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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

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

W.P.Nos.14048 & 14104 of 2021

WMP Nos.14983 & 14984 of 2021

W.P.No.14048 of 2021

D.Nithyanandan

..Petitioner

Vs.

1 The Sub Divisional Magistrate
and Revenue Divisional Officer
Tirupur District.

2 The Tahsildar
Avinashi Taluk
Tirupur District.

3 The Deputy Superintendent of Police,
Avinashi, Tirupur District.

4 The Authorised Officer
ARM Branch, Canara Bank
Coimbatore 2.

..Respondents

W.P.No.14104 of 2021

M/s. Sree Magal Tex
rep. by its Proprietor S.Loganathan
1/90-1, Sangapalayam
Uppilipalayam Village & Post
Avinashi Taluk
Tiruppur District 641 670.

..Petitioner

Vs.

1 The District Collector and District Magistrate
Tiruppur District, Tiruppur.

2 The Revenue Divisional Officer
Tiruppur, Tiruppur District.



3 The Tahsildar
Taluk Office
Avinashi Taluk
Tiruppur District.

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4 The Authorised Officer
Canara Bank
Asset Recovery Management Branch
1st Floor, Regional Office
TV Samy Road, R.S.Puram
Coimbatore 641 002.

..Respondents

Prayer in W.P.No.14048 of 2021 filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 3rd respondent to provide adequate police protection to the 2nd respondent and 4th respondent for taking over of physical possession of the petitioner's auctioned property in SF No.497 admeasuring to an extent of 4.38 acres of land and SF No.498/2 admeasuring to an extent of 1.10 acres of land out of the land to an extent of 6.85 acres in Uppilipalayam Village, Tiruppur Registration District, Avinashi Sub Registration District and consequentially direct the 4th respondent to handover the physical possession of the above survey land to the petitioner by complying the order of the District Magistrate/District Collector Tiruppur in Ref No.15917/2018/C3 dated 9.6.2021 under Section 14(1) of SARFAESI Act.

Prayer in W.P.No.14104 of 2021 filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari calling for the records of the first respondent pertaining to his proceedings in Ref.No.15917/2018/C3 dated 09.06.2021 and quash the same.

For Petitioner : Mr.P.Paramasiva Doss
for Mr.S.Senthil
(WP No.14048 of 2021)

Mr.G.Arul Murugan
(WP No.14104 of 2021)

For Respondents : Mr.P.Muthukumar,
for respondents 1 to 3
(in both WPs.)

Ms.S.R.Sumathy,
for 4th respondent
(WP No.14048 of 2021)



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Mr.P.Raghunathan
for M/s. T.S.Gopalan & Co
for respondent-4
(WP No.14104 of 2021)

ORDER

(Made by the Hon'ble Chief Justice)

The two petitions here are by the auction-purchaser and the borrower, respectively.

2. The auction-purchaser complains that despite the immovable property being sold and the sale certificate being issued on December 6, 2019, possession of the property has not yet been made over by the secured creditor which conducted the sale in accordance with the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The case of the borrower, the petitioner in W.P.No.14104 of 2021, is that the respondent secured creditor approached two sets of authorities with requests under Section 14 of the Act of 2002.

3. It appears that the District Collector, Tiruppur has recently passed some orders and the secured creditor has approached the local administration on the basis of such orders for providing access to the secured property and both the secured creditor and the auction-purchaser anticipate that possession of the property may be obtained within the next few days.

4. The borrower, however, raises a point of order without being able to demonstrate any element of prejudice that the borrower may have suffered except violation of the borrower's perceived fundamental right as an Indian citizen to obtain the loan and not re-pay. It is alarming that such ridiculous matters are brought to court.

5. The Scheme of the Act of 2002 permits a secured creditor to proceed against the secured asset even before an adjudication of the debt is conducted. In such scheme of things, it is necessary to get access to the secured asset or the documents pertaining thereto as the entire object of the Act of 2002 is to unblock public funds and ensure that the securities are sold as expeditiously as possible, so that the debts are realised or partially realised. It is in the light of such object of the statute that executive assistance is required to be rendered by the State functionaries as recognised in Section 14 of the Act.

6. A borrower has no say in course of any request under Section 14 of the Act nor may the executive functionary



approached under such provision give any notice to a borrower or hear the borrower before passing appropriate directions for police assistance or otherwise in terms of such provision. In such a scenario, it matters little that a secured creditor has carried requests simultaneously to the District Collector and to the Chief Judicial Magistrate exercising jurisdiction over the area where the secured asset is situate for the purpose of obtaining executive assistance. Of course, it is not necessary to make more than one application in such regard. But, merely because a second may have been erroneously made, it cannot prompt the borrower to rush to court as if such lapse absolves the borrower of the liability to discharge the debt or disqualifies the secured creditor from proceeding against the secured asset. It is shameful that such matters have to be addressed in courts and if a bit of discretion were to be exercised before these matters are filed in court, it might serve the system well.

7. In view of the foregoing discussion, particularly since the borrower has not been able to show that there is any prejudice suffered by the borrower upon the secured creditor making independent requests to two different authorities under Section 14 of the Act of 2002, W.P.No.14104 of 2021 is dismissed with costs assessed at Rs.25,000/- to be paid to the auction-purchaser, who has been kept waiting by the borrower failing to release the secured property to the secured creditor.

8. As far as W.P.No.14048 of 2021, filed by the auction-purchaser, is concerned, since the auction-purchaser is happy that the order passed by the District Collector is likely to culminate in the possession being handed over in the immediate future, no further order is made except to permit the secured creditor to seek police assistance from the Superintendent of Police exercising jurisdiction over the area where the secured asset may be situated to obtain possession thereof. It is hoped that the possession of the relevant property is made over to the auction-purchaser within the next four weeks.

WMP Nos.14983 and 14984 of 2021 are closed. There will be no order as to costs in W.P.No.14048 of 2021.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

kpl



To:

- 1 The Sub Divisional Magistrate
and Revenue Divisional Officer
Tirupur District.
- 2 The Tahsildar
Avinashi Taluk
Tirupur District.
- 3 The Deputy Superintendent of Police,
Avinashi, Tirupur District.
- 4 The Authorised Officer
ARM Branch, Canara Bank
Coimbatore 2.
- 5 The District Collector and District Magistrate
Tiruppur District
Tiruppur.
- 6 The Revenue Divisional Officer
Tiruppur
Tiruppur District.
- 7 The Authorised Officer
Canara Bank
Asset Recovery Management Branch
1st Floor, Regional Office
TV Samy Road, R.S.Puram
Coimbatore 641 002.

+lcc to Mr.S.Senthil, Advocate, S.R.No.39324

+lcc to the Government Pleader, S.R.No.39126

W.P.Nos.14048 & 14104 of 2021

AJ(CO)
RGA(16/08/2021)