

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.20888 of 2017
W.M.P.No.21765 of 2017

Dr.M.Rajan

... Petitioner

vs.

1.The Chief Manager
State Bank of India
No.12-A, New Hospital Road,
Gopichettipalayam Post,
Erode District.

2.The Assistant General Manager,
State Bank of India,
Stressed Assets Recovery Branch (SARB),
No.8, Dr.Ambedkar Road,
Vinayaga Nagar Branch (Upstairs),
Madurai-625 020.

3.The District Collector & District Magistrate,
Erode District,
Erode.

4.The Tahsildar,
Gopichettipalayam/Anthiyur,
Erode Taluk & District.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondents 1,2 and 4 to implement the order made in Ref.No.16284/2014/D2 dated 20.07.2015 passed by the 3rd respondent and consequently direct the respondents 1 and 4 to take possession of the property more particularly described in the petition schedule and handover the same to the petitioner including registration of sale certificate dated 07.10.2014 before the competent registration authority having territorial jurisdiction within a stipulated time.

For Petitioner : Mr.Dhanram

For Respondents : Mr.M.Elumalai (for R1)
Government Advocate

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Auction Purchaser, who had purchased the property, measuring an extent of 1886 Sq.ft., in S.F.No.349, R.S.F.No.395/3A (New Sub-Division No.395/3A3), in the auction, held on 08.09.2014, for which, a sale certificate was issued on 07.10.2014, has sought for a mandamus, directing the Chief Manager, State Bank of India, Erode District; Assistant General Manager, State Bank of India, Stressed Assets Recovery Branch (SARB), Madurai; and Tahsildar,

Gopichettipalayam/Anthiyur, Erode Taluk & District, respondents 1, 2 and 4 herein, to implement the order, made in Ref.No.16284/2014/D2, dated 20.07.2015, passed by the District Collector and District Magistrate, Erode District, 3rd respondent herein, and consequently, to direct the respondents 1 and 4 to take possession of the property, more particularly described in the petition's schedule and handover the same to the petitioner.

2. The petitioner has contended that earlier, for handing over the physical possession of the property, he was constrained to file W.P.No.34784 of 2015 and the Hon'ble Division Bench of this Court, vide order, dated 15.12.2015, has directed the Bank, to take steps, for expeditious disposal of the application, filed under Section 14(1) of the SARFAESI Act, 2002. Thereafter, orders were passed on 20.07.2015, by the District Collector-cum-District Magistrate, Erode District, directing the Tahsildar, Gopichettipalayam/Anthiyur, Erode Taluk & District, 4th respondent herein, to take physical possession of eight items of properties, auctioned by the Bank and to handover the properties to the Authorized Officer, State Bank of India, Erode District, 1st respondent herein, with proper acknowledgment.

3. The writ petitioner/auction purchaser, has further contended that the District Collector-cum-District Magistrate, Erode District, third respondent herein, has passed an order in NA.KA.No.16284 of 2014, dated 25.01.2016, holding that the value of the property in the hands of the bank, is more than the loan arrears amount and therefore, the claim made by the bank to take over other properties, is against the principles of natural justice.

4. In the supporting affidavit to the instant writ petition, the petitioner has stated that W.P.No.7242 of 2016 has been filed, to quash the order, dated 25.01.2016, has been mistakenly withdrawn on 20.02.2017, with a liberty. He further submitted that the claim made by him in W.P.No.7242 of 2016 has become infructuous. According to him, auction was conducted on 08.09.2014 and the entire amount of Rs.13,75,000/- was deposited in time. Despite several efforts, he could not get physical possession of the property and hence, prayed for a mandamus, as stated supra.

5. Record of proceedings shows that on 28.11.2017, after hearing the learned Government Advocate and Mr.Dhanram, learned

counsel for the petitioner, we passed the following orders:

"Mandamus is sought for against respondents 1, 2 and 4 to implement the order made in Ref.No.16284/2014/D2 dated 20.07.2015 passed by District Collector & District Magistrate, Erode District. Consequently, the Petitioner has sought for a direction to respondents 1 and 4 to take possession of the property, morefully set out in the schedule.

