

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.29230 of 2018 and
W.M.P.Nos.34156 & 34158 of 2018

1.Mrs.Prema. A
2.Arunthamizh. A
3.Thana Prabha. A .. Petitioners

v.

The Authorized Officer
The Tata Capital Housing Finance Ltd.,
11th Floor, Tower-A
Peninsula Business Park
Senapati Bapat Marg
Lower Park
Mumbai - 400 013 .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, directing the respondent herein to consider the representation of the petitioners dated 14.09.2018 followed by the reminder dated 30.09.2018 for objections and furnishing documents in respect of the property pertaining to the demand notice dated 14.08.2018 and consequently forbearing the respondent not to take any further steps under section 13(4) and 13(7) of the SARFAESI Act, 2002, pending disposal of the petitioners' representation.

For Petitioner : Mr.T.Dhanasekaran

O R D E R

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

The petitioners have filed the above Writ Petition to issue a Writ of Mandamus, directing the respondent to consider the representation dated 14.09.2018 followed by the

reminder dated 30.09.2018 for objections and furnishing documents in respect of the property pertaining to the demand notice dated 14.08.2018 and consequently forbearing the respondent not to take any further steps under section 13(4) and 13(7) of the SARFAESI Act, 2002, pending disposal of the petitioners' representation.

2. It is the case of the petitioners that they have given reply to the notice dated 14.08.2018 issued under section 13(2) the SARFAESI Act on 14.09.2018. Further, the petitioners contended that the respondent has not considered the petitioners' reply so far and therefore, the respondent should be restrained from initiating any proceeding under section 13 (4) of the SARFAESI Act.

3. It is settled position that notice issued under section 13(2) of the SARFAESI Act cannot be challenged either before this Court or before the Tribunal. The petitioner can challenge only the possession notice issued under section 13 (4) of the SARFAESI Act, in accordance with law.

4. If the petitioners' representation has not yet been considered by the respondent under section 13(3A) of the SARFAESI Act, the same can be raised as a ground while challenging section 13(4) notice.

5. In these circumstances, a Mandamus cannot be issued forbearing the respondent from proceeding under section 13(4) and 13(7) of the SARFAESI Act. The Writ Petition is devoid of merits and the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Rj
To

The Authorized Officer
The Tata Capital Housing Finance Ltd.,
11th Floor, Tower-A, Peninsula Business Park
Senapati Bapat Marg, Lower Park, Mumbai - 400 013

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