

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15..09..2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.4499 of 2020

M/s.Tamil Nadu Mercantile Bank Ltd.,
Rep. by its Authorized Officer
Mr.K.Rajkumar,
Pollachi Branch, Door No.76 and 77,
New Scheme Road, Pollachi 642 001.

... Petitioner

-Versus-

- 1.The District Collector cum District Magistrate,
Coimbatore.
- 2.The Tahsildar,
Pollachi Taluk.
- 3.M.Anandabalaji

[3rd respondent impleaded as per order dated 14.09.2020 made in
W.M.P.No.14324 of 2020 in W.P. 4499/2020]

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the 2nd respondent to take physical possession of the schedule mentioned property in terms of order dated 16.08.2019 in D.Dis.No.25242/2018/E3 passed by the 1st respondent and hand over the same to the petitioner.

Schedule of Property:

All that piece and parcel of the property measuring 29868 Sq.ft Or 68.57 Cents comprised in Survey No. 24/1 (Old No. 24) Devi Nagar, Plot No. A1 Solapalayam Village, Pollachi Taluk the following boundaries and measurements registered in the name of (Deceased) Thiru.G. Manickam S/o. Govindarajulu Chettiar as per the memorandum of Title Deed No. 7910/2013 dated 21.10.2013 of Sub Register Office, Pollachi.

Boundaries:

On the South	- Plot No. B-4 and 30 Feet Road
On the West	- Plot No. A-2 and B-5
On the North	- Coimbatore- Dindigul Road
On the East	- S.F. No. 24/2 Solapalayam Village

Within the following measurements:

East-West on the North	: 132 $\frac{1}{4}$ Feet
East-West on the South	: 130 Feet
North- South on the West	: 209 Feet
North- South on the East	: 150 $\frac{1}{2}$ Feet

For Petitioner .. Mr.T.Mohan for
Mr.KN.Chinnakrishnan

For Respondent .. Mr.R.Vijayakumar,
AGP for RR1 &2
Mr.Imayavaramban for R3

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner is the creditor bank. Pursuant to the order passed under Section 14(1) and (2) of the SARFAESI Act, 2002, the petitioner filed the present petition seeking direction to the respondents to take physical possession of the schedule mentioned property. Having found that the order was passed way back as early as on 16.08.2019, this court passed an order on 13.03.2020, which is extracted hereunder:-

"We are not satisfied with the submission made by the learned Additional Government Pleader appearing for respondents 1 and 2 that the possession could not be handed over in view of the unnumbered application filed by the borrower.

2. We are dealing with the case where the order has already been passed under Section 14 of the SARFESI Act. The question is one of giving effect to the said order passed. In such view of the matter, we direct the second respondent/The Tahsildar, to be present before this Court on the next date of hearing - 23.03.2020."

Thereafter, the possession was handed over in favour of the petitioner, who, in turn, further handed it over in favour of the auction purchaser.

2. Under those circumstances, the learned counsel for the petitioner submitted that nothing survives in this writ petition for consideration. However, the learned counsel appearing for the impleaded respondent, viz., the 3rd respondent submitted that as against the order passed under Section 13(1) and (2) of the SARFAESI Act, an application has been filed before the Debts Recovery Tribunal. However, the Tribunal declined to take up the matter on merits on the premise that it is barred by limitation. But for the order passed by this court, the 3rd respondent would have been in possession to get appropriate order before the debts Recovery Tribunal. Now dispossession has been made only pursuant to the order of this court. Therefore, the 3rd respondent will have to be given repossession from the petitioner and the auction purchaser.

3. The learned counsel appearing for the auction purchaser submitted that the order passed is covered by the earlier order of this court in W.P.No.35475 and 35479 of 2019 dated 19.12.2019 in which one of us (R.HEMALATHA.J.) was a party. He further submitted that to show the fairness, the auction purchaser will not alienate or further encumber the property which is in his possession.

4. Having heard the learned counsel appearing for the parties, we do not find any reason to pass any positive order in favour of the 3rd respondent/borrower. The District Magistrate passed the order way back on 16.08.2019. There is no need to hear the 3rd respondent under the scheme of the Act while facilitating handing over of possession of the property in favour of the secured creditor pursuant to the proceedings concluded under Section 13(4) of the SARFAESI Act, 2002. The petitioner herein is not expected to wait for the 3rd respondent to get appropriate orders before the jurisdictional Tribunal. Suffice it is to state that till now the 3rd respondent has not got any prohibitory order from the jurisdictional Tribunal. Therefore, we find anything wrong in the order passed by us pursuant to which possession has been taken in favour of the petitioner and the auction purchaser. It is not the question of possession being taken pursuant to our order, but one of giving effect to the order passed under Section 14 of the SARFAESI Act in the absence of any prohibitory order in existence from any judicial forum including the jurisdictional Debts Recovery Tribunal.

5. In such view of the matter, we are not inclined to accede to the request made by the counsel appearing for the 3rd respondent. However, in order to give an opportunity to the 3rd respondent, we permit him to re-present the papers before the Debts Recovery Tribunal, which has been rejected on 02.03.2020,

when a challenge has been laid to the order passed under Section 14(1) and (2) of the SARFAESI Act. Two weeks' time is granted from the date of receipt of a copy of this order to undertake the said exercise. On such re-presentation, the Debts Recovery Tribunal is directed to number it and thereafter proceed to hear it on merit. This we do so, in order to facilitate an opportunity to the 3rd respondent to get an order on merit. Till the disposal of the said application on merit, the auction purchaser to whom possession has been handed over shall not alienate or encumber the property. The Debts Recovery Tribunal is directed to dispose of all the pending matters including S.A.Nos.216 of 2018, 388 of 2018 and 261 of 2019 along with application which is directed to be numbered as directed hereinbefore preferably within a period of eight weeks from the date of receipt of a copy of this order. In the mean while, auction purchaser who has taken possession is directed to keep the assets of the 3rd respondent with him intact.

6. This writ petition stands disposed of accordingly with the above directions. No costs.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

To

- 1.The District Collector cum District Magistrate,
Coimbatore.
- 2.The Tahsildar,
Pollachi Taluk.
3. The Debts Recovery Tribunal
Coimbatore

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W.P.No.4499 of 2020

VD(CO)
SP(06/10/2020)