



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 24.01.2020**

**CORAM:**

**THE HONOURABLE MR.JUSTICE M.DURAI SWAMY  
and**

**THE HONOURABLE MR.JUSTICE T.RAVINDRAN**

**W.P.(MD) No.1358 of 2020**

**and**

**W.M.P.(MD) No.1102 of 2020**

A.Francis

... Petitioner

-VS-

- 1.The Collector  
The Collectorate  
Tuticorin  
Tuticorin District
- 2.The Commissioner  
Tuticorin Corporation  
Tuticorin, Tuticorin District
- 3.The Tasildhar  
Taluk Office  
Tuticorin, Tuticorin District
- 4.The Authorized Officer  
M/s.Cholamandalam Investment  
and Finance Co. Ltd.  
No.28, S.S.P.&Sons Building 2<sup>nd</sup> Floor  
5<sup>th</sup> Street, Tovipuram  
Tuticorin, Tuticorin District

5.R.Thanabalan

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus restraining 1<sup>st</sup> to 3<sup>rd</sup> respondents from taking physical possession of road property admeasuring 6.887 cents situated at Survey No.332/3, George Road (Pul Thodam Theru), Tuticorin, Tuticorin District, and hand it over the 4<sup>th</sup> respondent on the basis of this petitioner's representation dated 16.09.2019.

For Petitioner : Mr.B.Rajesh Saravanan

For Respondents : Mr.V.R.Shanmuganathan

Special Government Pleader for R1 & R3



**O R D E R**

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

The petitioner has filed the above writ petition to issue a writ of mandamus restraining the respondents 1 to 3 from taking physical possession of the road property, admeasuring 6.887 Cents, situated at Survey No.332/3, George Road (Pul Thodam Theru), Tuticorin, Tuticorin District and handing over the same to the fourth respondent on the basis of his representation, dated 16.09.2019.

2. It is the case of the petitioner that the fifth respondent had availed loan from the fourth respondent and since he defaulted in repaying the loan, the fourth respondent initiated SARFAESI proceedings and also filed an application, under Section 14 of the of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "the SARFAESI Act") for taking the physical possession of the secured asset. The District Collector / first respondent, by order dated 16.11.2018, directed the Revenue Divisional Officer to take physical possession of the secured asset and to hand over the same to the fourth respondent.

3. Though the order was passed by the District Collector / first respondent as early as on 16.11.2018, the borrower has not challenged the same till date. Therefore, the same has become final. Now, the petitioner has filed the above writ petition as a public interest litigation stating that the secured asset, which is the subject matter of the writ petition, is a road belonging to Tuticorin Corporation / second respondent.

4. When the District Collector / first respondent has ordered the application filed under Section 14 of the SARFAESI Act directing the Authority concerned to take physical possession of the secured asset from the hands of the fifth respondent, it cannot be stalled at the instance of a third party, that too by way of a public interest litigation. The fourth respondent is dealing with the public money and the recovery of the loan advanced to the fifth respondent cannot be left un-recovered. If the fifth respondent is aggrieved over the order passed by the District Collector / first respondent, he should have filed an appeal before the Debts Recovery Tribunal. The SARFAESI proceedings initiated against the defaulter cannot be stalled at the instance of a third party. In these circumstances, we are not inclined to entertain the writ petition.



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5. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020  
Sub Assistant Registrar(CS)

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To:

- 1.The Collector,  
The Collectorate,  
Tuticorin,  
Tuticorin District.
- 2.The Tasildhar,  
Taluk Office,  
Tuticorin, Tuticorin District.
- 3.The Commissioner  
Tuticorin Corporation  
Tuticorin, Tuticorin District.

+1 CC to M/s.SPL.GP ( SR-3150[F] dated 27/01/2020 )

W.P. (MD) No.1358 of 2020  
and  
W.M.P. (MD) No.1102 of 2020  
24.01.2020

JMN(11.02.2020) 3P : 5C