

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.02.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
&
THE HONOURABLE MRS.JUSTICE R. HEMALATHA

W.P.No.3521 of 2020 &
WMP.No.4118 of 2020

A. Rathinaraj

...Petitioner

Vs.

1. The District Magistrate/The District Collector,
Thiruppur District,
Thiruppur.
2. The Sub-Collector,
Tirupur District,
Tirupur.
3. The Authorised Officer,
M/s.State Bank of India,
Stressed Assets Management
Branch, No.1112, Raja Plaza,
Avinashi Road,
Coimbatore 641 037.
4. M/s.Tiruppur Surya Textiles Pvt. Ltd.,
No.5, M.P.Nagar Extension,
Surya Prabha Garden,
Tirupur.
5. Mr.K.Kuppusamy,
W/o.Kandasamy,
No.14, Kannairan Colony,
Uthukuli Road,
Tirupur 641 604

...Respondents

Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Mandamus forbearing the respondents 1 to 3 from taking any coercive measures based on the order dated 11.10.2018 in Ref.No.6204/2017/C3 of the 1st respondent till 31.05.2020 so as to enable the petitioner to relocate from the rented premises situated at Ward No.10,

Lakshmi Nagar Area, Thottipalayam Village in S.F.No.663, T.S.No.1163/28/2 admeasuring an extent of 9600 sq.ft. Out of 3.73 Acres, which is the secured asset of the 3rd respondent.

For Petitioner : Mr. J. Deliban
For Respondents : Mr.R.Vijayakumar, AGP
for R1 & R2
M/s.M.L.Ganesh,
Standing counsel for R3

O R D E R

[Order of the Court was made by M.Sathyanarayanan, J.]

The petitioner who claims to be a statutory tenant under the borrower namely, the 5th respondent and challenging the legality of the proceedings of the 1st respondent dated 11.10.2019, under section 14(1) of the SARFAESI Act, has filed this writ petition.

2. When this writ petition was listed for admission on 13.2.2020, this court has ordered private notice to respondents 3 to 5, returnable by 17.2.2020 and also permitted the learned counsel appearing for the petitioner to serve notice and papers upon the learned Standing Counsel appearing for the 3rd respondent Bank and on that date, Mr.R.Vijayakumar, learned Addl. Govt. Pleader, accepts notice on behalf of respondents 1 and 2.

3. Learned counsel appearing for the petitioner has invited the attention of this Court to the typed set of papers and would submit that on 31.8.2018, an unregistered lease deed came to be entered in to between the 5th respondent/borrower and the petitioner, in respect of a vacant site, on which, he has put up semi permanent structure for commercial purpose and though the said lease deed was for the period of 11 months, it was extended subsequently, by means of a further period, by way of an oral understanding. सत्यमेव जयते

4. It is the further submission of learned counsel appearing for the petitioner that prior to the passing of the order by the 1st respondent, if the petitioner was put on notice, he would be provided all the materials, and in the light of the fact that all of a sudden, he was called upon and deliver the vacant possession of the site in question, prays for some breathing time to do so.

5. Per contra, Mr. M.L.Ganesan, learned standing Counsel appearing for the 3rd respondent, on instructions, would submit that in connected writ petitions, similar plea raised, has been rejected and that on 13.2.2020, the secured assets belonging to

the 5th respondent/borrower had been taken possession and the remedy open to the petitioner, if any, is to invoke section 17 (4A) of the SARFAESI Act by filing an appeal before the jurisdiction Debt Recovery Tribunal.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. A perusal of the typed set of documents would disclose that the petitioner had entered into an unregistered lease deed dated 31.8.2018 in respect of a vacant site, which also form part of the secured assets, for which, necessary security documents have been executed in favour of the 3rd respondent Bank.

