



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESEVALU

W.P.No.2250 of 2020

AND WMP.No. 2631/20 & 2629/20

Saroja

...Petitioner

Vs

1. The District Collector,
Collectorate, Erode,
Erode District.
2. The Tahsildar,
Erode.
3. The Deputy Superintendent of Police,
Erode.
4. The Authorised Officer
City Union Bank
15/2a, Perundurai Road
Thindal, Erode-638012.
5. K.Jeevanantham
6. G.Venkatraman

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the first respondent made in his proceedings No.5989/2019/D2 dated 9.11.2019 and consequential vacation notice issued by the Tahsildar dated 20.11.2019 and quash the same and consequently direct the respondents 1 and 2 to give proper opportunity with regard to the ownership and the legality of occupation and issue appropriate orders following the principles of natural justice.



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For Petitioner : Mr.Silambanan
Senior Advocate
for M/s.Kaavya Silambanan
Associates

For Respondents : Mr.C.Harsha Raj
Counsel for the State
for respondent Nos.1 and 3

: Mr.S.Sethuraman
for respondent No.4

: R5 and R6 - Not Ready in
Notice

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The grievance of the petitioner is that despite the sixth respondent herein not being the owner of an immovable property and despite such respondent failing to assert any rights in respect of the property in a civil court, such respondent purported to sell the property to the fifth respondent who, in turn, purported to mortgage the same with the fourth respondent bank against the credit facilities obtained.

2. The petitioner claims that upon the first respondent Collector passing an order for obtaining possession of the immovable property and the second respondent Tahsildar seeking to implement the relevant order, the petitioner approached this court under Article 226 of the Constitution.

3. At the very highest, the petitioner's case is that a fraud was purported on the petitioner by the sixth and fifth respondents to which the fourth respondent bank may or may not have been a party. Even if the petitioner's contention is taken at face value, it will amount to the sixth respondent having created rights over the petitioner's property in favour of the fifth respondent, whereupon the fifth respondent purported to mortgage such imaginary and non-existent rights in favour of the fourth respondent bank; and the bank, as a secured creditor, sought to adopt measures under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.



4. Clearly, the petitioner was a person aggrieved within the meaning of the relevant expression in Section 17 of the Act of 2002. There is no doubt that the petitioner may not have been issued any notice under Section 13(2) of the Act or even forwarded any notice prior to any measure being adopted by the secured creditor under Section 13(4) of the Act. However, Section 17 of the Act embraces every person who is aggrieved by any measure adopted by a secured creditor under Section 13(4) of the Act and, for good measure, recognises the borrower to be a person aggrieved by indicating the borrower in parentheses.

5. Matters of the present kind where a question of title arises cannot be appropriately addressed or conclusively decided on affidavit evidence in summary procedure. It is possible that what the petitioner says is absolutely correct. Even then, the writ court would be slow in passing an order that would amount to a declaration of title. Surely, the remedy of the petitioner lies before the jurisdictional Debts Recovery Tribunal in terms of Section 17 of the Act of 2002.

6. Ideally, the writ petition should not have been entertained. Since, however, the petition has remained pending in this court for some time, it will be open to the petitioner to invoke Section 14 of the Limitation Act, 1963 before the appropriate Debts Recovery Tribunal, though as to whether the time spent in this court ought to be excluded or not will be the decision of the tribunal.

7. W.P.No.2250 of 2020 is dismissed on the ground that there exists an efficacious alternative remedy available to the petitioner. Nothing in this order should be deemed to be a pronouncement on the merits of the petitioner's case and it will be open to the petitioner to pursue the remedy in accordance with law before the jurisdictional Debts Recovery Tribunal. W.M.P.Nos.2631 and 2629 of 2020 are closed.

There will be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1. The District Collector,
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Erode District.

2. The Tahsildar,
Erode.

3. The Deputy Superintendent of Police,
Erode.

4. The Authorised Officer
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W.P.No.2250 of 2020
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KSM(CO)
LS(25/08/2021)