



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.08.2019

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THE HONOURABLE MR.JUSTICE **K.RAVICHANDRABAABU**

AND

THE HONOURABLE MR.JUSTICE **SENTHILKUMAR RAMAMOORTHY**

Writ Petition(MD)No.18519 of 2019

and

W.M.P(MD)Nos.14920, 14922 and 14925 of 2019

S.T.Tamilselvan

.. petitioner

Vs.

1.The District Collector,
District Collectorate,
Madurai.

2.The Authorised Officer,
Corporation Bank,
93, Chandra Arcade,
East Marret Street,
Madurai.

3.The Tahsildar,
Office of the Tahsildar,
Collectorate Campus,
Madurai.

4.The Inspector of Police,
Annanagar Police Station,
Madurai City.

5.V.Ravindran

..Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records in connection with the impugned order passed by the first respondent vide his proceedings Roc.No.C6/897/2015 dated 27.06.2019 and the consequential proceedings of the third respondent vide his proceedings Ref.No.Na.Ka.No.4697/2019/A3 dated 21.08.2019 and quash the same and consequently forbear the respondents from evicting the petitioner from his lawful possession as lawful tenant in an extent measuring 100 sq.ft., of shop situated in 2/628 East 1st Street, K.K.Nagar, Madurai, without following the due process of



law under the Tamil Nadu Buildings Lease and Rent Control Act or under the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017.

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For Petitioner : Mr.Niranjan S.Kumar
For Respondents : Mr.VR.Shanmuganathan
Spl. Govt. Pleader
(for R1, R3 and R4)

Mr.B.Kasirajan (for R2)

O R D E R

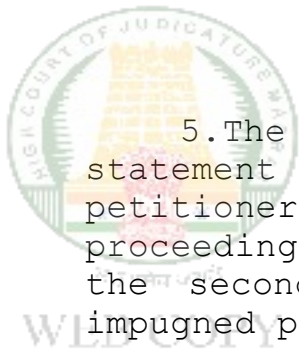
[Order of the Court was made by **SENTHILKUMAR RAMAMOORTHY, J.**]

This writ petition is filed challenging the order dated 27.06.2019 of the first respondent and consequential proceedings of the third respondent, dated 21.08.2019.

2.Mr.VR.Shanmuganathan, learned Special Government Pleader takes notice for respondents 1, 3 and 4 and Mr.B.Kasirajan, learned Standing Counsel takes notice for the second respondent bank.

3.The case of the petitioner is that he is a tenant running a small tea shop at No.2/628, East First Street, K.K.Nagar, Madurai, under the name 'Krishna Coffee Bar'. He further states that the daughter of the fifth respondent had obtained educational loan from the second respondent bank and that the property at Block No.628, K.K.Nagar in S.No.145/2 measuring about 2 grounds 405 was provided as mortgage to the bank. Upon defaulting repayment of the said loan, the second respondent bank declared the loan account as NPA and filed an application under Section 14 of the SARFAESI Act before the first respondent, so as to take physical possession of the secured asset. It is further stated that the first respondent passed an order dated 27.06.2019 in the said Section 14 petition and directed the third respondent to take physical possession of the property and handover the same to the secured creditor. The main grievance of the petitioner is that he was not put on notice either under Section 13 of the SARFAESI Act or in respect of the proceedings under Section 14 thereof and that therefore, the impugned orders are liable to be quashed.

4.We heard the learned counsel for the petitioner, learned Special Government Pleader appearing for the respondents 1, 3 and 4 and the learned standing counsel appearing for the second respondent bank. In view of the nature of order that we propose to pass, notice to the fifth respondent is dispensed with.



5.The learned counsel for the petitioner reiterated the statement made in the affidavit and mainly contended that the petitioner was not put on notice in respect of the impugned proceedings and that he is neither the borrower nor guarantor of the second respondent bank. Therefore, he submitted that the impugned proceedings are liable to be quashed.

6.In reply, the learned Standing Counsel for the second respondent bank submitted that the petitioner is occupying only about 100 sq.ft. in the secured asset, which measures about 2 grounds and 405 sq.ft. Accordingly, he submitted that it would be inequitable to quash the impugned proceedings when the petitioner's rights over the property are limited to small extent of 100 sq.ft.

7.We perused the records and considered the oral submission of both sides carefully.

8.As against the impugned orders, the petitioner has an alternative remedy under Section 17(4)(A) of the SARFAESI Act 2002. Therefore, we do not propose to examine the merits of the dispute or express any opinion with regard to the same. However, it has been confirmed by the learned counsel for the second respondent bank that pursuant to the impugned proceedings, the respondent bank has not taken physical possession of the asset as on date.

9.Considering the said facts and circumstances and considering the fact that there is an alternative statutory remedy, we dispose of this writ petition with the following directions:-

(a) the petitioner is granted leave to approach the Debt Recovery Tribunal by filing appropriate proceedings under Section 17 of the SARFAESI Act within a period of two weeks from the date of receipt of a copy of this order.

(b) the second respondent bank shall not take physical possession of the portion of the secured asset which is in the possession of the petitioner and measures about 100 sq.ft., for the period of 30 days from the date of receipt of a copy of this order.

(c) the Debt Recovery Tribunal shall consider the appeal filed by the petitioner and dispose of the same on merits and in accordance with law uninfluenced by any observations made herein.

<https://hcservices.products.gov.in/hcservices/> With the above directions, this writ petition is disposed of.



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W.P.(MD)No.18519 of 2019

Consequently, connected miscellaneous petitions are

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

skn

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Madurai.

2.The Tahsildar,
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Collectorate Campus,
Madurai.

3.The Inspector of Police,
Annanagar Police Station,
Madurai City.

4.The Authorised Officer,
Corporation Bank,
93, Chandra Arcade,
East Marret Street,
Madurai.

5.The Debt Recovery Tribunal
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+1 CC to M/s.B. KASI RAJAN, Advocate (SR-83598[F] dated
27/08/2019)

+1 CC to M/s.SPL GP (SR-83964[F] dated 28/08/2019)

+1 CC to M/s.NIRANJAN S. KUMAR, Advocate (SR-83883[F] dated 28/08/2019)

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