

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.24761 of 2018

Minor D.Chandrika
rep. by maternal grandmother
Subbulakshmi

... Petitioner

Vs.

1.The District Collector & District Magistrate,
Coimbatore Collector Office,
Coimbatore - 641 018.

2.The Thasildar,
Annur Taluk Office,
Sathy Main Road, Annur,
Coimbatore - 641 653.

3.The Chief Manager/The Authorized Officer,
Central Bank of India,
Regional Office,
No.14/15, Variety Hall Road,
Coimbatore - 641 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus forbearing the respondents from evicting the petitioner from the property comprised in Survey Field No.719/2 at Masagoundan Chettipalayam Village, Avinasi Taluk, Coimbatore District without considering the objections made by the petitioner dated 10.8.2018 before the 1st respondent.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.S.Kamalesh Kannan
Government Advocate
for respondents 1 and 2

Mr.B.Thilak Narayanan
for 3rd respondent

O R D E R

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

The petitioner has filed the above writ petition to issue a Writ of Mandamus forbearing the respondents from evicting the petitioner from the property comprised in Survey Field No.719/2 at Masagoundan Chettipalayam Village, Avinasi Taluk, Coimbatore District without considering the objections made by the petitioner dated 10.8.2018 before the first respondent.

2. It is the case of the petitioner that her mother has illegally mortgaged the property in favour of the third respondent Bank and that the petitioner has got a share in the said property. Further, the petitioner has stated that since she has got a right in the property mortgaged with the third respondent by her mother, her possession should not be disturbed by parties to the SARFAESI proceedings. Further, the petitioner has also stated that the third respondent has filed an application before the first respondent under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act') claiming physical possession of the property, which is in possession of the petitioner.

3. When the property has been mortgaged by the borrower in favour of the third respondent Bank and the third respondent has also filed an application under Section 14 of the SARFAESI Act before the first respondent for taking physical possession of the property, if the petitioner is aggrieved over the same, the remedy available to her is to challenge the said proceedings.

4. The learned counsel for the third respondent Bank submitted that the first respondent had already passed an order in Section 14 application in the month of August 2018 and therefore, the remedy open to the petitioner is only to file an appeal before the Debts Recovery Tribunal against the said order.

5. The relief sought for by the petitioner cannot be granted for the reason that the first respondent had already passed the order in Section 14 application filed by the third respondent. However, it is open to the petitioner to challenge

the said order in accordance with law.

6. With these observations, the writ petition is dismissed.
No costs. Consequently, W.M.P.No.28785 of 2018 is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

bbr Sub Assistant Registrar

To

- 1.The District Collector & District Magistrate,
Coimbatore Collector Office,
Coimbatore - 641 018.
- 2.The Thasildar,
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Coimbatore - 641 653.
- 3.The Chief Manager/The Authorized Officer,
Central Bank of India,
Regional Office,
No.14/15, Variety Hall Road,
Coimbatore - 641 001.

+1cc to Mr.R.Nalliyappan, Advocate SR.No.86011

+1cc to Mr.T.M.Hariharan, Advocate SR.No.85291

+1cc to Government Pleader SR.No.85644

W.P.No.24761 of 2018

KJ(CO)
GMY(04/01/2019)

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