representation dated 17 March 2016.

3 According to the petitioner, she is a lawful lessee/tenant in the aforesaid house property, as per the lease agreement dated 25 April 2013 entered into with one B. Chittrapal Seth, for a period of three years. Only after entering into the said lease agreement, she came to know of the fact that the property in question, viz., the house property, was mortgaged with the respondents 2 and 3/bank by the landlord/lessor as collateral security for the loan availed by him. While so, on 24 February 2016, the respondents 2 and 3/bank demanded the petitioner to vacate the house property on the ground that the possession of the same has already been taken by them under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, on 13 September 2013 in view of default in repayment of loan by the lessor/borrower, viz., Chittrapal Seth. Feeling aggrieved, the petitioner addressed a representation dated 17 March 2016 to the first respondent, viz., the District Collector and District Magistrate, Kancheepuram, seeking to take action against the respondents 2 and 3/bank for their alleged illegal act of demanding her to vacate the house property. Finding no response, the petitioner has come up with the instant writ petition seeking the aforestated relief.

4 We have heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the first respondent and also perused the pleadings and documents appended thereto.

5 It is not the case of the petitioner that even prior to mortgage of the house property with the respondents 2 and 3/bank, she was inducted as a tenant/lessee into the property in question by way of a valid lease agreement. Further, very recently, the Supreme Court, in Vishal N.Kalsaria Vs. Bank of India and others¹, has observed in unequivocal terms that for creating leasehold rights after the property has been mortgaged to the bank, the consent of the bank needs to be taken. When the

1 AIR 2016 SC 530

petitioner has failed to produce any material to establish that the alleged tenancy was created only after taking prior consent of the creditor, i.e., the respondents 2 and 3/bank, particularly, after the secured asset was classified as Non Performing Asset, we are of the considered opinion that this writ petition, at the instance of the petitioner, who is the alleged tenant / leaseholder, is not maintainable, at this stage.

As a sequel, this writ petition fails and is accordingly dismissed. Costs made easy.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

cad

To
The District Collector and District Magistrate
Collector Office
Kancheepuram District - 631 501

1 cc to Government Pleader, sr.27922

W.P. No.16609 of 2016

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kra 19.05.2016

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