



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.07.2021

CORAM:

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.35932 of 2019
and W.M.P.No.36848 of 2019

1.Y.Deepa
2.J.Mohamed Meeran
3.A.Shajahan
4.M.Devendiran
5.S.Prabhu
6.M.Surendhar

.. Petitioners

-vs-

1.Canara Bank
Rep. by its Manager,
No.524, Anna Salai,
Teynampet, Chennai 600017.

2.M.A.Jahanggir

3.M/s.Techno Builders,
Door No.4/32, Plot No.39,
AJS Towers, Royala Nagar 1st Main Road,
Ramapuram, Chennai 600 089.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus forbearing the 1st respondent from initiating proceedings under The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 or any other law, and also forbearing the respondents from forcibly evicting the petitioners from the residential portions occupied by them in pursuant to the Lease agreements dated 04.03.2017, 05.12.2016, 21.04.2018, 03.02.2019, 18.03.2019 and 06.03.2019.

For Petitioners	:	Mr.M.Muruganantham for Mr.M.Rajamani
For Respondents	:	Mr.R.Umasuthan for R-1
	:	Ms.S.Thenmozhi Sivaperumal



for RR 2 and 3
ORDER

(Made by the Hon'ble Chief Justice)

WEB COPY

The prayer in the petition is for the respondent bank to be restrained from initiating proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on the ground that the petitioners are tenants at parts of the secured asset occupied by them pursuant to lease agreements executed between 2016 and 2019.

2. A writ in the nature of mandamus cannot be issued to prevent any party, particularly a nationalised bank, to take steps under a statutory provision or to approach any particular forum in accordance with law. Further, a casual reading of the papers would reveal that the secured asset was furnished as a security long prior to the dates of lease indicated by the petitioners in the petition. It is elementary that upon an asset being furnished by way of security as a mortgage, if subsequent rights are created, without notice to the mortgagee, those rights are subservient to the mortgage and cannot affect the rights of the mortgagee.

3. There is no merit in the petition and it has needlessly remained pending in this Court for nearly two years. The only submission on merits made on behalf of the second and third respondents is that they have made some payment to the bank and the bank should consider a settlement. These are areas which a Writ Court refrains from going into. There is no basis to the petitioners' claim and it is evident that the second and third respondents have set up the petitioners to prejudice the claim of the respondent bank.

4. W.P.No.35932 of 2019 is dismissed with costs assessed at Rs.25,000/- to be paid to the respondent bank. The bank will be entitled to realise it from the petitioners or from the borrowers. Consequently, W.M.P.No.36848 of 2019 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra



To

The Manager,
Canara Bank
No.524, Anna Salai,
Teynampet, Chennai 600 017.

+ 1 cc to Mr. M.Rajamani, Advocate SR.32948 (28/09/2021)

W.P.No.35932 of 2019

VSNIH (CO)
PR (16/07/2021)