8. The learned counsel appearing for the petitioner claims, after expiry of the lease period, by means of an oral understanding, the period of lease was extended and prays for accommodation till 31.5.2020 to vacate delivery of vacant possession of the premises. Further, it is the stand of the 3rd respondent that on 13.2.2020 itself, the possession of the premises had been taken and in proof of same, he also produced a communication dated 12.2.2010, authored by the petitioner to the Tahsildar, Tiruppur North, Tiruppur, along with supporting photographs.

9. It is also the submission of the learned Standing counsel for the 3rd respondent that the secured documents came into existence as early as in the year 2005 and admittedly, the alleged tenancy in favour of the petitioner came in to existence, only during August 2018.

10. In the considered opinion of this Court, the points urged by the learned counsel for the petitioner would require adjudication on disputed questions of facts and since the petitioner is having an effective, alternative remedy under Section 17(4A) of the SARFAESI Act, if he is so advised, he is at liberty to avail the said remedy before the jurisdiction Debt Recovery Tribunal.

11. In the result, the writ petition is dismissed subject to the above observation. No costs. Consequently, connected WMP.No.4118 of 2020 is closed.

Sd/-

Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

msr

To

1.The District magistrate/The District Collector,
Thiruppur District, Thiruppur.

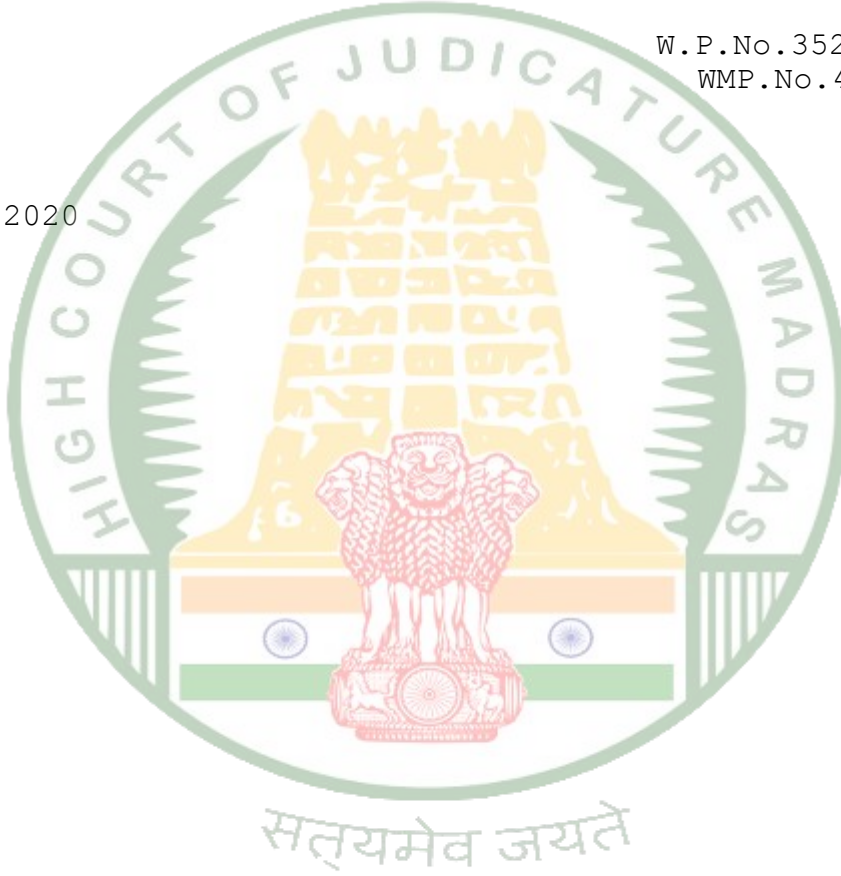
2.The Sub Collector,
Tiruppur District,
Tiruppur.

+lcc to M/s.J.Deliban,Advocate, SR.NO.13648

+lcc to M/s.M.L.Ganesh, Advocate, SR.NO.13764

W.P.No.3521 of 2020 &
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