IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

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THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Writ Petition Nos.19859, 19909, 20148, 20714, 20759 and 21172 of 2021

Velayutham	.. Petitioner in WP.No.19859 of 2021
K.Arunachalam	.. Petitioner in WP.Nos.19909 & 20148 of 2021
N.Ragavendran	.. Petitioner in WP.No.20714 of 2021
A.K.Nawaz	.. Petitioner in WP.No.20759 of 2021
S.Jaikumar	.. Petitioner in WP.No.21172 of 2021

Versus

1. Union of India,
   rep. by General Manager,
   Reserve Bank of India,
   Fort Glacis, Kamarajar Salai,
   Chennai - 600 001.

2. National Housing Bank,
   Department of Regulation and Supervision,
   (Complaint Redress Cell),
   4th Floor, Core - 5A, India Habital Centre,
   Lodhi Road, New Delhi - 110 003.

3. The Honourable Ombudsman, (NBFC),
   C/o. Reserve Bank of India,
   Fort Glacis, Chennai - 600 001.

4. The Manager,
   Vistaar Finance Services Private Limited,
   No.73 & 74, 2nd Floor, Pana Plaza,
   Arcade Road, Kodambakkam,
   Chennai - 600 024. .. Respondents in WP.No.19859 of 2021

1. Union of India,
   rep. by General Manager,
   Reserve Bank of India,
   Fort Glacis, Kamarajar Salai,
   Chennai - 600 001.

2. The Banking Ombudsman, (NBFC),
   C/o. Reserve Bank of India,

Fort Glacis, Kamarajar Salai,
Chennai - 600 001.

3. The Principal Nodal Officer,
HDB Financial Services Limited,
3rd Floor, Murugesa Naicker Office Complex,
New No.128/4F, Old No.53A,
Greams Road, Chennai - 600 006.

4. The Manager,
HDB Financial Services Limited,
3rd Floor, Murugesa Naicker Office Complex,
New No.128/4F, Old No.53 A,
Greams Road, Chennai - 600 006.

.. Respondents in WP.No.19909 of 2021

1. Union of India,
rep. by General Manager,
Reserve Bank of India,
Fort Glacis, Kamarajar Salai,
Chennai - 600 001.

2. The Banking Ombudsman,
C/o. Reserve Bank of India,
Fort Glacis, Kamarajar Salai,
Chennai - 600 001.

3. The Principal Nodal Officer,
ICICI Bank Limited,
Bundra Kurla Complex,
Bundra East, Mumbai - 400 051.

4. The Manager,
ICICI Bank Limited,
Arihant Insight, Ambattur,
Ambattur Industrial Estate,
Chennai - 600 058.

.. Respondents in WP.No.20148 of 2021

1. Union of India,
rep. by General Manager,
Reserve Bank of India,
Fort Glacis, Kamarajar Salai,
Chennai - 600 001.

2. The Banking Ombudsman,
C/o. Reserve Bank of India,
(Banking Office),
Fort Glacis, Kamarajar Salai,
Chennai - 600 001.

3. The Principal Nodal Officer,
   ICICI Bank Limited,
   Bandra Kurla Complex,
   Bandra East, Mumbai - 400 051.

4. The Manager,
   ICICI Bank Limited,
   Credit Card Division,
   Arihant Insight, Ambattur,
   Ambattur Industrial Estate,
   Chennai - 600 058. .. Respondents in WP.No.20714 of 2021

1. Union of India,
   rep. by General Manager,
   Reserve Bank of India,
   Fort Glacis, Kamarajar Salai,
   Chennai - 600 001.

2. The Banking Ombudsman,
   C/o. Reserve Bank of India,
   (Banking Office),
   Fort Glacis, Kamarajar Salai,
   Chennai - 600 001.

