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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :21.08.2018

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THE HONOURABLE Mr.JUSTICE T.RAJA

AND

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.18201 of 2018

and

W.M.P. (MD) Nos.16103 to 16105 of 2018

1.Blessy Mol

2.Priya Mol

... Petitioners

Vs.

1.The District Collector,  
Kanyakumari District.

2. The Authorized Officer,  
State Bank of India,  
Vadasery Branch,  
Nagercoil,  
Kanyakumari District.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings of the first respondent in K.Dis.No.C4/6133/2018 dated 02.04.2018 and quash the same as illegal and further direct the respondent not to initiate further proceeding till the disposal of the Civil Suit in O.S.No. 21 of 2018 pending on the file of the Sub Judge,Kuzhuthurai.

For Petitioners : Mr.V.M.Balamohan Thambi

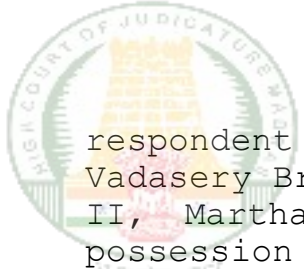
For R1 : Mr.V.Anand  
Government Advocate

For R2 : Mr.S.Devaraj

**O R D E R**

(Order of the Court was made by **T.RAJA., J**)

This Writ Petition has been directed against the impugned proceedings dated 02.04.2018 issued by the District Collector, Kanyakumari District @ Nagercoil in K.Dis.No.C4/6133/2018, by District Collector, exercising the powers under Section 14(1)(2) of SARFAESI Act, 2002, issued order for taking possession of the secured assets and handing over the same to the second



respondent - the Authorized Officer of the State Bank of India, Vadasery Branch, Nagercoil. Moreover, the Special Tahsildar Stamp-II, Marthandam, is also authorized as Nodal Officer to take possession of the said property and hand over the same to the Authorized Officer of the Bank with proper acknowledgment.

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2. The learned counsel for the petitioner, assailing the same, submitted that both the petitioners are the owners of the property covered in R.Survey No.324 of 2010, having an extent of 46 cents in Palugal Village, since they have inherited the same after the death of their father in the year 1996. The petitioners' father one late C.M.Joy and one Alexander were close friends. After demise of the petitioners' father, the said Alexander and his wife invited the petitioners to reside in their house at the first floor at Kannimar Theru, Vadasery, Nagercoil, on a monthly rent of Rs.1000/-. According to the said agreement, they became tenant on monthly rent of Rs.1000/- till April 2003. After some time, taking advantage of their close association, the said Alexander and his wife asked the petitioners to execute a hypothecation bond for arrears of rent amount. Believing their words, they also handed over the title deeds and the relevant documents of their property and also executed a hypothecation deed. The petitioners' native place is Trichur in Kerala State and their father is a Gospel Worker and they shifted their residence at Malayadi, Paulgal Village. All of them studied in Tamil Nadu, though they were unaware of Tamil language. Finally, misusing their relationship, the said Alexander and his wife mortgaged the property with the second respondent bank. Subsequently, they committed default. As a result, the second respondent bank has proceeded against the said Alexander and his wife Lilly Pushpam under SARFAESI Act, 2002 by issuing notice under Section 13(2) followed by notice under Section 13(4). Prior to that, the said Lilly Pushpam has also filed O.S.No.127 of 2010 on the file of the Subordinate Court, Kuzhuthurai, seeking a decree of declaration and recovery of possession on the basis of the execution of the sale deed in their favour. The petitioners, after receipt of summons, filed a detailed written statement and the said suit is pending.

3. Adding further, the learned Counsel for the petitioners submitted that they have also filed a suit in O.S.No.21 of 2018 on the file of the Sub Court, Kuzhuthurai seeking a decree for cancellation of the sale deed. Now, both suits filed by Lilly Puspam and also by the petitioners are pending on the file of the Subordinate Court, Kuzhuthurai. In the meanwhile, the second respondent has approached the District Collector-cum-District Magistrate, Nagercoil at Kanyakumari District and filed an application under Section 14 of the SARFAESI Act to take possession. By the impugned order dated 02.04.2018, the District Collector, Kanniyakumar District at Nagercoil, issued a direction to take possession of the property in question and to hand over same to the Authorized Officer of the bank with appropriate



acknowledgment. If the physical possession of the property is taken and sold in a public auction, the suit filed by the petitioners and also the suit filed by the said Lilly Pushpam would become meaningless.

4. Heard the learned counsel for the parties.

5. We are unable to appreciate any of the submissions made by the learned counsel for the petitioners. The reason being, it is an admitted case that the petitioners have become the tenant under Mr. Alexander and his wife on monthly rent of Rs.1000/-. The affidavit filed in support of the writ petition also clearly shows that they are also paying monthly rent till April 2003 and they have also committed default. As a result, there are arrears of payment of monthly rent and they executed hypothecation deed in favour of Alexander. Only in view of the default in paying monthly rent, the petitioners have executed a hypothecation bond for clearing the arrears of monthly rent.

6. It appears that subsequently, the said Lilly Pushpam has mortgaged the property with the second respondent after parting certain loan amount. The affidavit filed in support of the petitioner shows that the suit in O.S.No.127 of 2010 has also been filed by the said Lilly Pushpam on the file of the Sub Court, Kulithurai seeking declaration of title over the suit property and also for recovery of possession and the same is also pending.

7. In the meanwhile, the second respondent bank, having received the title deed from the said Lilly Pushpam for the alleged default committed by Lilly Pushpam, has issued a notice under Section 13(2) of the SARFAESI Act for payment of money. In view of the subsequent default, further notice under Section 13(4) was also issued under the SARFAESI Act. When the second respondent has initiated action against the said Lilly Pushpam, it is for the petitioners to work out their remedy by approaching the civil court where the suits are pending. Without taking recourse to the civil Court, they cannot approach this Court. We, therefore, find no merit in the present writ petition and accordingly, the writ petition fails.

8. In the result, this writ petition is dismissed. No costs. Consequently connected W.M.P.(MD) Nos.16103 to 16105 of 2018 are dismissed.

Sd/-

Assistant Registrar (CO)

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To

1. The District Collector,  
Kanyakumari District.

+1 CC To MR.V.M.BALAMOCHAN THAMBI, Advocate SR. NO. 79795  
+1 CC To MR.S.DEVARAJ, Advocate SR. NO. 79330  
+1 CC TO The Special Government Pleader SR.NO.79663

**W.P(MD)No.18201 of 2018**  
**and W.M.P. (MD) Nos.16103 to 16105 of 2016**  
**21.08.2018**

CM

TR/SV/SAR-IV(27.10.2018) 4P 5C