

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3/4/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.31140 of 2003

V.K.R.Akkayasamy ... Petitioner

Vs

1. The Recovery Officer
Debt Recovery Tribunal
First Floor
Kaveri Complex, 1670 Trichy Road
Ramanathapuram
Coimbatore 641 045.

2. V.R.Maheswaran ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorari to call for the records relating to order, dated 14/2/2003 passed in R.P.No.80 of 2002 in D.R.C.No.171 of 2001 (Old D.R.C.No.322 of 1999) on the file of the Recovery Officer, Debt Recovery Tribunal, I Floor, Kaveri Complex, 1670 Trichy Road, Ramanathapuram, Coimbatore 641 045, first respondent and to quash the same.

For petitioner ... Mr.P.Raja

For respondents... Mr.S.Namonarayanan for R.1
Mr.R.Devaraj for R.2.

O R D E R

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

Claiming himself to be a tenant, petitioner has challenged the order of the Recovery Officer, dated 14/2/2003, on the file of the Debts Recovery Tribunal, Coimbatore, which is extracted hereunder:-

"Your petition against the order of this Tribunal, dated 5th September 2002 directing you to vacate the petition mentioned property has been considered with reference to the rule position obtaining in this matter.

This Tribunal's order, dated 5th September 2002 has been challenged mainly on two grounds. That by virtue of an alleged sale agreement executed on 24/8/92, between the defaulter/mortgagor i.e., T.K.Devadoss and one R.Sekar, you were inducted as a tenant in the petition mentioned property vide lease agreement dated 7/10/1992. That you have obtained a permanent injunction against one R.Sekar and that being a statutory tenant you cannot be evicted from the premises except under an order of the said Court.

For more than one reason this Tribunal's order cannot be challenged on the above grounds. Firstly, you have neither submitted any documentary evidence in support of your claim regarding the existence of sale agreement/lease agreement nor appeared for the enquiry posted on 8th November 2002. Secondly, even assuming that there existed a sale agreement and also a lease agreement as alleged by you, it would not bind the mortgagee and during the subsistence of a mortgage will be subject to mortgage. Further, mortgagor's power to lease for more than 3 years is not valid in law. Therefore, your claim to be a tenant is not true in law and on facts. So much so, in law the character and possession by you not being true and valid besides which is in collusion and also not that of a tenant, you are only a third party at the instigation of the defaulter and therefore, liable to be evicted under Rule 42 of the Income Tax (Certificate Proceedings) Rules, 1962.

The fact that you have obtained a permanent injunction against one R.Sekar, the alleged erstwhile owner of the said premises is of no relevance to the implementation of the orders of the undersigned for vacating the premises, as your claim to be a tenant is not true in law and on facts in view of the aforesaid reasons.

Even assuming that you are a tenant, you

are not entitled to any protection under the Tamil Nadu Rent Control Act for right of tenancy, as alleged by you as the tenant-landlord relationship between you and the previous owners of the said property has been severed when the mortgaged property was sold in public auction and the sale was made absolute by the issue of sale certificate to the auction-purchaser.

Therefore, you are hereby directed to vacate the property and handover the keys of the said premises to the auction purchaser, Mr.V.R.Maheswaran, 253, VI North Cross Street, Anna Nagar, Madurai 20, immediately, failing which the Tribunal will be constrained to evict you forcibly, by seeking necessary police assistance as provided under Rull 19 of the second schedule of the Income Tax Act.

Specification of Property

In Madurai District, Madurai Registration District, Madurai Sub-Registration District, Madurai Survey Ward No.3, Corporation Ward No.57, in South Perumal Maistry Street, Town Survey No.2294/2, house property bearing Door No.66 bounded on the North by Survey No.2298, Chinna Konda Nannier's house and Door No.59 A house belonging to Mr.C.L.Mahadeva, on the East by S.No.2294, C.S.R.Visalakshi Ammal Kalyana House and Common wall, on the South by East-West South Perumal Maistry Stret and on the West by S.No.2295, 2296 (Solai) S.A.Rajaram and Guduva Kesavan and common land belonging to Mr.C.L.Mahadevan and Ramachandran, S/o Chinnokonda Nannier, in common."

2. Record of proceeding shows that when the petitioner sought for stay of the above said order, this Court, on 22/6/2004, in W.P.M.P.No.37915 of 2003, in W.P.No.31140 of 2003, ordered as hereunder:-

"Heard. As it is the case of the second respondent that he has already taken possession, question of grant of stay at this stage would not arise, as it would disloge the second respondent from the property. However, it is directed that the second respondent shall not alter the physical features of the property."

3. On this day, when the matter came up for hearing, Mr.P.Raja, learned counsel for the petitioner submitted that contravening the orders of this Court, dated 22/6/2004, building in which he was residing had been demolished. In the above said circumstances, learned counsel for the petitioner, seeks for a direction to the second respondent, to pay compensation.

4. From the order, dated 22/6/2004, it could be deduced that pursuant to the recovery certificate, in D.R.C.No.171 of 2001 (Old D.R.No.332 of 1999), the petitioner had already been dispossessed and that is why this Court has not granted stay. Had there been any violation of the interim order, in bringing down the property, petitioner should have filed Contempt Petition, which he has not chosen to do so. Petitioner is not the owner of the property. Even taking it for granted that the petitioner is entitled for compensation, the same can be made only by way of a civil suit.

5. Submission of the learned counsel for the petitioner, to order payment of compensation, in the instant writ petition, cannot be countenanced. Nothing survives in this writ petition, for adjudication and accordingly, the same is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Recovery Officer
Debt Recovery Tribunal
First Floor Kaveri Complex, 1670 Trichy Road
Ramanathapuram Coimbatore 641 045.

+1cc to Mr.S.NAMONARAYANAN, Advocate, S.R.No.24420
+1cc to Mr.ELIZABETH RAVI, Advocate, S.R.No. 24726

W.P.No.31140 of 2003

VG II (CO)
TR(18/04/2018)