

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.11514 of 2017
and WMP No.12501 of 2017

S.Thangavel

... Petitioner

vs.

1. The District Magistrate and District Collector,
Tiruppur District.

2. Indian Overseas Bank,
Rep. by its Manager,
Avinashi Branch,
Sreenivasapuram Branch,
Avinashi, Tiruppur - 641 654.

3. S. Jothi Magheswari

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, forbearing the respondents, their subordinates and servants in any manner dispossessing or evicting the petitioner from the property more particularly described in the schedule of property without due process of law in terms of an order in Reg.No.10048/2016/C3 dated 27.03.2017 passed by the 1st respondent.

For Petitioner :

Mr.R.Dhanaram

For Respondents :

Mr.K.V.Dhanapalan (for R1)

Spl. Government Pleader

Mr.F.B.Benjamin George (for R2)

No appearance - for R3

ORDER

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

Claiming himself to have acquired a right under "Bogiyam" by paying a lumpsum amount of Rs.3 Lakhs and that he cannot be evicted under the provisions of the SARFAESI Act, 2002,

petitioner has sought for a writ of mandamus forbearing the respondents, their subordinates and servants in any manner dispossessing or evicting the petitioner from the property more particularly described in the schedule of property without due process of law in terms of an order in Reg.No.10048/2016/C3 dated 27.03.2017 passed by the 1st respondent.

2. As per Section 17(4-A) of SARFAESI Act, 2002, inserted by Act 44 of 2016, with effect from 01.09.2016 (i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purpose of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy, -

- (a) has expired or stood determined; or
 - (b) is contrary to Section 65 A of the Transfer of Property Act, 1882 (4 of 1882); or
 - (c) is contrary to terms of mortgage; or
 - (d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of Section 13 of the Act; and
- (ii). the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act."

3. Despite the amendment, with effect from 01.09.2016, instant writ petition has been filed on 02.05.2017, for the relief stated supra.

4. Record of proceedings shows that while ordering notice to the respondents returnable on 16.06.2017, a Hon'ble Division Bench of this Court vide order dated 02.06.2017 has directed status quo, as on date of the order, to be maintained by the concerned parties. Subsequently, on 16.06.2017, interim order has been extended.

5. On this day, when the matter came up for further hearing, Mr.R.Dhanaram, learned counsel for the writ petitioner seeks permission to withdraw the writ petition and he has also made an endorsement to that effect. Further, the learned counsel seeks liberty to move the tribunal under Section 17 (4-A) of SARFAESI Act, 2002.

6. Placing on record the above, the writ petition is dismissed as withdrawn. No leave is granted to file a fresh writ of mandamus for the very same prayer. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ars

To

1. The District Magistrate and District Collector,
Tiruppur District.
2. The Manager,
Indian Overseas Bank,
Avinashi Branch,
Sreenivasapuram Branch,
Avinashi, Tiruppur - 641 654.

W.P.No.11514 of 2017
and WMP No.12501 of 2017

PA (CO)
VR(17/07/2017)

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