

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.17585 of 2017

M/s.Annai Enterprises,
Rep. by its Managing Director,
Mr.S.V.Kannan

... Petitioner

vs.

1. The Authorised Officer,
The Bank of India,
Asset Recovery Branch,
Parrys, Chennai - 600 001.

2. The Bank of India,
Rep. by its Branch Manager,
Thousand Lights Branch,
Chennai.

3. The District Magistrate,
O/o. The District Magistrate,
Thiruvallur,
Thiruvallur District.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the 1st respondent to take and handover the physical possession of the property namely Industrial Land to an extent of 11,596 sq.ft., together with constructed Building thereon 11,382 sq.ft. at Plot No.4D/1D, Third Main Road, Ambattur Industrial Estate, comprised in Survey No.:28 Part, situated at Athipet Village, Ambattur, Thiruvallur District to the petitioner and consequently directing the 1st respondent to register the "Sale Certificate" dated 04.10.2016 bearing reference No.THL/RK/-SARFAESI/2016-17/032 to the petitioner.

For Petitioner : Mr.A.N.Annamalai

ORDER

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

Auction purchaser has sought for a writ of mandamus, directing the 1st respondent to take and handover the physical possession of the property namely Industrial Land to an extent of 11,596 sq.ft., together with constructed Building thereon 11,382 sq.ft. at Plot No.4D/1D, Third Main Road, Ambattur Industrial Estate, comprised in Survey No.:28 Part, situated at Athipet Village, Ambattur, Thiruvallur District to the petitioner and consequently directing the 1st respondent to register the "Sale Certificate" dated 04.10.2016 bearing reference No.THL/RK/-SARFAESI/2016-17/032 to the petitioner.

2. Supporting affidavit discloses that petitioner has purchased the property in the e-auction conducted on 22.08.2016 and remitted the sale consideration. Sale certificate under Rule 9(6) of the Secured Interest [Enforcement] Rules, 2002, has been issued, but possession has not been handed over.

3. Auction purchaser has issued a notice dated 09.04.2017, to the bank to hand over physical possession. Acknowledging the said notice, bank has sent a letter dated 30.05.2017 stating that seeking assistance, application under Section 14 of the SARFAESI Act, 2002, has been filed before the District Magistrate, Thiruvallur District and that no orders have been passed. Due to the delay in passing orders, bank is unable to hand over possession and that bank would take all efforts to obtain orders from the District Magistrate-cum-Collector, Thiruvallur District and handover possession.

4. Contending inter alia that the petitioner has a right to the physical possession of the property purchased through e-auction, writ of mandamus is sought for.

5. Heard the learned counsel for the writ petitioner and perused the materials available on record.

6. Though the writ petitioner has contended that they are entitled to have physical possession of the property purchased through e-auction, as per the averments in the letter dated 30.05.2017 of the Chief Manager, Bank of India, Bank has filed the application under Section 14 of the SARFAESI Act, 2002 on 03.09.2016 and that the same is stated to be pending.

7. As per Section 14 of the SARFAESI Act, 2002, 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 SARFAESI Act, 2002, 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.

8. While exercising the powers under Section 14 of the SARFAESI Act, 2002, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, has to consider the factors enumerated in Section 14 of the Act, before granting or refusing assistance to the Secured creditor, in taking possession of the secured asset.

9. As stated supra, application under Section 14 of the SARFAESI Act, 2002 filed by the bank for seeking assistance is pending and due to the delay, auction purchaser would not be given physical possession of the property purchased. Section 14 of the SARFAESI Act, 2002, does not enable the auction purchaser to seek assistance, from the District Collector of the Chief Metropolitan Magistrate. Act only enables the secured creditor to seek assistance.

10. In the absence of any right conferred on the auction purchaser, under the Act, the petitioner cannot seek for enforcement of any right of getting possession, by a writ of mandamus.

11. Reasons as per the said letter is that due to the delay in passing of the orders, bank is unable to hand over possession. Bank who has sold the property under e-auction has to take effective steps to obtain necessary orders from the District Magistrate. When the issue as to whether assistance should be granted to the secured creditors to take possession, is pending consideration, before the District Magistrate, Thiruvallur, mandamus cannot be issued to the bank to hand over possession.

12. In the light of the above discussion, while declining to issue writ of mandamus, as prayed for, we only direct the

Authorised Officer, Bank of India, Asset Recovery Branch,
Chennai, the 1st respondent to take necessary steps for
obtaining orders from the District Magistrate, Thiruvallur.
Writ petition is dismissed. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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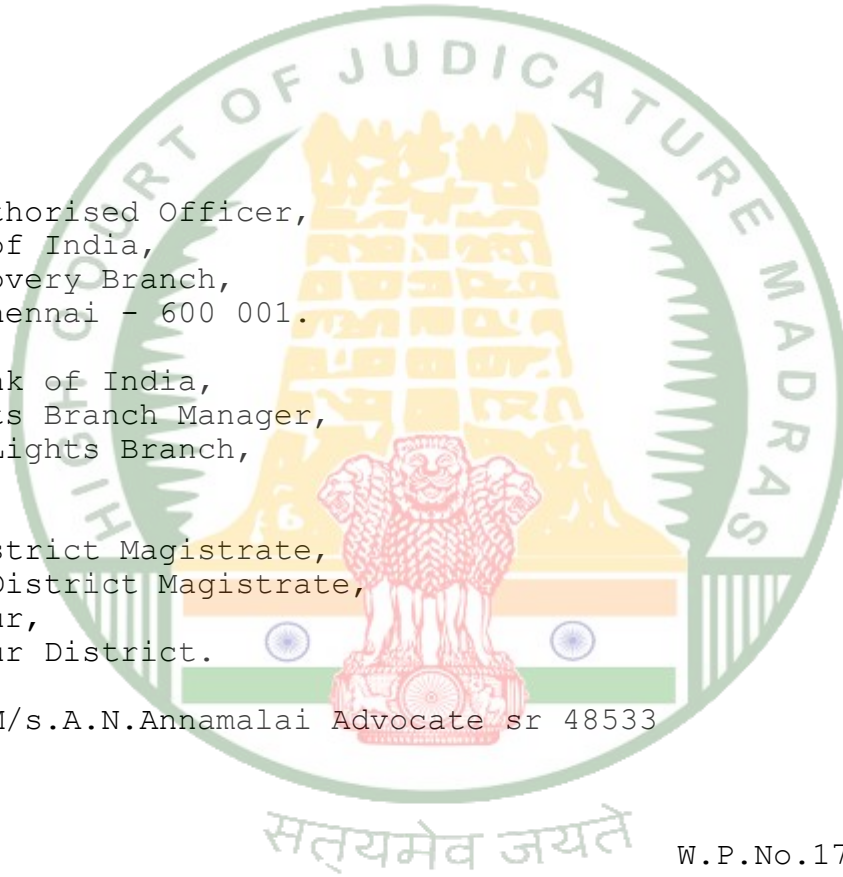
To

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2. The Bank of India,
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Thousand Lights Branch,
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3. The District Magistrate,
O/o. The District Magistrate,
Thiruvallur,
Thiruvallur District.

+1 cc to M/s.A.N.Annamalai Advocate sr 48533



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