



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 31.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) Nos.13504 to 13506 of 2017
and
W.M.P. (MD) Nos.10571 to 10574 of 2017

Venkatesan	.. Petitioner in
	W.P.(MD)No.13504 of 2017
Kesavan @ Pon.Panjabikesan	.. Petitioner in
	W.P.(MD)No.13505 of 2017
N.Mansor	.. Petitioner in
	W.P.(MD)No.13506 of 2017

Vs.

- 1.Union Bank of India,
ARMB, Chennai.
- 2.S.Abdul Wahab
- 3.The Recovery Officer,
Debts Recovery Tribunal II,
Chennai.
- 4.The Superintendent of Police,
Thanjavur District,
Thanjavur.

.. Respondents in
W.P.(MD)Nos.13504 to 13506 of 2017

PRAYER IN W.P. (MD) Nos.13504 to 13506 of 2017: Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the third respondent in connection with the letter dated 15.07.2017 in D.R.C.No.113 of 2009 issued to the fourth respondent and quash the same as being illegal and beyond his powers.

For Petitioners	: Mr.P.Thirumahilmaran
in all W.Ps	
For Respondent No.1	: Mr.S.Alagusundar
in all W.Ps	For Mr.M.Govindaswamy

For Respondent No.2	: Mr.T.Cibichakraborty
in all W.Ps	For M/s.Isaac Chambers



For Respondent No.3
in all W.Ps
For respondent No.4
in all W.Ps

: Tribunal
: Mr.T.S.Mohammed Mohideen
Additional Government Pleader

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COMMON ORDER

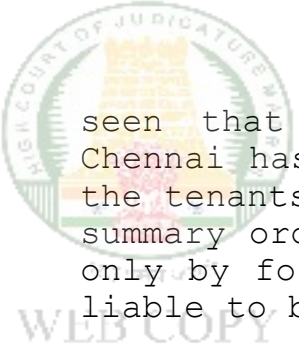
(Common Order of the Court was made by **G.R.SWAMINATHAN, J**)

These writ petitions are directed against the order dated 15.07.2017 passed by the third respondent herein in D.R.C.No.113 of 2009.

2.The first respondent/Union Bank of India had extended loan finance facilities in favour of one Mr.G.Magbool Hussain on the strength of mortgage of land with building at Ward No.5, TS No 839E, Attu Mandai Street, East Gate, Thanjavur. The bank filed O.A.No.139 of 2007 and Recovery Certificate No.113 of 2009 dated 16.11.2009 was also issued in expansion of Recovery Certificate. The property in question was sold in Public auction held on 25.11.2011. The second respondent herein purchased the property. The property consists of seven shops and is occupied by seven persons including the three writ petitioners herein. The Tribunal after confirming the sale made in favour of the second respondent directed the occupants of seven shops to hand over the vacant possession of the property. Since the said individual did not comply with the direction, the tribunal passed an order of eviction. It also directed the Superintendent of Police, Tirunelveli District to provide sufficient police protection at the time of eviction. This eviction order coupled with the direction to provide police protection for eviction made vide order dated 15.07.2017 in D.R.C.No.113 of 2009 is under challenge in these writ petitions.

3.The case of the writ petitioners is that they are lawful tenants/ occupants of the shops in question. It is true that their landlord mortgaged the said property in favour of the first respondent Bank. It is also true that the second respondent had purchased the property in public auction. The second respondent could only take symbolic possession, he cannot physically dispossess the tenants who are already occupying the premises. The second respondent as the title holder of the property could secure the eviction only by filing Rent Control Proceedings. The right of the tenants who are in occupation of the property brought to auction under SARFEASI proceedings must be laid down in the decision of Hon'ble Supreme Court reported in **2016 (3) SCC 762 (Vishal N Kalchariya v. Bank of India)**.

4.Of course, in this case, the proceedings did not arise under SARFEASI Act. The execution proceedings are under second schedule to the Indian Tax Act, 1961 read with Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Under the said proceedings also, the tenants are entitled to protection. It is



seen that the Recovery Officer of Debts Recovery Tribunal II, Chennai has not taken note of the statutory protection available to the tenants occupying the shops. They are sold in public auction. A summary order has been passed. The writ petitioners can be evicted only by following due process of law. The impugned proceeding is liable to be quashed.

5. These writ petitions are accordingly allowed. No costs. Consequently, the miscellaneous petitions are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Recovery Officer,
Debts Recovery Tribunal II,
Chennai.
2. The Superintendent of Police,
Thanjavur District,
Thanjavur.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No. 76116
+1cc to M/s. ISSAC CHAMBERS Advocate in SR. No. 75870
+1cc to M/s. T. GOVINDASAMY Advocate in SR. No. 76036
+3ccs to M/s. P. THIRUMAHILMARAN Advocate in SR. No. 75935 TO 75937
MRN
JS/SKN.RSK/SAR.2/16.11.2017/3P-9C

Order made in
W.P. (MD) Nos. 13504 to 13506 of 2017
31.08.2017