

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 11.1.2016

ORDER DATED : 20.01.2016

CORAM :

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

W.P.Nos.35387 & 35388 & of 2015

and

M.P.No.1 of 2015 in W.P.No.35387 of 2015

State Bank of India
Stressed Assets Management Branch,
1112, Raja Plaza, Avinashi Road,
Coimbatore-641 037,
Rep. by its Chief Manager ... Petitioner in both WPs

Vs.

- 1.The Inspector General of Police (West),
COP Campus - Coimbatore,
Coimbatore-641 018.
- 2.The Superintendent of Police,
Coimbatore Rural District,
Ram Nagar, Coimbatore-641 018.
- 3.The Inspector of Police,
Perianaickenpalayam Police Station,
Coimbatore District.
- 4.The Inspector of police,
Karamadai Police Station,
Coimbatore District.
- 5.M/s.Technomax Building Solution India Private Limited,
Rep. by its Managing Director Shri.R.Raju,
No.102, 7th Street, Tatabad,
Coimbatore-641 012.
- 6.Mr.R.Raju,
S/o.Rangaswamy Naidu,
Deepalaya, No.91/108, Valluvar Street,
Sivananda Colony,
Coimbatore-641 012.

7.Mr.M.Tilak,
S/o.Mounsami,
No.3/11 & 12, Srilakshmi Nagar,
Hindustan College Road,
Coimbatore 641 208

8.Mr.A.Durairaj,
S/o.Appusamy,
No.75A/72, Sambalhattam,
Deviampalayam, Gudalur Naickenpatti,
Coimbatore.

9.Mr.R.Deepak,
S/o.R.Raju,
Deepalaya, No.91/108, Valluvar Street,
Sivananda Colony,
Coimbatore -641 012. Respondents in both WPs

Prayer in W.P.No.35387 of 2015:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents 1 to 4 herein to provide necessary protection to the authorised Officer and the other officials of the petitioner-Bank to take re-delivery of the property vested with them and situate at Bellathi and Belichi of Coimbatore Taluk & District in terms of the Possession Notices dated 03.10.2015, preventing the respondents 5 to 9 or any persons claiming through them from in any manner interfering with the right and interest of the Petitioner Bank, trespassing and encroaching the said properties.

Prayer in W.P.No.35388 of 2015:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing transfer of investigation of the cases in FIR No.386 of 2015 dated 10.10.2015 on the file of the 3rd Respondent and FIR No.273 of 2015 dated 11.10.2015 on the file of the 4th respondent, to the file of Crime Branch, CID, State of Tamil Nadu headed by an official in the rank of Assistant Commissioner, for a proper investigation and necessary action in accordance with law.

For Petitioner : **Mr.E. Om Prakash***
M/s.Ramalingam & Associates

For R1 to R4 : Mr.P.Sanjay Gandhi, AGP

For R5 to R9 : **Mr.S. Prabakaran**
for Mr.K.J. Saravanan

COMMON ORDER

W.P.No.35387 of 2015 has been filed by the petitioner-Bank praying for issuance of a writ of mandamus directing the respondents 1 to 4 herein to provide necessary protection to the authorised Officer and the other officials of the petitioner-Bank to take re-delivery of the property vested with them and situate at Bellathi and Belichi of Coimbatore Taluk & District in terms of the Possession Notices dated 03.10.2015 and to prevent the respondents 5 to 9 or any persons claiming through them, from in any manner interfering with the right and interest of the Petitioner-Bank, trespassing and encroaching the said properties.

2.W.P.No.35388 of 2015 has been filed by the petitioner-Bank praying for issuance of a writ of mandamus directing transfer of investigation of the cases in FIR No.386 of 2015 dated 10.10.2015 pending on the file of the 3rd Respondent and FIR No.273 of 2015 dated 11.10.2015 pending on the file of the 4th respondent, to the file of Crime Branch, CID, State of Tamil Nadu headed by an official in the rank of Assistant Commissioner, for a proper investigation and necessary action in accordance with law.

3.Since the issues involved in these two writ petitions are inter-related, they are disposed of by way of this common order.

4.The brief facts, which are necessary to dispose of these writ petitions, are as follows:-

4-1.The petitioner is the State Bank of India and it has commercial branch at Coimbatore. During its course of normal business transactions, on the request of the respondents 6 to 9 as the Directors of the 5th respondent-company, the said Commercial Branch of the petitioner-Bank at Coimbatore had sanctioned a Working Capital Limit of Rs.12 crores to the 5th respondent-Company, among other limits in and by a Sanction Letter dated 26.07.2010. The said sanction was further renewed on 15.11.2011, 02.07.2012, 28.01.2013 and 07.08.2013 and finally on 09.05.2014. The said credit facility was sanctioned against the security of movable properties of the 5th respondent-Company, namely stocks, stock-in-trade, receivables, entire current assets and plant and machinery etc. The said facilities were also agreed to be secured by mortgage of immovable properties owned by the 5th respondent-Company and its Directors. The 5th respondent-company availed the said credit facility by executing all necessary loan documents and security documents in favour of the petitioner-Bank. The respondents 6 to 9 and also other individuals and also group concerns had guaranteed the loan transactions by executing personal guarantees and corporate guarantee.

