

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2018

CORAM:

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

W.P.No.7967 of 2018
and WMP No.9921 of 2018

Mrs.Uma

... Petitioner

vs.

1. Indian Overseas Bank,
Rep. by its Authorized Officer,
Mugaliyakkam Branch, Chennai - 600 125.

2. The District Collector cum District Magistrate,
Puducherry.

3. The Thasildar,
Oulgaret Commune,
Puducherry North, ECR Road, Puducherry.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records relating to the order passed by the 2nd respondent in his proceedings No.9393/DRDM/C3/SARFAESI/2017 dated 08.03.2018 consequently direct the 3rd respondent not to take possession of the premises bearing No.4 & 5, 7th Cross Street, Kumaran Nagar, Lawspet, Puducherry.

For Petitioner : Mr.N.Poovalingam
For Respondents : Mr.F.B.Benjamin George (for R1)
Mr.J.Kumaran (for R2 & R3)
Government Advocate (Pondy)

ORDER

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

Though, the subsequent purchaser, claimed to be unaware of the

Branch, Chennai, later on filed a suit in OS No.69 of 2016, on the file of the learned III Additional District Judge, Pondicherry, and sought for a certiorarified mandamus challenging the order of the District Collector cum District Magistrate, Puducherry, in his proceedings No.9393/DRDM/C3/SARFAESI/ 2017 dated 08.03.2018, material on record discloses that the writ petitioner / subsequent purchaser, has submitted a letter dated 26.03.2018 to the District Collector cum District Magistrate, Puducherry, seeking time to vacate, till the end of April 2018 and thereafter, to surrender vacant possession of the property.

2. We have perused the representation dated 26.03.2018 sent to the District Collector and District Magistrate, Puducherry. In her representation, she has stated that the borrower N.Balu, has entered into a sale agreement on 05.09.2013 and subsequent to the same, possession was handed over in December 2014 and since then, the petitioner has been in continuous possession and enjoyment of the property. In the representation, writ petitioner has further stated that she has paid property tax, water tax and electricity bill of the property and continued to pay the same.

3. In the said representation dated 26.03.2018, petitioner has also stated that a suit in OS No.69/2016 has been filed on the file of the learned

III Additional District Judge, Puducherry. Thasildar, Oulgaret Commune, Puducherry North, Puducherry, has inspected the property on 10.01.2018. Representation further states that her son is undergoing final examinations and hence time is sought for till the end of April 2018.

4. Having regard to the averments made in the supporting affidavit and the contents of the representation dated 26.03.2018, addressed to the District Collector cum District Magistrate, Puducherry, we directed Mr.F.B.Benjamin George, learned counsel, to take notice on behalf of the Indian Overseas Bank, represented by its Authorised Officer, Mugalivakkam Branch, Chennai. Mr.J.Kumaran, learned Government Advocate (Pondy) takes notice for respondents 2 and 3.

5. Taking note of the reasonable request, made by the writ petitioner, to stay in the mortgage property, till April 2018, and thereafter, to surrender vacant possession, Mr.F.B.Benjamin George, learned counsel for the bank fairly agreed for the proposal.

6. Submission of both the learned counsel for the parties is placed on record.

7. Alternate remedy is available under Section 17 of the SARFAESI Act, 2002 to challenge the order impugned before us. Be that as it may, now that the petitioner has agreed to surrender vacant possession in May 2018, we direct the District Collector cum District Magistrate, Puducherry and the Tahsildar, Oulgaret Commune, Puducherry North, Puducherry, the respondents 2 and 3 respectively, not to enforce the impugned order dated 08.03.2018. We permit the writ petitioner to stay in the subject property till the examinations are over and further direct the writ petitioner to surrender vacant possession to the bank, by 1st week of May 2018.

8. Having regard to the averments made in support of the writ petition, it is left open to the petitioner to pursue her remedy, sought for in O.S.No.69 of 2016, on the file of the learned III Additional District Judge, Puducherry.

9. With the above direction, the writ petition is disposed of. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

(S.M.K., J.) (V.B.S., J.)
05.04.2018

Index: Yes/No.
Internet: Yes.
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To

1. The Authorized Officer,
Indian Overseas Bank,
Mugalivakkam Branch,
Chennai - 600 125.

2. The District Collector cum District Magistrate,
Puducherry.

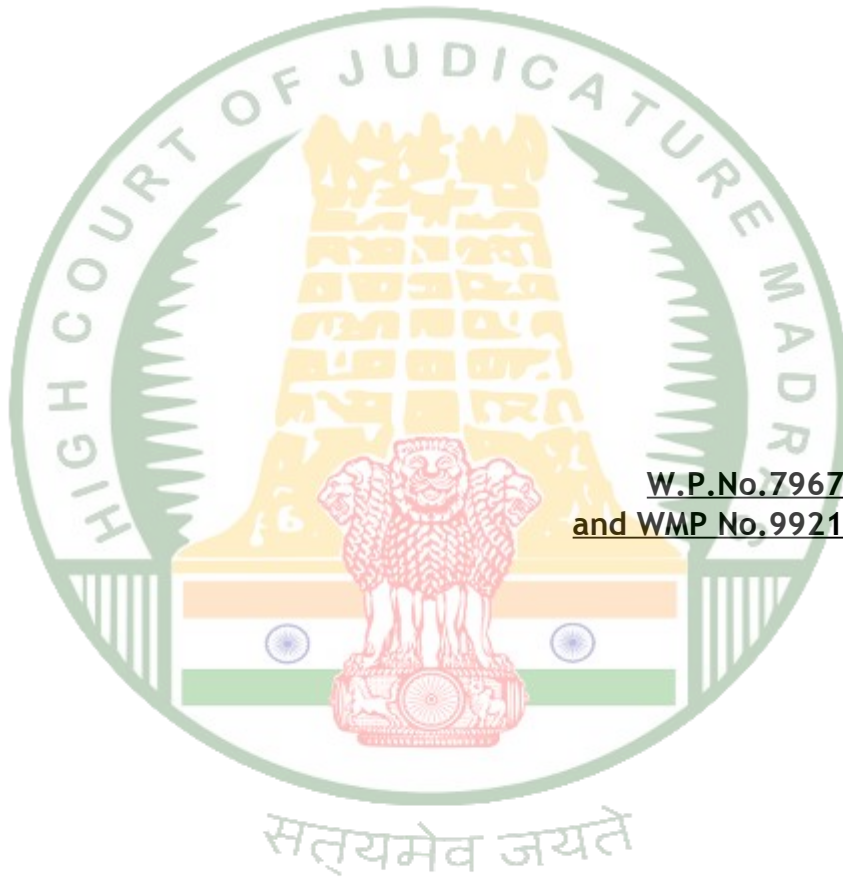
3. The Thasildar,
Oulgaret Commune,
Puducherry North,
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