

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.6.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.4132 of 2016

The Authorised Officer

Canara Bank

R.S.Puram Branch No.100 D.B. Road

R.S.Puram Coimbatore-641002.

Petitioner

Versus

1 The District Magistrate &
District Collector
Coimbatore District-641018.

2 M/s. Sivasakthi Carvings
Rep. by Partner Mr. D.Gangadharan
No.31 Angammal Layout
Neelikonampalayam Coimbatore-641033.

3 Mr. D.Gangadharan
4 Mr. D.Sivabalan
5 Mr. D.Varun
6 Mrs. Suyambukani
7 Mrs. Mangalasudha
8 Mr. N.N.Manoharan
9 Mr. T.Srinivasan

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of the 1st respondent in O.Mu./10560/2015/U.3 dated 19.11.2015, quash the same and direct the 1st respondent to proceed in accordance with law, assist the petitioner in taking possession of the property - building at House site No.31 in G.S. No.362/1 362/2 405/1-A and 405/2 of Uppilipalayam Village.

For petitioner : Mr.P.Raghunathan for
M/s.T.S.Gopalan and Co.

For R1 : Mrs.A.Srijayanthi, Special Govt. Pleader
For R2 to R7 : No appearance.
For R8 : No appearance.

ORDER

(Order of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the first respondent. There was no representation for the other respondents.

2. The writ petition has been filed seeking issuance of a writ of certiorarified mandamus to call for the records of the 1st respondent in O.Mu./10560/2015/U.3 dated 19.11.2015, quash the same and direct the 1st respondent to proceed in accordance with law, assist the petitioner in taking possession of the property - building at House site No.31 in G.S. No.362/1 362/2 405/1-A and 405/2 of Uppilipalayam Village.

3. It is the case of the petitioner that respondents 2 to 7 availed credit facilities to the tune of Rs.15 lakhs and Term Loan to the tune of Rs.34.76 lakhs secured by way of equitable mortgage of the land and building at Uppilipalayam Village Coimbatore Taluk and vacant house site at Puliakulam Village, Coimbatore Taluk and since the borrowers defaulted in making payment, the petitioner-Bank initiated SARFAESI proceedings and took possession of the said properties and brought the same in e-Auction whereby respondents 8 and 9 were the successful bidders. In the meanwhile, the borrowers moved the Debts Recovery Tribunal and got an order of stay with regard to confirmation of sale on a condition that they had to pay a sum of Rs.10,00,000/- within 21 days, but, the borrowers did not comply with the same and hence, the sale was confirmed in favour of the successful bidders. The petitioner-Bank moved the first respondent, District Magistrate, Coimbatore under section 14 of the SARFAESI Act, for taking possession, but, in the meanwhile, the auction purchasers appear to have alienated the properties in favour of third parties and hence, the first respondent passed the impugned order refusing to exercise the power under Section 14 of the SARFAESI Act and hence, the present writ petition has been filed.

4. The first respondent has filed counter contending that since the property was alienated in favour of the third parties, the petitioner was informed that their request for assistance of the District Magistrate and District Collector to deliver the property in favour of the bank could not be entertained.

5. It appears that the first respondent has refused to entertain the request of the Bank on the ground that when once sale certificate is issued to the auction purchaser, the bank cannot take physical possession of the property. We are unable to endorse the view taken by the first respondent. This court in M/S.KATHIKKAL TEA PLANTATIONS v. STATE BANK OF INDIA & ANOTHER (2009-4-LW 395) has held that the Bank is entitled to take possession under section 14(2) of the SARFAESI Act and the issuance of sale certificate is not a bar to take physical possession. In that view of the matter, the impugned order is set aside. The District Magistrate and District Collector viz., the first respondent shall issue notice to the parties concerned viz., original borrowers, the auction purchasers and the purchasers of the property from the auction purchaser and do the

needful in accordance with law enabling the petitioner to take possession of the property.

6. The writ petition is disposed of accordingly. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To:

1 The District Magistrate &
District Collector
Coimbatore District-641018.

+1 cc to Govt.Pleader,sr.36921

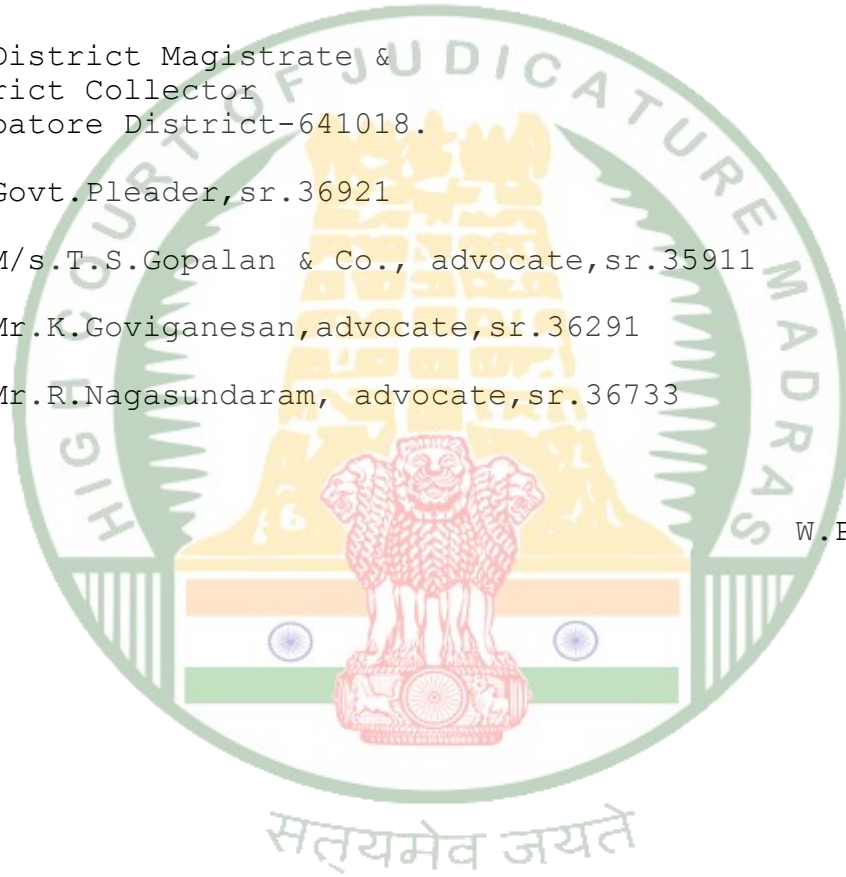
+1 cc to M/s.T.S.Gopalan & Co., advocate,sr.35911

+1 cc to Mr.K.Goviganesan,advocate,sr.36291

+1 cc to Mr.R.Nagasundaram, advocate,sr.36733

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krd 1/8

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