4-2.To secure the said credit facilities availed by the 5th respondent, various immovable properties have been mortgaged with the petitioner-Bank by deposit of original title deeds and with an intention to create equitable mortgage. The said deposit of title deeds and creation of equitable mortgages were confirmed by execution of confirmation letters and memorandums. The said mortgaged assets are the secured assets in the hands of the petitioner-Bank to enforce the debt as against the borrower and guarantors. The petitioner-Bank is entitled to invoke their right as against the said mortgaged properties being the secured assets under the provisions of SARFAESI Act.

4-3.The 5th respondent-Company failed to operate the account satisfactorily and has committed breach of the sanctioned terms and conditions. Since the 5th respondent-company failed to maintain adequate stocks/receivables to cover the loan amount and diverted the amounts availed from the Bank to their other business, apart from non-payment of the interest dues and other breaches, the loan account of the 5th respondent-company with the bank was classified as Non-Performing Asset (NPA) under the guidelines of RBI with effect from 26.01.2015. The said loan accounts were subsequently migrated to the petitioner branch from the Commercial Branch at Coimbatore, as per the internal policies of the bank for better follow up and resolution of the said account.

4-4.The petitioner-Bank invoking their right under SARFAESI Act as against the secured assets issued a Demand Notice dated 17.06.2015 under Sec.13(2) of the SARFAESI Act to the respondents 5 to 9 as well as to other guarantors. The said demand notice was duly served on all the parties concerned including the respondents 5 to 9. In terms of the demand notice, the petitioner-Bank had called upon the borrower and guarantors to pay the entire debt of Rs.13,65,81,684.94, which includes the dues in the above said Working Capital (Cash Credit Facility) and the dues of Rs.47,43,215.41 in the Term Loan Account, within the statutory period of 60 days. Under the Act, the borrower/guarantors are permitted to raise objections to the demand notice under the statutory provisions of SARFAESI Act or to pay the amount demanded within the statutory period. But, the respondents 5 to 9 herein neither replied to the said demand notice nor did pay the amount to the bank as demanded. On completion of 60 days of statutory period, the petitioner-Bank invoked their further right under Sec.13(4) of the SARFAESI Act and through their Authorized Officer issued Possession Notice dated 03.10.2015.

4-5.Thereafter, the Authorized Officer of the petitioner/Bank along with other officials as well as with the assistance of the police personnel of the local police station,

visited the secured assets, more particularly the 5th respondent Company's Readymix Concrete Unit and the Quarry at Belichi and Bellathi Villages of Coimbatore Taluk respectively, for the completion of the exercise under Sec.13(4) of the Act and as provided under the Security Interest (Enforcement) Rules. While the officials of the petitioner/Bank visited the premises on 03.10.2015, one of the Directors of the 5th respondent-Company namely Mr.A.Durairaj, the 8th respondent herein, was personally present and he had felicitated in handing over actual possession of the secured asset to the Bank. Since there was no resistance and any untoward incident, the physical and actual possession of the secured assets situate in the said villages were taken by the petitioner/Bank, apart from other secured assets, being vacant lands. The Possession Notices dated 03.10.2015 issued under Sec.13(4) of the Act was affixed in the properties and photographs were taken, confirming the affixture. A Panchanama was drawn setting out in detail the inventory of the plant and machinery and goods lying in the premises and the same was attested by a Notary Public. The 8th respondent, who was present in the place, did not sign in the Panchanama and the inventory list. On completion of the exercise of taking physical possession, the premises was locked and sealed and the security personnel were deployed in the property to take care of the security of the premises. For the said purposes, the petitioner-Bank had engaged the services of M/s.Matrix Security Services with 15 guards per shift for guarding property at Bellathi Village and 10 guards per shift for safeguarding the property at Belichi Village. After completing all the exercise, the officials of the petitioner-Bank and the police personnel left the place after putting lock and seal and placing the property under the custody of the security personnel. The entire exercise was completely photographed and video graphed by the petitioner Bank, which confirms the presence of police personnel as well as the 8th respondent representing the respondents 5 to 9.

4-6.While so, on 10.10.2015 around 5.00 pm, the petitioner-Bank was informed that around 8.30 pm on 09.10.2015, around 40 to 50 armed people with various types of weapons, at the instance of respondents 5 to 9, broke open the gates of both the properties at Bilichi Village and Bellathi Village, which were in the possession of the Bank under lock and seal, and took all the security guards into their custody, assaulted and threatened them of dire consequences, if they inform anyone about the incident. The petitioner-Bank was also informed that around 4.30 am on 10.10.2015 the said hooligans had transported all the security guards, who were locked in a room till then under their custody, in two lorries and left them far away from the location of the assets. The guards ran to the nearest town and informed the Security Service Providers regarding the forced occupation of the assets by the Borrower and their armed gangs.