2. On 14.09.2017, when the matter came up for hearing on behalf of Stat Bank of India, Assets Recovery Management Branch, Ms.S.R.Sumathy, learned counsel submitted that bank has instructed her to say that the order of District Collector & District Magistrate, Erode District dated 20.07.2015, has been subsequently withdrawn. She sought for time to get proper instructions.

3. On this day, when the matter came up for further hearing, on the basis of counter affidavit filed by the District Collector & District Magistrate, Erode District, 3rd respondent, copy of which not furnished to the Court, Mr.G.Ethirajulu, learned counsel for the writ petitioner submitted that though the District Collector, Erode District, at paragraph No.9 of the counter affidavit has stated that vide proceedings in Ref.No.16284/2014/D2 dated 05.08.2015, the earlier proceedings dated 20.07.2015 sought to be implemented, is stated to have been withdrawn, from the averments in the counter affidavit it could be deducted that proceedings dated 05.08.2015, can be

only with reference to the request of the Chief Manager of State Bank of India, Gopichettipalayam, regarding the properties in Item Nos.1 and 3 and withdrawal may not be in respect of all properties. According to him, there is no clarity in the averments in paragraph No.9 of the counter affidavit filed by the District Collector & District Magistrate, Erode District. Petitioner is stated to have purchased item No.8 in the scheduled properties brought for auction.

4. Though on the earlier occasion, Ms.S.R.Sumathy, learned counsel made submissions on behalf of the bank, today, there is no representation as to whether proceedings dated 20.07.2015 has been withdrawn in entirety or not.

5.Mr.M.Elumalai, learned Government Advocate is directed to file counter affidavit of the District Collector & District Magistrate, Erode District and also to produce the entire files pertaining to the proceedings in Ref.No.16284/2014/D2 dated 20.07.2015 and further proceedings in Ref.No.16284/2014/D2 dated 05.08.2015 referred to in paragraph No.9 of the counter affidavit.

6. Post on 30.11.2017."

6. Today, counter affidavit has been filed by the District Collector-cum-District Magistrate, Erode District, 3rd respondent herein, with copies of the proceedings, dated 20.07.2015, 05.08.2015

and 25.01.2016. Perusal of the same shows that the Authorized Officer, State Bank of India, Gobichettipalayam, has filed a petition, before the 3rd respondent herein, on 16.06.2014, under Section 14 of the SARFAESI Act, 2002, seeking assistance for taking possession of the following secured assets,

Sl. No.	Name of the borrower/Guarantor	Amount outstanding	Details of secured Assets
1.	Sri.K.Sivachardar (Managing Director) S/o.Sri.K.R.Kandasamy 61/2, Vaikkal Thottam Kaliyankadu T.N.Palayam, Gobichettipalayam TK Erode District.	Outstanding inclusive of Interest as on 15.11.2011 Rs.1,90,94,999 with further dues with interest	Erode District Anthiyur Taluk Poonachi Village, R.S.No.10 (new sub-division 10/2) 2.77 acres (1.27+1.50)
2.	Sri.K.R.Kandasamy (Director/Chairman) S/o.Ramasamy Gounder, 61/2, Vaikkal Thottam, Kaliyankadu, T.N.Palayam, Gobichettipalayam TK Erode District		Erode District Gobi Taluk, Vaniputhur Village Old SF.No.444D New RS.No.136 Door No.59-61 Total Extent 25 cents
3.	Sri.K.R.Eswaramoorthi S/o, Ramasamy Gounder 61/2, Vaikkal thottam, Kaliyankadu Vaniputhur Village, Gobichettipalayam TK Erode District.		Erode District Gobi Taluk, Vaniputhur Village, Old SF.No.447, 448D, New RS.No.138/2, Door No.68-70, Total Extent 30 cents
4.	Smt.S.Maragathamani W/o.G.K.Somasundaram Gettiseviyur, Santhipalayam Village, Gobichettipalayam TK Erode District.		Erode District Gobi Taluk Veerapandi Village Natham No.39/A1 Door No.22/23 Total Extent 1031 Sqt
5.	Smt.M.Rukmani W/o, Marappan		Erode District Gobi Taluk

