



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P. (MD) No.19417 of 2018

and

W.M.P. (MD) .Nos.17261 to 17263 of 2018

J.Margert

... Petitioner

Vs.

1. The District Magistrate / District Collector,
Ramanathapuram District,
District Collectorate,
Rameswaram Road,
Ramanathapuram.

2. The Thasildar,
Paramakudi,
Taluk Office,
Paramakudi.

3. The Authorised Officer,
City Union Bank Limited,
24-B Gandhiji Nagar,
Kumbakonam.

4. Sri. D.Ramanathan

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records from the first respondent relating to Mu.M.C4/12978/2018, dated 30.05.2018, consequently passed by the impugned order dated 09.07.2018, passed by the second respondent in Na.Ka.No.A1/6663/2018, quash the same as illegal, null and void.

For Petitioner : Mr.S.Rengasamy

For R1 & R2 : Mr.C.Ramar

Additional Government Pleader

For R3

: Mr.R.Pandivel

**O R D E R**

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

This writ petition is directed against the impugned order dated 30.05.2018, passed by the District Magistrate / District Collector, Ramanathapuram, allowing the petition filed under Section 14 of the SARFAESI Act, 2002, requesting to render necessary assistance to take possession of the secured assets as detailed therein.

2. The learned counsel appearing for the petitioner submitted that the petitioner is a tenant in the first floor of the property taken from the fourth respondent borrower, whereas the fourth respondent is still residing in the ground floor. While so, all of a sudden, the second respondent / the Thasildar, Paramakudi along with the police officials came to their portion of the property on 30.07.2018, informed the petitioner that they are going to evict them as per the Collector's order, dated 30.05.2018, passed under Section 14 of the Act. When the petitioner enquired as to why the second respondent officials have made an attempt to evict the petitioner from the land in question, the Tahsildar, Paramakudi / the second respondent herein informed the petitioner that the fourth respondent after availing loan from the third respondent Bank committed default and due to the non-payment of the loan amount, the entire property was sold by the third respondent Bank in a public auction. Immediately, the petitioner also informed the second respondent that the fourth respondent was not put on notice with regard to the SARFAESI proceedings. When the second respondent admittedly did not serve any notice, they cannot direct the petitioner to hand over the possession to the second respondent. It is also submitted that the third respondent Bank while approaching the District Collector / District Magistrate under Section 14 of the Act to take actual possession, has suppressed the factum of tenancy in the property entered into between the petitioner and the fourth respondent. The alleged act of the third respondent Bank suppressing the real fact will vitiate the entire proceedings initiated by the District Collector under Section 14 of the Act. But we are unable to find any merit in any of the pleadings raised before us. If the petitioner asserts any right as a lawful tenant, she has to approach only the Debt Recovery Tribunal to establish the fact that her tenancy was made prior to the mortgage in the present place.

3. The learned counsel appearing for the third respondent Bank submitted that the mortgage of the property in question, for which the impugned order was passed by the District Collector / District Magistrate under Section 14 of the Act, took place on 17.02.2015. The petitioner claims that she had entered into a lease agreement only on 11.04.2016, which is one year and two months after the mortgage took place.



4. The copy of the registered lease deed or the tenancy agreement has not been produced before us. Therefore, we are of the view that the writ petition is not maintainable and the same is dismissed. It is for the petitioner to work out the remedy by approaching the Debt Recovery Tribunal, Madurai. The question as to whether the petitioner is *bona fide* or not has to be gone into only by the Debt Recovery Tribunal. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS-I)

To

1. The District Magistrate / District Collector,
Ramanathapuram District,
District Collectorate,
Rameswaram Road,
Ramanathapuram.

2. The Thasildar,
Paramakudi,
Taluk Office,
Paramakudi.

+1 CC To MR.R.PANDIVEL, Advocate SR. NO.83216
+1 CC To MR.S. RENGASAMY, Advocate SR. NO. 83217
+1 CC TO The Special Government Pleader SR.NO. 83705

W.P. (MD) No.19417 of 2018
10.09.2018

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