

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-12-2018

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.7196 of 2005

And

W.P.M.P.No.7851 of 2005

E.Jayapal

...Petitioner

Vs

1.The Government of India,  
Represented by its Secretary,  
Ministry of Law and Justice  
And Company Affairs,  
New Delhi.

2.The Lakshmi Vilas Bank Ltd.,  
Represented by its  
The Authorised Officer/Manager,  
No.128, Nehru Street,  
Tindivanam,  
Villupuram District.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the second respondent in his proceedings No.Nil, dated 9.7.2004 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondent-1 : No Appearance

For Respondent-2 : Mr.A.V.Radhakrishnan

## O R D E R

The possession notice issued under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act, 2002') is under challenge in the present writ petition.

2. The writ petitioner was a borrower from the second respondent-Bank and had not repaid the dues as per the terms and conditions of the Loan Agreement. In view of the fact that the writ petitioner was a defaulter, action was initiated by the second respondent under the SARFAESI Act, 2002 and a notice was issued under Section 8(1) of the Act, for taking possession. Challenging the said possession notice, the writ petitioner has filed the present writ petition.

3. The impugned notice stipulates that the borrower Mr.E.Jayabal and the guarantor Mr.K.M.Ravichandran have to repay the amount mentioned in the notice being Rs.12,19,047/- along with interest and expenses, within a period of 60 days from the date of receipt of the said notice, failing which further action would be initiated against the writ petitioner and the guarantor under the provisions of the SARFAESI Act, 2002.

4. This Court is of an opinion that the impugned proceeding is nothing but the notice issued under the provisions of the Act, directing the borrower to repay the loan dues, within a period of 60 days. Instead of settling the amount or adjudicating the matter with reference to the provisions of the Act, the writ petitioner has chosen to file the present writ petition.

5. No writ petition can be entertained against a show cause notice, more specifically, a possession notice issued under the provisions of the SARFAESI Act, 2002. A writ against a notice can be entertained if such notice is issued by an incompetent authority having no jurisdiction or an allegation of mala fides are raised or if the same is in violation of the statutory rules in force. Even in case of raising the allegation of mala fides, the authorities against whom such an allegation is raised to be impleaded as a party in writ proceedings in his personal capacity. In the absence of any one of these legal grounds, no writ proceedings can be entertained in a routine manner against such possession notice.

6. This Court is of an opinion that against the possession notice issued, the writ petitioner has to exhaust the remedies available under the provisions of the SARFAESI Act, 2002 and

therefore, the present writ petition cannot be entertained.

7. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

Svn

To

1.The Secretary,  
Government of India,  
Ministry of Law and Justice  
And Company Affairs,  
New Delhi.

2.The Authorised Officer/Manager,  
Lakshmi Vilas Bank Ltd.,  
No.128, Nehru Street,  
Tindivanam,  
Villupuram District.

+1cc to Mr.AV.Radhakrishnan, Advocate SR.No.83193

JP (CO)  
GMY (19/12/2018)

W.P.No.7196 of 2005

सत्यमेव जयते

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