

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.30489 of 2019

V.Damodaran

.. Petitioner

Vs

1 The District Collector
Kancheepuram District
Kancheepuram.

2 The Tahsildar
Pallavaram Zone
Pallavaram
Chennai.

3 The Assistant Commissioner of Police
S5 Pallavaram Police Station
GST Road, Pallavaram
Chennai - 600 043.

4 The Authorized Officer
M/s. Electronica Finance Limited
No.116, T.V.S. Colony
Anna Nagar West Extension
Chennai - 600 101.

5 Ishwant Singh

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issue of writ of declaration, declaring the action of the 2nd Respondent Tahsildar in sealing the premises pursuant to the order passed by the 1st Respondent in his Proceedings dated 25.4.2019 in R.C.M3/16870/2018 passed under Sections 14(1) and (2) of the SARFAESI Act as null and void and to break open the lock and seal immediately and permit the petitioner to continue to occupy and live in the said premises till the disputes with 4th and 5th respondents herein are resolved by an appropriate forum.

For Petitioner : Mr.M.C.Swamy

For Respondents : Mr.S.Kamalesh Kannan
Government Advocate
for respondents 1 to 3

ORDER

(Order of the Court was made by the Hon'ble Acting Chief Justice)

The petitioner, a lessee in the demised premises, which was secured asset of the third respondent Electronica Finance Limited, has filed this writ petition under Article 226 of the Constitution of India aggrieved by the order passed by the first respondent District Collector, Kancheepuram District, on 25.4.2019 seeking to take and handover the possession of the property in question, which is stated to be a residential house, under the provisions of the Securitisation and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act").

2. The learned counsel for the petitioner, Mr.M.C.Swamy, submitted that the earlier writ petition filed by the petitioner, namely, W.P.No.26508 of 2019 [V.Damodaran v. The Registrar, Debts Recovery Tribunal-III, Chennai and others], was dismissed by a Co-ordinate Bench of this Court observing, inter alia, that the delay in filing the Securitisation Appeal under Section 17 of the SARFAESI Act cannot be condoned.

3. The learned counsel for the petitioner further submitted that the residential house in question has been sealed by the second respondent Tahsildar, Pallavaram Zone, in pursuance of the said order dated 25.4.2019 and the family of the petitioner has been ousted physically from the possession of the said property in question.

4. We have heard the learned counsel for the petitioner and Mr.S.Kamalesh Kannan, learned Government Advocate for respondents 1 to 3.

5. Section 17 of the SARFAESI Act provides for a limitation of 45 days from the date on which the measure under Section 13 (4) of the SARFAESI Act is taken against the petitioner. Section 17(4A) of the SARFAESI Act, which was inserted later on in the said Act with effect from 1.9.2016, enables any person claiming any tenancy or leasehold rights upon the secured asset to move the Debts Recovery Tribunal against the order passed for taking measures against them under Section 13(4) of the SARFAESI Act, including the order passed under Section 14 of the SARFAESI Act by the District Collector.

6. In view of the availability of an effective alternative remedy to the petitioner, we are of the opinion that we cannot entertain the present writ petition under Article 226 of the Constitution of India. However, lest the bar of limitation of 45 days comes in the way of the petitioner, since in pursuance of the order dated 25.4.2019 the property in question seems to have been sealed by the second respondent Tahsildar on 20.10.2019, it would give a fresh limitation of 45 days, as that would be construed as a measure taken under Section 13(4) of the SARFAESI Act.

7. We, therefore, direct the petitioner to file an application under Section 17(4A) of the SARFAESI Act before the Debts Recovery Tribunal within two weeks from today. The Tribunal shall hear the same on merits and in accordance with law, after giving opportunity of hearing to the petitioner as well as the respondent bank and the concerned Tahsildar/District Collector. For a period of three weeks from today, we direct the respondent authorities of the State to desal the property in question and allow the petitioner's family to reside in the same. However, we direct the petitioner not to create any third party right or allow possession of any third party in the said property. The position of possession after three weeks shall depend on the order to be passed by the Debts Recovery Tribunal in accordance with law.

With the above observation, this writ petition is disposed of. No costs. Consequently, W.M.P.No.30521 of 2019 is closed.

Sd/-

Assistant Registrar(Insp.cell)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

sasi

To:

- 1 The District Collector
Kancheepuram District
Kancheepuram.

WEB COPY

2 The Tahsildar
Pallavaram Zone
Pallavaram
Chennai.

3 The Assistant Commissioner of Police
S5 Pallavaram Police Station
GST Road, Pallavaram
Chennai - 600 043.

+1cc to Mr.M.C.Swamy, Advocate SR.No.89803

+1cc to Government Pleader, High Court, Madras SR.No.80666

W.P.No.30489 of 2019

RSK (CO)
GMY (05/11/2019)



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