3. The Principal Nodal Officer,
   Standard Chartered Bank,
   19, Rajaji Salai, Chennai - 600 001.

4. The Manager,
   Standard Chartered Bank,
   19, Rajaji Salai,
   Chennai - 600 001. .. Respondents in WP.No.20759 of 2021

1. The Banking Ombudsman,
   C/o. Reserve Bank of India,
   Fort Glacis, Chennai - 600 001.

2. The Nodal Officer,
   SBI Card, P.O Bag No.28, GPO,
   New Delhi - 110 001.

3. The President,
   Collections,
   SBI Cards and Payments Service Private Limited,
   10th Floor, TVH Agnito Park,
   Rajiv Gandhi Salai,
   Kandanchavadi,
   Chennai - 600 096. .. Respondents in WP.No.21172 of 2021

Prayer in WP.No.19859 of 2021: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the second and third respondents to take action against the fourth respondent to follow the due process of law, regarding collection of loan amount, as guided by Reserve Bank of India forthwith petitioner complaint dated 04.09.2021.

Prayer in WP.No.19909 of 2021: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the second respondent to take action against the fourth respondent to follow the due process of law, regarding collection of loan amount, as guided by Reserve Bank of India forthwith petitioner complaint dated 03.09.2021.

Prayer in WP.No.20148 of 2021: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the second respondent to take action against the fourth respondent to follow the due process of law, regarding collection of loan amount, as guided by Reserve Bank of India forthwith petitioner complaint dated 07.09.2021.

Prayer in WP.No.20714 of 2021: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the second respondent to take action against the fourth respondent to follow the due process of law, regarding collection of loan amount, as guided by Reserve Bank of India forthwith petitioner complaint dated 21.08.2021.

Prayer in WP.No.20759 of 2021: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the second respondent to take action against the fourth respondent to follow the due process of law, regarding collection of loan amount, as guided by Reserve Bank of India forthwith petitioner complaint dated 02.09.2021.

Prayer in WP.No.21172 of 2021: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the first respondent to take action against the third respondent to follow the due process of law, regarding collection of loan amount, as guided by Reserve Bank of India forthwith petitioner complaint dated 07.09.2021.

For Petitioner	:	Mr. M. Govindarajan in all Wps
For Respondents	:	Mr. T.Jurisman Fernando for R4 in WP.No.19859 of 2021

COMMON ORDER

In all these writ petitions, the relief sought is to issue a Writ of Mandamus directing the respondent concerned to take action against the banks/financial institutions, which have lent money to the respective petitioners, after following due process of law, regarding collection of loan amount, as guided by the Reserve Bank of India forthwith, based on the petitioners' respective complaints.

2. The petitioners in these writ petitions have availed credit card/ term loan or housing loan facility from the respective banks. According to the petitioners, they have repaid the amount periodically, however, owing to pandemic situation, they could not pay the loan amount. Notwithstanding the adverse financial situation faced by the petitioners, the recovery personnel attached to the lending banks / financial institutions frequently called upon them and demanded repayment of the entire balance amount by slapping exorbitant interest. Unable to sustain the frequent threats unleashed by the recovery agents appointed by the lending banks/financial institutions to collect the loan amount, the petitioners have given complaints to the Banking Ombudsman seeking to take appropriate action against the lending banks/ financial institutions for the unfair and unreasonable practice adopted in the matter of recovering the loan amount through threat and coercion. According to the petitioners, the complaints given by them have not been considered so far and therefore, they have filed these writ petitions.

3. The learned counsel for the petitioners submits that the Honourable Supreme Court, time and again, held that the private banks should not resort to collect the borrowed amount by adopting third degree methods and such a practice has been deprecated. To substantiate such contention, he placed reliance on the order dated 26.02.2007 passed by the Honourable Supreme Court in Appeal (Crl) No. 267 of 2007 (Manager, ICICI Bank Limited vs. Prakash Kaur and others) wherein it was held that the Banks have to be held vicariously liable for such acts of the agents engaged by them and that the recovery of loan or vehicles has to be done only through legal means and the Banks cannot employ goondas to take possession by force. In the present case, according to the learned counsel, the lending banks/ financial institutions engaged goondas and hooligans to collect the loan amount from the petitioners without following the due process of law and therefore, the petitioners have been constrained to give complaints to the Banking Ombudsman, however, no action has been taken on the same. Hence, the

learned counsel prayed this Court to issue appropriate direction to the lending banks/financial institutions to recover the loan amount only by adopting due process of law.