Sl. No.	Name of the borrower/Guarantor	Amount outstanding	Details of secured Assets
	Senkarattu Thottam Arrakankottai Gobichettipalayam TK Erode District		Veerapandi Village Natham No.163 Door No.22/23 Municipal ward No.14 New Town Survey Ward B, Block No.9 TS.No.13 EB SC No.307-017-63 Munsif Street Total extent 882 sqft.
6.	Sri G.Parameswaran S/o.Griyappan Chennaripalayam Village Sokkumaripalayam (Post) Geettiseviyur (via) Gobichettipalam Taluk Erode District		Erode District Gobi Taluk Santhipalam Village R.S.No.330/1A Total Extent 10739 1/4 Sqft
7.	Smt.P.Saraswathi W/o. Parameswaran Chennaripalayam Village Sokkumaripalayam (Post) Geettiseviyur (Via), Gobi Taluk, Erode District.		Erode District Gobi Taluk Nichampalayam Village Ole SF No.183B, 183A R.S.No.172/3 (New Sub division No.171/2, 172/3B & 172/3C) Total Extent 6360 Sq.ft.
8.	Sri.K.M.Magudeswaran S/o.Late.Marappan Gounder Kaliyampalayam (Post) Nichampalayam Village Gobichettipalayam Taluk, Erode District		Erode District Gobi Taluk Santhipalayam Village Old SF No.349, R.S.No.395/3A (New Sub Division No.395/3A3) Old Door No.22A & 22B New Door No.104 & 105 EB.SC.No.346,70 Total Extent 1886 sq.ft. Erode District Gobi Taluk Vaniputhur Village Old SF 560 New SF No.56/1B, 53/1, 53/2 & 53/3 Present Sub Division 53/1B Door No.7/10 Total Extent 0.10.0 Hectares (0.25 Acres)

7. The 3rd respondent has further submitted that prior to the filing of petition, Under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, the Secured Creditor, Bank has issued notice under Section 13(2) of the Act, on 15.11.2011, to the borrowers, as well as the guarantors, including respondents 3 & 4 herein, calling upon them, to settle the entire dues with interest within 60 days. After receiving the demand notice, the borrowers have failed to discharge the liabilities in full, within the stipulated period. Hence, possession notice under Section 13(4) of the said Act, was issued to the Borrower/Guarantor by the Bank, on 15.04.2013.

8. The District Collector-cum-District Magistrate, Erode, 3rd respondent herein, has further submitted that after going through the materials putforth by the Secured Creditor/Bank, in exercise of the powers conferred on the District Collector/District Magistrate, under Section 14(1) of the said Act, an order was passed in Office Proceedings Ref.16284/2014/D2, dated 20.07.2015, for taking possession of above secured assets and handing over the same to the Authorized officer of the Bank.

9. After the said orders, one Mr.K.S.Palanisamy S/o.Chennimalai gounder of Vaniputhur Village, in Gopichettipalayam Taluk, has issued lawyer's notice, dated 24.07.2015, to the District Collector, Erode; the Tahsildar, Gobichettipalayam; the Deputy Superintendent of Police, Gobichettipalayam and Authorized Officer of Bank at Gobichettipalayam, stating that the property described in Sl.No.3 of statement in Para 6 above, is a house property and in respect of which, he has filed a suit in O.S.No.62/2011, on the file of the Subordinate Judge, Gobichettipalayam and got a decree on 24.04.2014, directing Mr.Eswaramoorthy, who is the brother of Mr.K.R.Kandasamy, to perform his part of sale agreement, dated 02.01.2008 and to surrender possession.

