

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.8742 of 2018
and W.M.P.No.10647 of 2018

Krishnan

.. Petitioner

Vs.

1. The District Collector,
Kancheepuram District,
Kancheepuram.

2. Chinnappan

3. The Chief Manager,
State Bank of India (0826)
Connor Branch, Nilgiris District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, forbearing the respondents from evicting the petitioner from his house at No.19, Mettu Street, Kannadapalayam, West Tambaram, Chennai - 600045, in Survey No.269/3, Kannadapalayam Village, Tambaram Taluk, Kancheepuram District by considering the representations of the petitioner dated 09.04.2018 and 26.03.2018 on the file of the first respondent herein in accordance with law.

For Petitioner : Ms.Padmapriya
for Mr.R.Sankarasubbu
For Respondent 1 : Mr.N.Manikandan, G.A.
For Respondent 2 : Mr.K.M.Venugopal
For Respondent 3 : No appearance

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O R D E R

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

Claiming himself to be residing in the property purchased by the auction purchaser (Respondent No.2), under SARFAESI action, for many years and patta issued recognising the same and apprehending forcible eviction by the auction purchaser, petitioner seems to have made a representation dated 09.04.2018,

to the District Collector-cum-District Magistrate, Kancheepuram District, to give police protection.

2. Petitioner has also contended that a similar representation dated 26.03.2018, has been given by one Damodharan to the District Collector-cum-District Magistrate, Kancheepuram district.

3. Contending inter alia that representations remained unanswered and based on the auction, second respondent has demolished a portion of the building, instant writ petition has filed for a Mandamus, forbearing the respondents from evicting the petitioner from the house at Door No.19, Mettu Street, Kannadapalayam, West Tambaram, Chennai - 600045, in Survey No.269/3, Kannadapalayam Village, Tambaram Taluk, Kancheepuram District, by considering the representation of the petitioner dated 09.04.2018, on the file of first respondent herein, in accordance with law.

4. Though bank has been served and name shown in the cause list, there is no appearance either in person or through counsel.

5. Heard Ms.Padmapriya, learned counsel for the petitioner.

6. Mr.K.M.Venugopal, learned counsel for the respondent No.2 / auction purchaser, submitted that direction be issued to the bank to take steps under Section 14 of the SARFAESI Act, 2002.

7. Section 14 of the SARFAESI Act, 2002 reads as follows:

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.-

(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, 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 asset and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."

8. On the pleadings, it could be deduced that the writ petitioner apprehends forcible eviction by respondent No.2/auction purchaser. He has alleged demolition of a portion of the building.

9. Section 14 of the Act does not empower the auction purchaser to take physical possession of the property. It only enables the secured creditor to approach the Chief Metropolitan Magistrate or District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and if such request is made to the above said authorities, a declaration has to be made by the secured creditor and after satisfying the contents of the affidavit, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall pass suitable orders for the purpose of taking possession of the secured assets provided therefor.

10. District Collector-cum-District Magistrate or the Chief Metropolitan Magistrate is enjoined with a duty to pass suitable orders whenever an application is made by the secured creditor under Section 14 of the Act. Therefore, respondent No.1, the District Collector-cum-District Magistrate, Kancheepuram District, cannot be directed to forbear from evicting the petitioner, if any assistance is sought for by the Bank under Section 14 of the Act.

11. Mandamus prayer is against the Statute and cannot be issued.

12. Writ petition is not maintainable and hence dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Kancheepuram District,
Kancheepuram.
2. The Chief Manager,
State Bank of India (0826)
Connor Branch, Nilgiris District.

+1cc to Mr.R.Sankarasubbu, Advocate sr.no.35257
+1cc to Mr.K.M.Venugopal, Advocate sr.no.35414
+1cc to Government Pleader in sr.no.35869

W.P.8742 of 2018 and
W.M.P.No.10647 of 2018

nr 18/06/2018

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