4. The learned counsel appearing for the fourth respondent in WP.No.19859 of 2021 vehemently contends that the banks/financial institutions have not adopted any such unlawful method in collecting the loan amount. He further submits that the petitioner, having availed the term loan/credit card facility or housing loan, has failed to repay the loan amount and the same was directed to be repaid by the bank in a lawful manner and hence, the question of exerting pressure towards the petitioner through third degree method does not arise. It is also submitted that the petitioner has availed huge amount and committed default in payment of the same; and therefore, the lending banks/financial institutions lawfully demanded him to repay the loan amount. Instead of repaying the same, the petitioner has raised various allegations as against the lending banks/financial institutions in the matter of collection of the loan amount and the present attempt in filing the writ petition is to throttle the legitimate process initiated by the lending banks/financial institutions to recover the loan amount. Stating so, the learned counsel for dismissal of the writ petition.

5. Heard the counsel for both sides. The grievance of the petitioners is that the lending banks/financial institutions have resorted to collect the loan amount payable by them without following due process of law and the complaints submitted by the petitioners to the Banking Ombudsman have not been acted upon.

6. At the outset, the correctness or otherwise of the grievance expressed by the petitioners that the lending banks/financial institutions have engaged musclemen or goons to collect the loan amount, cannot be examined by this Court in these writ petitions. This is more so that the learned counsel appearing for the fourth respondent in WP.No.19859 of 2021 denied having engaged goondas or hooligans to collect the loan amount from the petitioner. In fact, the petitioners have given complaints to the Banking Ombudsman narrating their grievance. The Banking Ombudsman has been exclusively constituted under The Banking Ombudsman Scheme, 2006 with the object of resolving complaints relating to certain services rendered by the banks and to facilitate the satisfaction or settlement of such complaints. As per Chapter III, Clause 7 (2) of The Banking Ombudsman Scheme 2006, the Banking Ombudsman shall receive and consider complaints relating to the deficiencies in banking or other services. Clause 10 empowers the Banking Ombudsman to call for the records from the bank against whom the complaint is made. When such power is conferred on the Banking Ombudsman and the petitioners also already subjected themselves to the

jurisdiction of the Banking Ombudsman with complaints, this Court is of the view that such complaints preferred by the petitioners before the Banking Ombudsman shall be directed to be disposed of in accordance with law.

7. In such view of the matter, this Court hereby directs the Banking Ombudsman to consider the complaints said to have been given by the petitioners herein on various dates and pass orders thereof on merits and in accordance with law, after affording an opportunity of hearing to the petitioners (complainants) as well as the respective lending banks/financial institutions, within a period of eight weeks form the date of receipt of a copy of this order.

8. Accordingly, all the writ petitions are disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The General Manager
Union of India
Reserve Bank of India
Fort Glacis, Kamarajar Salai
Chennai - 600 001

2.The Banking Ombudsman
C/o. Reserve Bank of India
(Banking Office)
Fort Glacis, Kamarajar Salai
Chennai - 600 001

3.National Housing Bank,
Department of Regulation and Supervision,
(Complaint Redress Cell),
4th Floor, Core - 5A, India Habital Centre,
Lodhi Road, New Delhi - 110 003.

4.The Honourable Ombudsman, (NBFC),
C/o. Reserve Bank of India,
Fort Glacis, Chennai - 600 001.

5.The Principal Nodal Officer,
HDB Financial Services Limited,
3rd Floor, Murugesa Naicker Office Complex,
New No.128/4F, Old No.53A,
Greams Road, Chennai - 600 006.

Writ Petition Nos. 19859, 19909, 20148,
20714, 20759 and 21172 of 2021

PMK(CO)
CB(12/11/2021)