



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD)NO.15638 OF 2021

The Tamil Nadu Mercantile Bank Limited,
represented by its Branch Head,
Mr.C.Gopal Raj, son of Chelladurai,
Theni Branch,
3, Chokkar Street,
Theni- 625 531.

:Petitioner

.vs.

- 1.The Tahsildar,
Tahsildar Office,
Madurai West Taluk,
Madurai.
- 2.The Taluk Surveyor,
Office of the Tahsildar,
Madurai West Taluk,
Madurai.

3.P.Jegatheesan

: Respondents

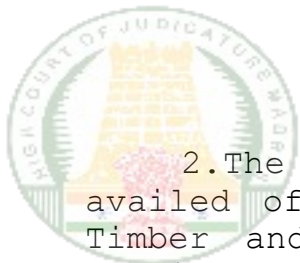
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents 1 and 2 to conduct survey and to mark the boundaries in Plot Nos.1,2,3 and 4 totalling an extent of 8379 sq.ft at R.S.No.95/3, Sekaram Nagamalai Pudukkottai, Thirupparankundram, Madurai South Taluk, Madurai District based on the Petitioner Bank's application dated 12.7.2021 within a time frame stipulated by this Court.

For Petitioner : Mr.B.Baskar

For Respondents : Mr.P.Subbaraj
Standing Counsel for the State

O R D E R

<https://hcservices.ecourts.gov.in/hcservices> The Petitioner seeks a survey of the land ad-measuring 8379 sq.ft at R.S.No.95/3, Sekaram Nagamalai Pudukkottai, Thirupparankundram, Madurai South Taluk, Madurai District.



2.The Petitioner states that the third respondent herein had availed of credit facilities in the name of M/s.Sree Nevasa Timber and Trade and M/s.Seven and Seven Trading Company. Such credit facilities were availed of by creating a mortgage by deposit of title deeds of the property described above. On account of the failure of the borrower to discharge the loan in terms of the relevant loan agreements, the loan was classified as a non-performing asset on 30.6.2021. Pursuant thereto, the Petitioner issued a Demand Notice dated 8.7.2021 under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002(The SARFAESI Act). In view of the failure of the third respondent to discharge the amounts due inspite of receipt of the notice under Section 13(2), the bank intends to take measures under Section 13(4) of the SARFAESI Act.

3.Before taking possession of the mortgaged property, the Petitioner intends to conduct a survey and demarcate the boundaries of such property. For such purpose, a representation dated 12.7.2021 was submitted to the first respondent. In spite of following up with the first respondent, it is stated that no action was taken even upon inspite of the issuance of a second representation dated 5.8.2021. The present Writ Petition is filed in the said facts and circumstances.

4.Mr.P.Subbaraj, learned counsel for the State, accepts notice on behalf of respondents 1 and 2. He submits that the Petitioner's representation may be considered and disposed of on merits after putting the third respondent on notice.

5.The documents on record indicate that the Petitioner is the mortgagee by deposit of title deeds in relation to the property described above. As a mortgagee, the Petitioner has an interest in the property. It also appears that a Demand Notice has been issued under Section 13(2) of the SARFAESI Act. It is unclear as to whether any measures have been taken under Section 13(4) of the above enactment. If measures have been taken under Section 13(4), the borrower concerned has the right to approach the jurisdictional Debts Recovery Tribunal under Section 17 of the above enactment. Therefore, it would be necessary to put the third respondent on notice before the Petitioner's request for survey is decided.

6.Subject to the above observations, but without going into the merits of the matter, the first respondent is directed to consider the Petitioner's representation dated 12.7.2021 requesting for a survey and dispose of the said representation by a reasoned order, after providing a reasonable opportunity to the Petitioner, the third respondent herein and the owners of adjoining properties, who may be affected by the conduct of survey. Such reasoned order shall be issued within three months from the date of receipt of a copy of this order. On account of the fact that the merits of the matter has not been gone into and because the first respondent has been



directed to provide a reasonable opportunity to the third respondent before deciding the Petitioner's request for survey, the Writ Petition is disposed of without notice to the private respondent.

7.W.P(MD)No15638 of 2021 is disposed of on these terms without any order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsn

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Tahsildar,
Tahsildar Office,
Madurai West Taluk,
Madurai.
- 2.The Taluk Surveyor,
Office of the Tahsildar,
Madurai West Taluk,
Madurai.

+1 CC to M/s.GP (SR-28054[F] dated 03/09/2021)

W.P(MD)NO.15638 OF 2021

02.09.2021

RD(13.09.2021) 3P 4C