10. In the lawyer's notice, he has stated that when attempts were made by the Bank, to take possession of the said property, he has filed a suit for permanent injunction in O.S.No.61/2013, on the file of the District Munsif, Gobichettipalayam, to restrain the Authorised Officer of State Bank of India, Gobichettipalayam, Eswaramoorthy of M/s.Greenbay Food Product, Rep by its Director R.Sivachandran and Kandasamy and that the same was decreed on 24.02.2014 and as such, the Authorized Officer of the Bank has

11. The 3rd respondent has further submitted that suppressing the above facts, the Authorized officer of the Bank has made an application, on 16.06.2014, to the District Collector, under Section 14 of SARFAESI Act, 2002. The plaintiff, Mr.K.S.Palanisamy, in O.S.No.61 of 2013, in his notice, dated 24.07.2005, has called upon the parties, not to take possession and sell the above mentioned property, demanded to recall the order and cautioned that contempt proceedings would be initiated against all, in the event of failure. Along with notice, he has also sent a Photostat copy of judgment passed by the District Munsif, Gobichettipalayam in O.S.No.61/2013 on 24.02.2014.

12. The 3rd respondent has further submitted that the Chief Manager of State Bank of India, Gobichettipalayam also sent a letter in Ref.No.00839/SME/021/15-16, dated 29.07.2015, to the Office of the District Collector, Erode, to exclude the properties mentioned in Sl.Nos.1 and 3 of the statement in para 4 above. In the above circumstances, an order was passed, vide proceedings in Ref.16284/2014/D2, dated 05.08.2015, cancelling the previous order, in proceedings Ref.16284/2014/D2, dated 20.07.2015 and re-examination of the case, was ordered.

13. It is further submitted that the Chief Manager, State Bank of India, Gobichettipalayam, in Ref Roc SMB 036/2015-16, dated 21.09.2015, informed that in respect of property mentioned in Sl.No.1, measuring 2.77 acres, is under attachment, by order of the Chief Judicial Magistrate, in CMP.No.625/2013, dated 01.11.2013 and the property mentioned in Sl.No.3, measuring 0.30 acres, is covered by a permanent injunction, passed by the District Munsif, in O.S.No.61/2013, dated 24.02.2014 and that therefore, the other six properties' possession may be taken.

14. The 3rd respondent has further submitted that during re-examination, objections were received, alleging that the properties of borrowers were sufficient to satisfy the debts, due to the Bank and only when it is insufficient to clear the debts due to Bank, it is justifiable to proceed against the properties of guarantors.

15. While examining the plea of objectors and the contention of Bank, it was found that there was a loan due about 1.39 crores only and whereas, the Bank has taken possession of properties of the borrower, worth about 2.73 crores. Therefore, considering the

principles of natural justice, an order was passed, vide proceedings in <http://www.judis.nic.in>

Roc.No.6284/2014, dated 25.01.2016, stating that it is not possible to take possession of properties of Guarantors and also confirming the order passed, vide proceedings in Ref.16284/2014, dated 05.08.2015.

16. The 3rd respondent has further submitted that the property situated in old SF.No.349, RSF 395/3A (New Sub Division No.395/3A3), Old Door No.22A & B New Door No.104 & 105 EB SC No.346, 70, admeasuring 1886 Sq.Ft., in Santhipalayam Village, mentioned in Sl.No.8 of statement in Para 4 above, belonged to the Guarantor, Mr.K.N.Magudeswaran and the said property is one of the items brought up for auction sale, by the State Bank of India, for the loan dues. This item is included in order No.Ref.16284/2014/D2, dated 20.07.2015 of the District Collector Erode, which has been later on, recalled by the District Collector Erode, vide order passed in Roc.16284/2014/D2, dated 05.08.2015. Hence, the present writ petition, has been filed by the auction purchaser, for the abovesaid property, which was withdrawn earlier.

17. It is also contended by the 3rd respondent that among the secured assets, one of the properties, belonged to the Guarantor,

<http://www.judis.nic.in> Mr.K.N.Magudeswaran and earlier, after going through the materials

purforth by the Bank, the District Collector & District Magistrate, Erode Passed order, vide proceedings in Ref.16284/2014/D2, dated 20.07.2015, under Section 14(1) of SARFAESI Act, 2002, for taking over the possession and handing over to the authorized official of the Bank. Only after conducting auction sale, petition under Section 14(1) of SARFAESI Act, has been filed and therefore, matters like execution of issuance of fresh sale certificate and registration of sale certificate, etc., rests with the State Bank of India only.

