IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-11-2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

WRIT PETITION No.38111 of 2016

Smt.M.Sangeetha ... Petitioner

-Vs-

1.The District Collector
Kancheepuram
Kancheepuram District

2.The Tahsildar
Alandur
Kancheepuram District

3.The Authorised Officer
Vijaya Bank
Asset Recovery Management Branch
No.144, Moore Street
Chennai 600 001

4.D.C.A. Ashok Kumar ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the 2nd respondent to submit a report to the 1st respondent, in pursuance to the letter in Na.Ka.No.40902/2013/M3 dated 27.06.2016 of the first respondent and further direct the 1st respondent to complete the proceedings on the petition filed by the 3rd respondent under Section 14 of the SARFAESI Act, within a time frame to be fixed by this Hon'ble Court.

For Petitioner : Mr.V.R.Thangavelu

For respondents 1 & 2 : Mr.K.V.Dhanapalan, Special Government Pleader

ORDER

(delivered by S.MANIKUMAR, J.)

Material on record discloses that for taking possession of the auctioned property, subject matter of SARFAESI action, the Authorised Officer, Vijaya Bank, Asset Recovery Management Branch, Chennai, has filed a petition under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act, 2002) in December 2013. Taking note of the same, the District Collector, Kancheepuram District, vide letter in Na.Ka.No.40902/2013/M3 dated 27.06.2016, has directed the Tahsildar, Alandur, to submit a detailed report, after conducting an enquiry with reference to the particulars and documents relating to the subject property, has sought for the following particulars.

> "1) Who is present owner of the above mentioned property? Furnish revenue records.
>
> 2) Whether Patta has been transferred in the name of the borrower? Furnish particulars and copies of revenue records.
>
> 3) Whether the borrower has any right in the above property? Furnish particulars.
>
> 4) What is the relationship between the borrower and the patta holder? Furnish particulars about the verification of documents.
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> 5) Whether there is any encumbrance over the property? Furnish encumbrance certificate or furnish details of the encumbrances.
>
> 6) Whether the site is vacant or house has been constructed? Furnish report about the same.
>
> 7) If house is constructed, obtain statement from the occupant or if the house is occupied by the borrower, submit report after conducting enquiry.
>
> 8) If occupied by tenant, whether any agreement has been tenred into with the owner? Furnish particulars.
>
> 9) Whether the site forms part of any acquisition? Furnish details.



2. Contending interalia that, though a public auction was conducted on 25.11.2010, and despite declaration of the petitioner, as the successful bidder for a valuable consideration of Rs.18,05,000/-, and even after a lapse of six years, possession could not be taken, the instant writ petition, has been filed by the auction purchaser, for a writ of mandamus directing the Tahsildar, Alandur, Kancheepuram District/Respondent No.2 herein, to submit a report to the District Collector, Kancheepuram District/Respondent No.1, pursuant to the letter dated 27.06.2016, stated supra, and

consequently, prayed for a direction to the District Collector, Kancheepuram District/Respondent No.1, to complete the proceedings on the petition filed under Section 14 of the SARFAESI Act, 2002 by the bank.

3. As the relief sought for is only against the Tahsildar, Alandur, Kancheepuram District/Respondent No.2 and the District Collector, Kancheepuram District/Respondent No.1, and when no adverse order is passed on the merits of the case, notice is waived on the respondent No.4.

4. Section 14 of the SARFAESI Act, 2002, reads as follows:

> 14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset
>
> (1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him--
>
> (a) take possession of such asset and documents relating thereto; and
>
> (b) forward such assets and documents to the secured creditor.
>
> (2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.
>
> (3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

5. Bare reading of section 14 of the Act does not enable the auction purchaser, any right to seek the assistance of the Chief Metropolitan Magistrate or the District Magistrate for taking possession of the secured asset. The section only enables the secured creditor to take possession, which the

bank has already taken steps by filing an application under Section 14 of the SARFAESI Act, 2002.

6. In the light of the above, we are of the view that auction purchaser, cannot invoke Section 14 of the SARFAESI Act, 2002. Therefore, we are not inclined to issue any direction to the Tahsildar, as there is no statutory right to enable the auction purchaser to invoke Section 14 of the Act. However, inasmuch as statute contemplates that appropriate orders have to be passed under Section 14 by the District Collector and taking note of the steps taken by the bank, District Collector, Kancheepuram District, is directed to pass appropriate orders under Section 14 of the Act, as early as possible, in accordance with law. We make it clear that the directions issued to the District Collector, Kancheepuram District, should not be construed, as directions issued at the instance of the auction purchaser.

Writ petition is disposed of accordingly. However, there shall be no order as to cost.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Asr

To

1.The District Collector
Kancheepuram
Kancheepuram District

2.The Tahsildar
Alandur
Kancheepuram District



+1cc to Mr.V.R.Thangavelu, Advocate, S.R.No.62386
+1cc to the Government Pleader, S.R.No.62861

W.P.No.38111 of 2016

ALA(CO)
CA(28/11/2016)