



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE **N.KIRUBAKARAN**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P (MD) No.18333 of 2020

and

W.M.P (MD) Nos.15317, 15318 and 15320 of 2020

Rajamani

: Petitioner

Vs.

1.The Joint Director,
Central Bureau of Investigation (CBI),
3rd Floor, E.V.K.Sampath Building,
College Road, Chennai - 600 006.

2.The District Collector,
Thoothukudi District,
Thoothukudi.

3.The Sub-Collector /
Revenue Divisional Officer,
Beach Road, Thoothukudi.

4.The Sub Registrar(Joint II)
Sub Registrar Office,
Thoothukudi,
Thoothukudi District.

5.The Authorised Officer,
Canara Bank, Chidampara Nagar Branch,
Thoothukudi.

6.M.Raja

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus, to call for the records pertaining to the impugned orders dated, 05.05.2016 under Section 13(2) and dated 21.07.2016 under Section 13(4) of the SARFAESI Act, 2002 and a E-Auction notice, dated 12.08.2016 and the Sale Certificate dated 21.06.2017 issued by 5th Respondent and sale certificate Deed executed in favour of the 6th respondent as Document No.1417 of 2017, dated 29.12.2017 at Sub Registrar Office (Joint II), Thoothukudi and also the order passed by the 1st respondent under Section 14 of the SARFAESI Act, 2002 in Na.Ka.C4/34003/2018, dated 15.07.2019 and quash the same and consequently, direct the respondents 2 to 6 to hand over the possession of the house involved in this writ petition to the petitioner.



For Petitioner : Mr.R.Murugappan
For Respondent : Mr.R.Murugan
Nos.2 to 4 Additional Government Pleader
For Respondent : Mr.N.Dilip Kumar
No.5

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ORDER

[Order of the Court was made by **B.PUGALENDHI, J.**]

This writ petition has been filed as against the SARFAESI Proceedings initiated by the 5th respondent Bank and the E-auction notice, dated 12.08.2016, sale certificate, dated 21.06.2017 and sale deed in Document No.1417 of 2017 dated 29.12.2017.

2.Heard Mr.R.Murugappan, learned Counsel appearing for the petitioner, Mr.R.Murugan, learned Additional Government Pleader appearing for the respondents 2 to 4 and Mr.N.Dilip Kumar, learned Standing Counsel appearing for the respondent 5.

3.It is seen from the records that the petitioner has earlier approached this Court, as against the possession, notice issued under Section 13(4) of the SARFAESI Act, 2002 and as against the E-auction notice, dated 12.08.2016, in W.P(MD)No.17374 of 2016, wherein this Court has dismissed the writ petition by order dated, 15.09.2016, with a liberty to the petitioner avail the appeal remedy under Section 17 of the SARFAESI Act and the relevant portions of the order dated 15.09.2016, are extracted hereunder

"8. The issue as to whether the petitioner has created equitable mortgage or not? cannot be adjudicated under writ jurisdiction as it revolves on adjudication of factual dispute. Insofar as the interlocutory application filed by the petitioner for condonation of delay in filing application to set aside the ex parte preliminary decree is concerned, it is for the petitioner to approach the appropriate forum to work out his appeal remedy and this Court is not inclined to express any opinion in that regard. Be that as it may, the petitioner is having an effective appeal remedy under Section 17 of SARFAESI Act and in the light of the same, this Court is not inclined to invoke its extraordinary jurisdiction under Article 226 of the Constitution of India and therefore, the writ petition deserves for dismissal.

9. In the result, the writ petition fails and it is dismissed leaving it open to the petitioner to avail the appeal remedy under Section 17 of the SARFAESI Act, if he is so advised. No costs.



Consequently, connected miscellaneous petition is closed."

4. Even after obtaining an order from this Court, the present writ petition is filed as against the possession notice issued under Section 13(4) of the SARFAESI Act, 2002, dated 21.07.2016, the E-auction notice, dated 12.08.2016 and as against the consequential proceedings.

5. When the issue has already been decided by this Court in W.P (MD) No.17374 of 2016, this Court is not inclined to entertain this writ petition and therefore, this writ petition is dismissed. No Costs. Consequently miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Dsk

To

1. The Joint Director,
Central Bureau of Investigation (CBI),
3rd Floor, E.V.K.Sampath Building,
College Road, Chennai - 600 006.

2. The District Collector,
Thoothukudi District,
Thoothukudi.

3. The Sub-Collector /
Revenue Divisional Officer,
Beach Road, Thoothukudi.

4. The Sub Registrar (Joint II)
Sub Registrar Office,
Thoothukudi,
Thoothukudi District.

+1 CC to Mr.N.DILIP KUMAR, Advocate (SR-6544[F] dated 22/02/2021)

W.P (MD) No.18333 of 2020

19.02.2021