



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P(MD)No.21659 of 2018

and

W.M.P. (MD) No.19563 of 2018

K.S.M.Educational & Charitable Trust,
Represented by its Managing Trustee C Bright,
Melpalai Edaicode Post,
Kanyakumari District.

: Petitioner

Vs.

1.The Authorized Officer,
Central Bank of India,
Regional Office,
Madurai, Madurai District.

2.The Branch Manager,
Central Bank of India,
Puliyoor Salai Branch,
Kanyakumari District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent pertaining to the impugned demand notice dated 29.05.2018 under Section 13(2) of the SARFAESI Act, 2002 and the consequential impugned possession notice dated 21.08.2018 issued under Section 13(4) of the said Act by the first respondent Bank under the SARFEASI Act 2002 pertaining to the immovable agricultural landed properties and the college and the school buildings owned by M/s. K.S.M.Educational & Charitable Trust offered as security by the petitioner and quash the same.

For Petitioner

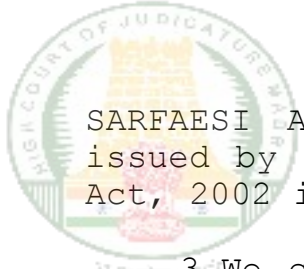
: Mr.R.Murugan

O R D E R

[Order of the Court was made by S.S.SUNDAR, J.]

This Writ petition is filed challenging the impugned demand notice dated 29.05.2018 issued under Section 13(2) of the SARFAESI Act, 2002 and the consequential possession notice dated 21.08.2018 issued under Section 13(4) of the SARFAESI Act, 2002.

2.The only ground on which the writ petition has been filed is that the respondents have proceeded against the agricultural lands. Since the agricultural lands are exempted under Section 34(i) of



SARFAESI Act, it is stated that the impugned possession notice issued by the first respondent under Section 13(4) of the SARFAESI Act, 2002 is without jurisdiction.

3. We considered the submissions of the learned counsel for the petitioner and the documents submitted by the petitioner. The petitioner has not produced any document to show that the land against the proceeding is initiated all agricultural land in which cultivation has taken place. Except the certificate issued by the Village Administrative Officer no other document is produced by the petitioner to show that the properties are agricultural land. In respect of the Items one and four the property described in the possession notice is referred to as land and building. The other three items described in the possession impugned notice is described as land.

4. The learned counsel for the petitioner admits that the lands are contiguous. It is seen from the records that the petitioner is running an Educational Institution in the building constructed in some of the items which are the subject matter of the proceedings.

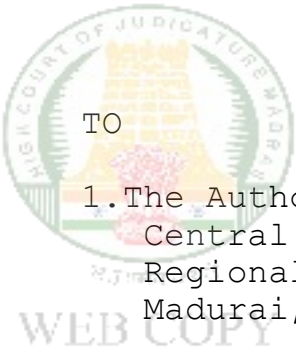
5. In such circumstances, this Court has no other documents except the certificate issued by the Village Administrative officer to decide as to the character of the land. Considering the position that there is a serious dispute and this Court cannot go into the disputed question of fact in the writ petition by exercising power under Article 226 of the Constitution of India, this Court is of the view that the alternative remedy under Section 17 of the SARFAESI Act is effective and efficacious. The Hon'ble Supreme Court has time and again has held that the petitioner should resort to the remedy available to the borrower under SARFAESI Act. The remedy available to the petitioner is to file an appeal before the Debt Recovery Tribunal under Section 17 of the SARFAESI Act.

6. Hence, this Writ Petition is dismissed. No order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (WRITS)

/True Copy/

Sub Assistant Registrar (CS-IV)



TO

1.The Authorized Officer,
Central Bank of India,
Regional Office,
Madurai, Madurai District.

2.The Branch Manager,
Central Bank of India,
Puliyoor Salai Branch,
Kanniyakumari District.

- 1 CC TO Mr.R.MURUGAN, ADVOCATE IN SR No. 90904.
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- CP/SJ
- DS RSK SAR4 12 11 2018 3P 4C

ORDER MADE IN
W.P (MD) No.21659 of 2018
and
W.M.P. (MD) No.19563 of 2018
16.10.2018