18. The District Collector-cum-District Magistrate, Erode District, has further submitted that the property purchased by the auction purchaser, belonged to the Guarantor, Mr.K.N.Magudeswaran and since the Bank had taken possession of the properties of the borrower, worth about 2.73 acres, holding that it is sufficient for the realization of loan dues, an order was passed on 25.01.2016, stating that it is not possible to take possession of the properties of Guarantor and the only recourse to the writ petitioner, is to seek for refund of the amount paid. Hence, the 3rd respondent has prayed for dismissal of the writ petition.

Heard the learned counsel appearing for the parties and perused

<http://www.judis.nic.in> the materials available on record.

19. Proceedings dated 20.07.2015 of the District Collector cum District Magistrate, Erode District, is extracted hereunder:

**PROCEEDINGS OF THE DISTRICT COLLECTOR AND DISTRICT
MAGISTRATE, ERODE DISTRICT, ERODE.**
PRESENT: Dr PROCEEDINGS .S.Prabhakar, I.A.S.,

Ref.162/2014/D2

Date: 20.07.2015

Sub: Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 Petition filed by Authorized Officer, State Bank of India, Gobichettipalayam - said Act - Orders Issued.

Ref: Petition from the State Bank of India, Gobichettipalayam, received on 16.06.2014.

ORDER:

The Authorized Officer, State Bank of India, Gobichettipalayam has filed petition before the District Collector and District Magistrate, Erode District under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (Central Act 54 of 2002) praying assistance in taking possession of the secured assets of the following borrower.

Sl. No.	Name of the borrower/Guarantor	Amount outstanding	Details of secured Assets
1.	Sri.K.Sivachardar (Managing Director) S/o.Sri.K.R.Kandasamy 61/2, Vaikkal Thottam Kaliyankadu T.N.Palayam,	Outstanding inclusive of Interest as on 15.11.2011 Rs.1,90,94,999 with further	Erode District Anthiyur Taluk Poonachi Village, R.S.No.10 (new sub-division 10/2) 2.77 acres (1.27+1.50)

Sl. No.	Name of the borrower/Guarantor	Amount outstanding	Details of secured Assets
	Gobichettipalayam TK Erode District.	dues with interest	
2.	Sri.K.R.Kandasamy (Director/Chairman) S/o.Ramasamy Gounder, 61/2, Vaikkal Thottam, Kaliyankadu, T.N.Palayam, Gobichettipalayam TK Erode District		Erode District Gobi Taluk, Vaniputhur Village Old SF.No.444D New RS.No.136 Door No.59-61 Total Extent 25 cents
3.	Sri.K.R.Eswaramoorthi S/o, Ramasamy Gounder 61/2, Vaikkal thottam, Kaliyankadu Vaniputhur Village, Gobichettipalayam TK Erode District.		Erode District Gobi Taluk, Vaniputhur Village, Old SF.No.447, 448D, New RS.No.138/2, Door No.68-70, Total Extent 30 cents
4.	Smt.S.Maragathamani W/o.G.K.Somasundaram Gettiseviyur, Santhipalayam Village, Gobichettipalayam TK Erode District.		Erode District Gobi Taluk Veerapandi Village Natham No.39/A1 Door No.22/23 Total Extent 1031 Sqft
5.	Smt.M.Rukmani W/o, Marappan Senkarattu Thottam Arrakankottai Gobichettipalayam TK Erode District		Erode District Gobi Taluk Veerapandi Village Natham No.163 Door No.22/23 Municipal ward No.14 New Town Survey Ward B, Block No.9 TS.No.13 EB SC No.307-017-63 Munsif Street Total extent 882 sqft.
6.	Sri G.Parameswaran S/o.Griyappan Chennaripalayam Village Sokkumaripalayam (Post) Geettiseviyur (via) Gobichettipalam Taluk Erode District		Erode District Gobi Taluk Santhipalam Village R.S.No.330/1A Total Extent 10739 1/4 Sqft
7.	Smt.P.Saraswathi W/o. Parameswaran		Erode District Gobi Taluk

