

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.01.2019

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.34684 of 2018 and
W.M.P.No.40233 of 2018

M.K.Gokuldas (Senior Citizen)

.. Petitioner

vs.

1 The Tamil Nadu Industrial Investment
Corporation Ltd
Rep by its Branch Manager
Chennai Branch Office
No.692, Anna Salai, Nandanam
Chennai 600095

K.R.Shanmugam (Deceased)

2 Mrs.Aley Kutty

3 Mrs.Meera Srilatha

4 Mr.S.Mithra Srikanth

5 Mrs.Marun Sripriya

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the 1st respondent to demark the adjacent property which is under the collateral security with the petitioner admeasuring 650 sq.ft. Building and undivided share of land admeasuring 205.3 sq.ft schedule hereunder

Schedule

Item No.1

All that piece and parcel of land comprised in R.S.No.14/1 T.S.No. 1/1 Part in Block No.16, Vada Agaram Village, Nelson Manickam Road, Chennai-29 of an undivided share in land an extent of 90.5 sq.ft out of total extent of 6 Grounds 982 sq.ft. super built up area of 300 sq.ft within the limits of Sub 'Registrar Office at Kodambakkam.

Boundaries

North by : Property owned by Sri Palaniappa and Coovam River
South by : Nelson Manickam Road
East by : Land owned by the Eecho Engineering
West by : Land owned by Valliammal achi Charities Trust

Item No.2

All that piece and parcel of land comprised in R.S.No.14/1 T.S.No. 1/1 Part in Block No.16, Vada Agaram Village, Nelson Manickam Road, Chennai-29 of an undivided share in land an extent of 114.8 sq.ft out of total extent of 7 Grounds 950 sq.ft. super built up area of 350 sq.ft within the limits of Sub Registrar Office at Kodambakkam.

Boundaries

North by : Coovam River
South by : Nelson Manickam Road
East by : Land owned by A.M.Palaniappa Chettiar Charities trust
West by : Land owned by Vendros Trust and Temple
the 1st respondent may continue the Tender Auction for the remaining property which is under the possession of the 1st respondent.

For Petitioner : Mr.G.M.Syed Fasi Mohammed

For Respondents : Mr.K.Makesh - for R1

O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of Mandamus directing the 1st respondent to demark the adjacent property, which is under the collateral security, with the petitioner measuring an extent of 650 sq.ft. of building and undivided share of land measuring 205.3 sq.ft, comprised in R.S.No.14/1, T.S.No. 1/1 Part in Block No.16, Vada Agaram Village, Nelson Manickam Road, Chennai-600 029.

2. It is the case of the petitioner that one Shanmugam borrowed a sum of Rs.20,00,000/- [Rupees twenty lakhs only] from the petitioner and handed over the original deeds of immovable properties as collateral security in 2005. The said Shanmugam had died on 24.09.2010 leaving behind his legal heirs. The said Shanmugam also availed loan from the 1st respondent-Corporation. Since the borrower failed to repay the loan amount to the 1st respondent, the 1st respondent proceeded against him and ultimately, an auction notice was issued fixing the auction on 27.12.2018.

3. Mr.G.M.Syed Fasi Mohammed, learned counsel appearing for the petitioner, submitted that the property may be divided between the petitioner and the 1st respondent and a portion may be given to the petitioner towards the loan amount.

4. Mr.K.Makesh, learned counsel appearing for the 1st respondent submitted that the borrower, viz., Shanmugam availed the loan much prior to the alleged mortgage created in favour of the petitioner.

5. Since prayer sought for by the learned counsel for the petitioner with regard to partition of the property cannot be granted in this Writ petition under Article 226 of the Constitution of India, we are not inclined to grant the same. If the petitioner is seeking for partition of the property, the remedy available to him is only to go before the Civil Court.

6. In these circumstances, the Writ Petition is devoid of merits. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Rj

To

The Branch Manager
Tamil Nadu Industrial Investment Corporation Ltd
Chennai Branch Office
No.692, Anna Salai,
Nandanam
Chennai 600095

+1cc to Mr.K.Magesh, Advocate, S.R.No.5205

+2ccs to Mr.G.M.Syed Fasi Mohammed, Advocate, S.R.No.5360

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SSV(CO)

rrs 14/02/2019