4-7.Hence, the petitioner has given complaints to the respondents 3 & 4 and the same were registered as FIR No.386 of 2015 on the file of the 3rd Respondent and FIR No.273 of 2015 on the file of the 4th respondent, for offence under Sections 147, 148, 457, 324 and 506 Part II of IPC. However, till date no action was taken by the respondents 3 & 4 pursuant to the registration of the said FIRs. The conduct of the respondents-Police would clearly demonstrate that there cannot be any faith in the investigation, which is being done by the respondents 3 & 4. Hence, the petitioner has come forward with the present writ petitions seeking to provide police protection and also to transfer the investigation to Crime Branch, CID.

5.The respondents 3 & 5 have filed counter affidavits, denying the allegations made by the petitioner. In the counter affidavits, it has been stated that on continuation of investigation, in continuation of the investigation, two eye-witnesses to the occurrence, viz., Selvaraj and Muthu Krishnan were examined and the accused persons were identified as one Krishnaraj, Sivakumar, Chirti Raj, Karthikeyan, Aravindha Kumar, Diwakar, Rajendran, Senthil Kumar, Saravanankumar, Sridhar, Ramu, Selvapathy, Selvaraj, Subbaiya, Muthazhagan and Viswanathan and the police personnel were deputed to find out the hideouts of those accused persons. While so, the 3rd respondent receive a tapal from the 5th respondent-Company stating that a writ petition in W.P.No.34346 of 2015 has been filed against the petitioner/bank/defacto-complainant, challenging the legality of taking symbolic possession of the properties. The witnesses who were examined so far have not spoken anything to implead the private respondents herein in the offence. Further more, the eye witnesses to the occurrence viz., 10 security guards have stated that a mob, which attacked them, was lead by the accused Kanagaraj, Manager of the 5th respondent-Company. Thus, it is stated by the respondents-Police that it is incorrect to state that the respondents 3 & 4/police have not taken any action as per law. Thus, they sought for dismissal of the writ petitions.

6.When the matter is taken up for consideration, the learned counsel appearing for the petitioner-Bank made his submissions reiterating the contentions made in the affidavit.

7.The learned counsel appearing for the respondents 5 to 9 contended that the legality of the possession taken by the petitioner-Bank is under challenge in W.P.No.34346 of 2015 and as such, the petitioner-Bank is not entitled to the relief sought for in the present petitions.

8.The learned Additional **Government Pleader*** has also opposed to grant the relief sought for by the petitioner-Bank in these petitions.

9.Keeping the submissions made on either side, I have carefully gone through the entire materials available on record and I find that the possession of the subject properties was taken by the petitioner on 03.10.2015 and the premises were locked by the petitioner-Bank. It appears that the respondents 5 to 9, thereafter, forcibly entered into the subject premises with the help of their henchmen. Now, the petitioner has filed the present Writ Petitions, one for providing police protection to take re-delivery of the possession of the subject properties and another one for transfer of the investigation to Crime Branch, CID.

10.Considering the facts and circumstances of the case, I am of the opinion that the prayer of the petitioner-Bank to provide police protect for taking re-delivery of the possession of the subject property could be entertained. Accordingly, the petitioner is directed to give fresh representation to the respondents 3 & 4 requesting for providing police protection. On receipt of the same, the respondents 3 & 4 are directed to pass appropriate orders with regard to providing police protection for taking re-delivery of the subject properties.

11.So far as the prayer of the petitioner to transfer the investigation is concerned, I find that the respondents 3 & 4 are initiating action; hence, it is not necessary to transfer the investigation to any other investigating agency. However, this Court directs the respondents 3 & 5 to expedite the investigation and file final report as early as possible. The 2nd respondent is directed to monitor the investigation being conducted by the respondents 3 & 4.

With the above terms, the writ petitions are disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Asst.Registrar (CS III)

dt. 25.01.2016

As per order of this court dated
09.02.2015, Corrections Carried out
in Pg.Nos. 3 and 12 and made therein

/true copy/

Sd/-

Asst.Registrar (CS III)

dt. 25.02.2016

Sub Asst. Registrar

ssv

To

1.The Inspector General of Police (West),
COP Campus - Coimbatore,
Coimbatore-641 018.

2.The Superintendent of Police,
Coimbatore Rural District,
Ram Nagar, Coimbatore-614 018.

3.The Inspector of Police,
Perianaickenplayam Police Station,
Coimbatore District.

4.The Inspector of police,
Karamadai Police Station,
Coimbatore District.

To be substituted
to the order already
despatched
on 27/01/2016

2 ccs to Government Pleader, Sr. 3266, 3267

4 ccs to M/s. Ramalingam and Associates, Sr. 3163 & 3166

2 ccs to Mr.K.J. Saravanan, Advocate, Sr. 3126, 3125

W.P.Nos.35387 & 35388 & of 2015
and
M.P.No.1 of 2015
in W.P.No.35387 of 2015

CA (CO)
kk 25/1
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