Sl. No.	Name of the borrower/Guarantor	Amount outstanding	Details of secured Assets
	Chennaripalayam Village Sokkumaripalayam (Post) Gettiseviyur (Via), Gobi Taluk, Erode District.		Nichampalayam Village Ole SF No.183B, 183A R.S.No.172/3 (New Sub division No.171/2, 172/3B & 172/3C) Total Extent 6360 Sq.ft.
8.	Sri.K.M.Magudeswaran S/o.Late.Marappan Gounder Kaliyampalayam (Post) Nichampalayam Village Gobichettipalayam Taluk, Erode District		Erode District Gobi Taluk Santhipalayam Village Old SF No.349, R.S.No.395/3A (New Sub Division No.395/3A3) Old Door No.22A & 22B New Door No.104 & 105 EB.SC.No.346,70 Total Extent 1886 sq.ft. Erode District Gobi Taluk Vaniputhur Village Old SF 560 New SF No.56/1B, 53/1, 53/2 & 53/3 Present Sub Division 53/1B Door No.7/10 Total Extent 0.10.0 Hectares (0.25 Acres)

2) The petitioner Bank issued notice u/s.13(2) of SARFAESI Act, 2002 on 15.11.2011 to the respondent calling upon to settle the entire dues with interest within 60 days and also the Respondents received the said notice on 17.11.2011. After receiving the demand notice, the respondents failed to discharge the liabilities in full within the period and u/s/13 (4) of the said Act Possession Notice is also issued to Borrower/Guarantor dated on 15.04.2013 by the Petitioner Bank. Since the borrower did not comply with the notice the petitioner

Bank has filed this petition.

3) In the above circumstances, after going through the materials put forth in this case and as per the powers conferred on the District Collector and District Magistrate under Section 14(1) of the said Act, orders are hereby issued for taking over the possession of the secured assets detailed above and handing over to the Authorized officer of the petitioner Bank.

4) The Tahsildar, Gobichettipalayam/Anthiyur is authorized to take Physical possession of the above mentioned property and to seek the help of the Police officials if necessary and hand over that to the Authorized Officer of the Bank with proper acknowledgment. The date of taking and handing over of the possession of the secured Asset should be reported to this office at once.

The Deputy Superintendent of Police, Gobichettipalayam is hereby instructed to give sufficient police protection if there is any need."

20. Proceedings, dated 05.08.2015 of the District Collector cum District Magistrate, Erode District, is extracted hereunder:

**PROCEEDINGS OF THE DISTRICT COLLECTOR AND
DISTRICT MAGISTRATE, ERODE DISTRICT, ERODE**
PRESENT: Dr.S.Prabhakar, I.A.S.,

Ref.16284/2014/D2

Date: 05.08.2015

Sub: Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, Petition filed by Authorized Officer, State Bank of India, Gobichettipalayam - revised order-issued.

Ref: 1. Petition from the State Bank of India, Gobichettipalayam received on 16.06.2014.

2. Proceedings of the District Collector and District Magistrate, Erode, Ref.No.16284/2014/D2 dated 20.07.2015.

3. Notice from the Advocates Thiru. C.Devarajan, Erode and Thiru.G.M.Mahendran, Gobichettipalayam, dated 24.07.2015.

4. A Letter Reference No.00839/SME/021/15-16, dated 29.07.2015 of the Authorized officer/chief manager of State Bank of India, Gobichettipalayam.

ORDER:

As per the requisition received from the Authorized Officer, State Bank of India, Gobichettipalayam, an order was passed in the reference 2nd cited, to take possession of the secured assets from the defaulters.

