



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.09.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P. (MD) No.17745 of 2018

and

W.M.P. (MD) .Nos.15631 and 15632 of 2018

Dr.Anandhasekar

... Petitioner

Vs.

1. The District Collector,
Thanjavur District.
2. The Revenue Divisional Officer,
Thanjavur.
3. The Tahsildar,
Thanjavur.
4. The Indian Bank,
Thanjavur Junction Branch,
Ground Floor, 1087 Mission Street,
Thanjavur 613 001,
represented by its Branch Manager /
Authorised Officer.
5. G.Anusuya
6. T.Elangovan
7. Dr.Radhika Rani
8. E.Abinesh

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the third respondent in Na.Ka.86/2018/A7, dated 30.07.2018 and quash the same and consequently forbearing the respondents herein from taking physical possession of "M.V.K.Hospitals & Jeyam Pharmacy", TS No.2767, 2771 Part & 2762, Therkalangam, Ward No.4, Thanjavur Town, from the petitioner.

For Petitioner	: Mr.Veera Kathiravan Senior counsel for Mr.P.Vadivel
For R1 to R3	: Mr.VR.Shanmuganathan Special Government Pleader
For R4	: Mr.Pala Ramasamy
For R6	: T.Elangovan, Party in Person,
For R5, 7 & 8	: No Appearance

**ORDER****[Order of the Court was made by T.RAJA,J.]**

This writ petition is directed against the impugned order passed by the Tahsildar, Thanjavur in Na.Ka.86/2018/A7, dated 30.07.2018.

2. The writ petitioner claiming to be a tenant of the hospital viz., M.V.K. Hospitals & Jeyam Pharmacy situated in T.S.No.2767, 2771 Part and 2762, Therkalangam, Ward No.4, Thanjavur Town, has come to this Court under Article 226 of the Constitution of India to interfere with the impugned order passed by the third respondent.

3. Asserting his right that he being a lawful tenant and running the aforementioned hospital, the third respondent cannot dispossess the petitioner without giving any notice whatsoever. The impugned order issued by the third respondent under the SARFAESI Act indicates that the District Collector, Thanjavur District and the Revenue Divisional Officer, Thanjavur / respondents 1 and 2 exercising their power under Section 14 of the SARFAESI Act and passed an order to take physical possession of the property in question from the petitioner, at the instance of the sixth respondent Mr.T.Elangovan, for the dues payable by the fifth respondent G.Anusuya, behind his back, which is not permissible in the light of the ratio laid down by the Apex Court in the case of Vishal N.Kalsaria v. Bank of India and others reported in 2016 (2) SCC 452, followed by an order passed by the Division Bench in Writ Petition No.36504 of 2016, dated 20.10.2016 (Mohamed Jamaludin vs. State Bank of Travancore and others). Since Section 17 of the SARFAESI Act, which has been amended on 12.06.2016 by inserting Section 4(A) of 2016 with effect from 01.09.2016, makes it clear that any person claiming to be a tenant or having leasehold right upon the secured asset has to approach the Debt Recovery Tribunal to examine the facts of the case on evidence that such person is a lawful tenant, we are unable to entertain the writ petition. Accordingly, the writ petition is dismissed by giving liberty to the petitioner to approach the Debt Recovery Tribunal, Madurai. Since the petitioner claims that he is running the hospital with patients, we give 5 working days time from today to approach the Debt Recovery Tribunal, Madurai. Till then, status quo shall be maintained. This order is not passed on the merits but only on the ground that the petitioner claims to be running the hospital. No costs. Consequently, the connected Miscellaneous Petition are closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/



To

1. The District Collector,
Thanjavur District.

2. The Revenue Divisional Officer,
Thanjavur.

3. The Tahsildar,
Thanjavur.

Copy To:

The Registrar,
Dept Recovery Tribunal,
Madurai.

+1CC to Mr.P.Vadivel, Advocate, SR.No. 83811
+1CC to Mr.Pala Ramasamy, Advocate, SR.No.83643
+2CC to T.Elangovan, Party in Person, SR.No.83557
+1CC to the Special Government Pleader SR.No. 84075

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ES/SV/SAR 1/12.09.2018/3P/10C