

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.9841 of 2019 and
W.M.P.Nos.10431, 10433 and 10434 of 2019

1 Ravi
2 Mahalingam
3 Kathirvel .. Petitioners

v.

1 The Authorized Officer
I.D.B.I. Bank Ltd.
K.T. Towers, Omalur Road
Four Roads Salem

2 The District Magistrate and
District Collector
Namakkal

3 M/s. Venkatrayar Sago Factory
S.F.No. 272/ 4A, Velampalayam Road
Kakkavaeri, Rasipuram Taluk
Namakkal District - 637408

4 K.Venkatraman and Co.
1/ 169, K.K.Thottam, Velampalayam Road
Kakkaveri, Rasipuram Taluk
Namakkal District - 637408

5 V.DineshKumar
6 K.Vengataraman
7 V.Prabhavathi
8 D.Gayathri .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in his proceedings in ROC.23165/2017-M4, dated 21.01.2019 and quash the same and thereby forebear the respondents from interfering in the petitioners possession of the properties in Survey Nos. 274/1A1A-40 cents and residential portion, 276/1A agricultural land, 274/1A1B2 property used for agricultural purposes.

274/3A, 272/2A, 272/3 and also the engineering workshop and all the above are situate at Kakkaveri Village, Rasipuram Taluk, Namakkal District.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.S.Kamalesh Kannan
Government Advocate - for R2

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 Certiorari Mandamus to call for the records of the 2nd respondent dated 21.01.2019, to quash the same and thereby forebear the respondents from interfering in the petitioners' possession of the properties in Survey Nos. 274/1A1A, measuring an extent of 40 cents and residential portion in 276/1A agricultural land, 274/1A1B2 property used for agricultural purposes, Survey Nos. 274/3A, 272/2A, 272/3 and also the engineering workshop and all the above situate at Kakkaveri Village, Rasipuram Taluk, Namakkal District.

2. It is the case of the petitioners that they are lessees of the above mentioned lands and therefore, the order passed by the 2nd respondent under Section 14 of the SARFAESI Act is liable to be set aside.

3. When a query was raised with regard to the maintainability of the Writ Petition challenging the order passed under Section 14 of the SARFAESI Act without exhausting the alternate remedy available under the SARFAESI Act, the learned counsel appearing for the petitioners submitted that in view of the judgment reported in 2016(3) SCC 762 [Vishal N. Kalsaria v. Bank of India and others] the tenants/lessees cannot approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. The Hon'ble Supreme Court of India pronounced the above referred judgment on 20.01.2016. However, an amendment was brought on 01.09.2016 by inserting Section 17 (4-A) in the SARFAESI Act, which reads as follows: -

"Section 17 (4-A) Where -

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case

and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy, -

(a) has expired or stood determined; or

(b) is contrary to Section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-Section (2) of Section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Court."

4. As per Section 17 (4-A), it is clear that if any person claims any tenancy or leasehold rights in respect of secured assets, the Debts Recovery Tribunal, will have the jurisdiction to examine the claim of tenancy or leasehold right and pass appropriate orders.

5. In the judgment reported in 2011 (2) SCC 782 [Kanaiyalal Lalchand Sachdev & Ors v. State Of Maharashtra & Ors] the Hon'ble Supreme Court held that an action under Section 14 of the SARFAESI Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act.

6. In the light of the dictum laid down by the Hon'ble Supreme Court in the judgment reported in 2001 (2) SCC 782 [cited supra], the petitioners have got efficacious remedy before the Debts Recovery Tribunal in terms of Section 17 (4-A) in the SARFAESI Act.

7. Since the petitioners have filed the Writ Petition challenging the order passed by the 2nd respondent under Section 14 of the SARFAESI Act without exhausting the alternate and efficacious remedy available under Section 17 (4-A) in the SARFAESI Act, we are not inclined to entertain the Writ

Petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Rj

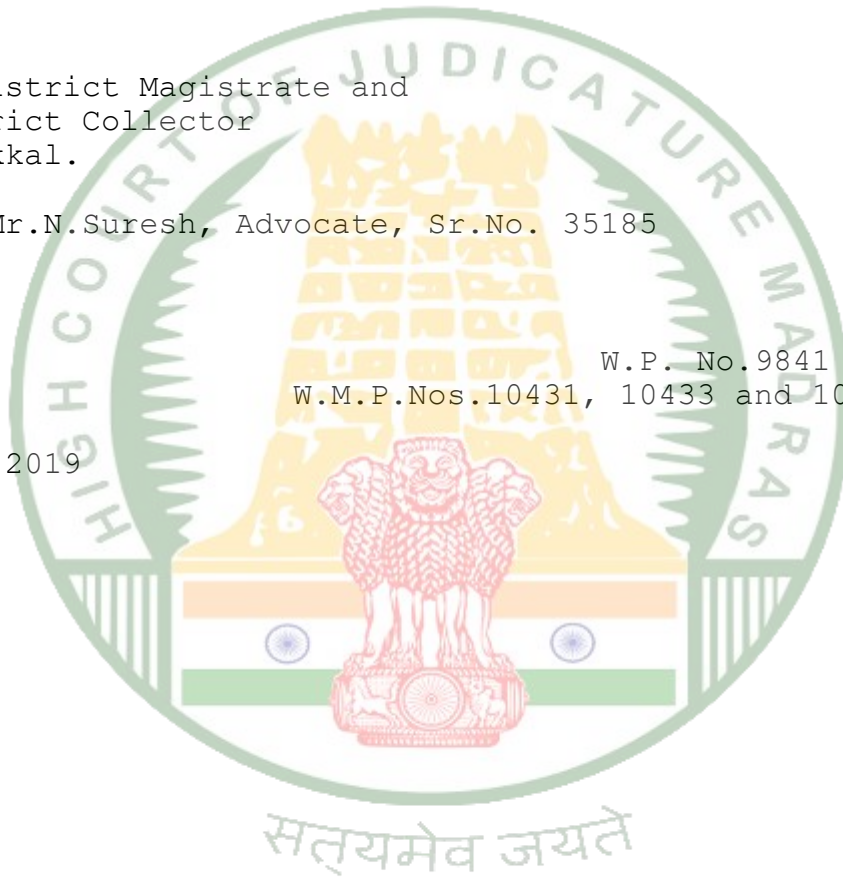
To

1 The District Magistrate and
District Collector
Namakkal.

+1 cc to Mr.N.Suresh, Advocate, Sr.No. 35185

W.P. No.9841 of 2019 and
W.M.P.Nos.10431, 10433 and 10434 of 2019

SSI (CO)
CSL/29.04.2019



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