2) A notice issued by the Advocates Thiru.C.Devarajan, Erode and Thiru.G.M.Mahendran, Gobichettipalayam, on behalf of Thiru.K.S.Palanisamy, S/O.Chennimalaigounder in the reference 3rd cited to recall the order issued in the reference 2nd cited as per the injunction order passed against the State Bank of India, Gobichettipalayam, in O.S.No.61/2013, District

Munsif Court of Gobichettipalayam, dated 24.02.2014.

3) Now, the chief manager, State Bank of India, Gobichettipalayam requested in the reference 4th cited to exclude the properties as mentioned in serial no.1 & 3 in the previous order issued in the reference 2nd cited.

4) Therefore, the previous order passed in the reference 2nd cited is hereby cancelled. Also it is hereby ordered for re-examining the case."

21. Proceedings, dated 05.08.2015, shows that the District Collector cum District Magistrate, Erode District, has cancelled the proceedings, dated 20.07.2015, authorising the Tahsildar, Gobichettipalayam/Anthiyur, to take possession of the subject property, with the help of the police officials and handover to the authorized officer of bank, with proper acknowledgment.

22. After cancellation of the proceedings, dated 20.07.2015 and pursuant to the directions to re-examine the issue, the District Collector cum District Magistrate, Erode District has passed yet another proceedings in NA.KA.No.16284 of 2014, dated 25.01.2016, confirming the cancellation of the proceedings, dated 20.07.2015. When the correctness of the order, dated 25.01.2016, has been challenged by the writ petitioner, this Court in W.P.No.7242 of 2016,

dated 20.02.2017 has passed the following orders:-

"Mr.Guruprasad, learned counsel for the writ petitioner seeks permission to withdraw the writ petition with liberty to approach the competent forum, challenging the order impugned and he has made an endorsement to that effect.

2. Permission is granted. Writ petition is dismissed as withdrawn, granting liberty to the petitioner to approach the competent forum. The impugned order is dated 25.01.2016. Writ petitioner has approached this Court on 23.02.2016. If any challenge is made to the impugned proceedings, tribunal is directed to consider the time spent in this Court. No Costs. Consequently, the connected Writ Miscellaneous petition is closed."

23. Though, at Paragraph No.6 of the supporting affidavit to the instant writ petition, the petitioner has stated that he has withdrawn W.P.No.7242 of 2016, mistakenly on 20.02.2017 and the claim made by the writ petitioner, in the said writ petition, has become infructuous, this Court is of the view that the prayer in the present W.P.No.20888 of 2017, for a mandamus to direct the respondents 1, 2 and 4 to implement proceedings, dated 20.07.2015, passed by the District Collector cum District Magistrate, Erode District and for consequential directions, as stated supra, cannot be granted,

as the entire proceedings, dated 20.07.2015, has been cancelled on 05.08.2015, which includes Items 1 and 3 of the suit property, bought for auction.

24. Consequential proceedings have also been issued by the District Collector cum District Magistrate, Erode District on 25.01.2016, which came to be challenged in W.P.No.7242 of 2016 and that the same was withdrawn on 20.02.2017.

25. The petitioner, who is fully aware of the consequential proceedings of the District Collector cum District Magistrate, Erode District, 3rd respondent herein, has attempted to obtain directions, to implement an order, dated 20.07.2015, which has been cancelled. When the said order has been cancelled and the District Collector cum District Magistrate, Erode District, 3rd respondent herein, has passed a subsequent order, dated 25.01.2016, prayer sought for, in this writ petition, is wholly mis-conceived.

26. Though, on the facts and circumstances of the case, we are of the view that the petitioner deserves to be imposed with cost, we are not inclined to do so.

27. Hence, the Writ Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

(S.M.K., J.) (R.S.K., J.)
30.11.2017

Note to Office:

Registry is directed to mark a copy of the order to the petitioner.

Index: Yes/No

Internet: Yes/No

Speaking/Non speaking

dm/skm

To

1.The District Collector & District Magistrate,
Erode District,
Erode.

2.The Tahsildar,
Gopichettipalayam/Anthiyur,
Erode Taluk & District.

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S.MANIKUMAR, J.
AND
R.SURESH KUMAR, J.

dm/skm



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