

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

CORAM :

The Hon'ble Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.DURAI SWAMY

W.P. No.23366 of 2018
and W.M.P.No.27266 of 2018

S.Kasthuri

.. Petitioner

-vs-

- 1.The Recovery Officer,
The Debts Recovery Tribunal-III
at Chennai, 5th Floor, Spencer Towers,
770A, Anna Salai, Chennai 600 002.
- 2.The Indian Overseas Bank
The Assets Recovery Management Branch,
Rep. by its Branch Manager, No.20,
ORMes Road, Kilpauk, Chennai 600 010.
- 3.R.Vinayagamoorthy
- 4.The Inspector of Police,
Law & Order, J-11 Kannagi Nagar
Police Station, Kannagi Nagar, Chennai.
- 5.S.Subramani
- 6.S.Rajeswari

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to forbear the respondents from interfering with peaceful possession of the petitioner's property House Ground and Premises bearing No.1/273 Kadumbadi Naicker Street Karapakkam Chennai 97 situated at Karapakkam Village Tambaram Taluk Kanchipuram District comprised in Old Survey No.114/part New Survey No.114/7 property bounded on the North by Kadumbadi Naicker Street South by balance property of Survey No. 114/7 East by Kadumbadi Naicker Street and West by House in Survey No.113 measuring to

an extent of 6854 sq.ft. which is not at all mortgaged to anybody or tried by any of the court including above DRT.

For Petitioner : Mr.M.Venkatesan

For Respondents : Mr.F.B.Benjamin George for R-2

Mr.Kamalesh Kannan GA for R-4

O R D E R

(Order of the Court was made by M.DURAI SWAMY, J.)

The petitioner has filed the above writ petition to issue a writ of mandamus forbearing the the respondents from interfering with the peaceful possession of the petitioner's House, bearing No.1/273 Kadumbadi Naicker Street, Karapakkam, Chennai, which is not at all mortgaged to anybody or tried by any of the court including the Debts Recovery Tribunal.

2.The learned counsel appearing for the petitioner submitted that the above mentioned property was not mortgaged with the second respondent-bank and in spite of the same, the respondent-bank is proceeding with the said property under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short 'SARFAESI').

3.Mr.F.B.Benjamin George, learned counsel, taking notice on behalf of the second respondent-bank, submitted that the recovery certificate was issued as early as in the year 2008 and in spite of the same, the petitioner has not challenged the order passed at the time of issuance of the recovery certificate by the Debts Recovery Tribunal so far.

4.Since the petitioner has not challenged the order passed by the Debts Recovery Tribunal even after a lapse of ten years and now contending that the second respondent-bank is intending to take action on the property which was not mortgaged with them under the SARFAESI proceedings, the remedy open to the petitioner is only to approach the Debts Recovery Appellate Tribunal and not under Article 226 of the Constitution of India by filing the writ petition.

5.Since the petitioner has approached this Court without exhausting the alternative remedy available under the SARFAESI Act, we are not inclined to entertain the writ petition.

Accordingly, the writ petition is dismissed. No costs.
Consequently, W.M.P.No.27266 of 2018 is also dismissed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

To

- 1.The Recovery Officer,
The Debts Recovery Tribunal-III
at Chennai, 5th Floor, Spencer Towers,
770A, Anna Salai, Chennai 600 002.
- 2.The Inspector of Police,
Law & Order, J-11 Kannagi Nagar
Police Station, Kannagi Nagar, Chennai.

+2cc to Mr.M.Venkatesan, Advocate SR.No.62361

W.P.No.23366 of 2018

GMV (19/09/2018)

सत्यमेव जयते
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