

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2019

CORAM :

The Hon'ble Dr.VINEET KOTHARI, ACTING CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE C.SARAVANAN

W.P. No.31058 of 2019
and WMP Nos.31169 & 31170 of 2019

Agasthiya Bharathiyar ... Petitioner

-vs-

1. The District Collector,
Singaravelar Maligai,
Chennai.

2. The Thasildar,
Maduravoyal,
Chennai.

3. HDB Financial Services Ltd.,
4th Floor, Loyal Towers,
68/2, Greams Road,
Chennai - 600 006

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records relating to the impugned Order passed by the first respondent in Na.Ka.No.114/8386/2019 dated 15.10.2019 and quash the same as illegal and consequently direct the first respondent to conduct a fresh enquiry to the said proceedings.

For Petitioner : Mr.A. Manojkumar for
Mr.M. Balaji

For R.1 & R.2 : Mr.K.S. Suresh
Government Advocate

O R D E R

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

This Writ Petition has been filed against the Order dated 15.10.2019 passed by the District Collector, Chennai/first respondent herein under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), seeking to hand over the possession of the property, in question, situate at Door No.30, V.O.C. Street, Valasaravakkam, Chennai - 87, which is the residential house of the petitioner and his father, which was financed by the third respondent/HDB Financial Services Ltd.

2. The learned counsel for the petitioner submits that the outstanding amount shown in the said Order is approximately Rs.2,80,36,742.76 (Rupees Two Crores Eighty Lakhs Thirty Six thousand Seven hundred Forty Two and paise seventy six only) and the said amount was borrowed from the third respondent to construct the house property, in question. The learned counsel further submits that the borrower, in question, viz., Mrs.R.Kalaivani was the mother of the petitioner and unfortunately, she passed away on 17.07.2019 and therefore, the impugned order has been passed against the dead person and the same is not sustainable. The learned counsel further submits that the District Collector/first respondent did not give adequate opportunity to the petitioner and the said order was in pursuance of the direction of this Court dated 23.09.2019 in W.P.Nos.28048, 28051 and 28053 of 2019, filed by the third respondent herein viz., HDB Financial Services Ltd.

3. The learned Government Advocate supported the impugned Order dated 15.10.2019.

4. We are of the opinion that the petitioner has an alternative remedy against the impugned order passed by the District Collector, Chennai under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and therefore, we are not inclined to interfere with the order passed by the District Collector/first respondent herein.

5. However, in view of the facts and circumstances narrated by the learned counsel for the petitioner, we hereby direct the petitioner to deposit a sum of Rs.30,00,000/- (Rupees thirty lakhs only) by way of an adhoc repayment of loan, in question, to the third respondent viz., HDB Financial Services Ltd, within a period of six weeks from today and upon such

deposit of Rs.30,00,000/- (Rupees thirty lakhs only) before the third respondent, the petitioner may approach the Debts Recovery Tribunal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) within a period of eight weeks from today.

6. If such an application is filed before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, the Debts Recovery Tribunal, without raising an objection to the question of limitation, the Debts Recovery Tribunal may entertain the application and decide the same in accordance with law, after affording an opportunity to the concerned party.

7. In the mean time, the status-quo position of the petitioner house shall be maintained.

8. It is made clear that neither extension of time nor reduction of the amount shall be granted to the petitioner in any circumstances,

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

sr

To

1. The District Collector,
Singaravelar Maligai,
Chennai.

2. The Thasildar,
Maduravoyal,
Chennai.

+1cc to Mr..M. Balaji, Advocate SR.No.90883 (07/11/2019)

W.P. No.31058 of 2019

GMR (CO)
GMY (04/11/2019)