



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Writ Petition (MD).No.18300 of 2019

and

W.M.P. (MD) .Nos.14748 and 14749 of 2019

The Karur Vysya Bank,
represented by its Authorised Officer,
Asset Recovery Branch,
Mattuthavani - Melur Road,
Near Mattuthavani Bus Stand,
Madurai 625 017.

... Petitioner

Vs.

1.The District Collector,
Dindigul District,
Dindigul.

2.The Revenue Divisional Officer,
Kodaikanal,
Dindigul District.

3.The Tahsildar,
Kodaikanal Taluk,
Dindigul District.

4.The Commissioner,
Kodaikanal Municipality,
Kodaikanal,
Dindigul District.

5.M/s. D.S.Resorts,
A sole Proprietorship Concern
represented by its Proprietor D.Prabhu,
No.9/2B, Anandagiri 7th Street,
Kodaikanal,
Dindigul District.

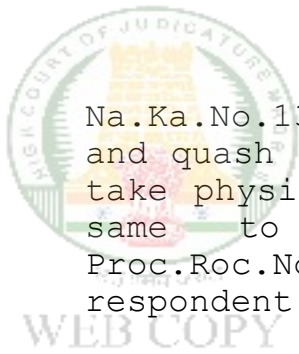
6.D.Santhanam

7.M.Dharmaraj

8.P.Priyadharshini

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order made in



Na.Ka.No.133/17/Aa1, dated 20.03.2019 passed by the third respondent and quash the same and consequently direct the third respondent to take physical possession of the subject property and hand over the same to the petitioner as per the order made in Proc.Roc.No.3353/2018/C1, dated 05.01.2019 passed by the first respondent within a time stipulated by this Court.

For Petitioner	:	Mr.D.Pala. Ramasamy
For R1 to R3	:	Mr.A.K.Manickam
		Standing counsel for Government
For R4	:	Mr.T.S.Mohammed Mohideen
For R5 to R8	:	No appearance

O R D E R

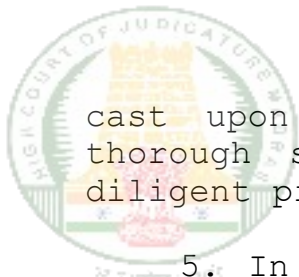
(Order of the Court was made by **T.S.SIVAGNANAM, J.**)

Heard Mr.D.Pala. Ramasamy, learned counsel appearing for the petitioner, Mr.A.K.Manickam, learned Standing counsel appearing for the respondents 1 to 3 and Mr.T.S.Mohammed Mohideen, learned counsel appearing for the fourth respondent.

2. This writ petition has been filed challenging the order passed by the third respondent in Na.Ka.No.133/17/Aa1, dated 20.03.2019 and to quash the same and consequently direct the third respondent to take physical possession of the subject property and hand over the same to the petitioner, as per the order passed by the first respondent in Proc.Roc.No.3353/2018/C1, dated 05.01.2019.

3. The petitioner is a secured creditor, who has advanced loan to the respondents 5 to 8. The loan appears to have been advanced for putting up a resort building and the borrowers are defaulted in repayment and their account has become Non-Performing Assets and action has been taken by the petitioner Bank for recovery of the amount, by initiating action under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (SARFAESI Act). The petitioner Bank approached the District Collector, Dindigul and filed a petition under Section 14 of the SARFAESI Act, for recovery of possession of the property and an order to the said effect was passed by the District Collector, on 05.01.2019. However, the Tahsildar, Kodaikanal Taluk, Dindigul District has informed the petitioner Bank by communication dated 20.03.2019, that he is unable to implement the order of the District Collector passed under Section 14 of the SARFAESI Act, on account of the direction issued by this Court, directing the locking and sealing of the building put up by the respondents 5 to 8 as the building is a total unauthorised construction.

4. The learned counsel appearing for the petitioner in reply would submit that in the impugned order, the Tahsildar has not commented upon the title to the property and no aspersion should be



cast upon the petitioner Bank which will advance money, after thorough scrutiny of title and following appropriate due and diligent procedure.

5. In such circumstances, the question would be as to whether the rights of the secured creditor can be made to stand on a higher pedestal than that of the public interest, which is involved in the matter, which is leading to locking and sealing of the unauthorisedly constructed building in Kodaikanal.

6. Under normal circumstances, we would have no hesitation to hold that the petitioner Bank shall proceed. However, the facts of the present case are very peculiar and the building has been locked and sealed for various violations and it is not clear as to the title of the property on which the building has been constructed, which according to the learned counsel for the Kodaikanal Municipality is not a valuable document and in such circumstances, this Court is of the view that the rights of the secured creditors have to yield to the public interest with which an action is directed to be taken against unauthorised and illegal constructions in Kodaikanal Hills. Therefore, at this juncture, we find there is no error in the order passed by the Tahsildar, Kodaikanal Taluk, Dindigul District, who is unable to implement the order passed by the District Collector, Dindigul District, under Section 14 of the SARFAESI Act. However, we are anxious by the fact that the petitioner Bank's money has to be protected. Therefore, we are inclined to issue certain directions.

7. For all the above reasons, the Writ Petition is dismissed and the order passed by the Tahsildar, Kodaikanal Taluk, Dindigul District is held to be valid and the petitioner Bank is directed to approach the Tahsildar, Kodaikanal Taluk, Dindigul District, with a representation clearly setting out on what basis loan was advanced to the respondents 5 to 8, the documents which they had produced before the Bank, the documents produced and mortgaged with the Bank and all records and after receipt of the same, the Tahsildar shall issue notice to the Kodaikanal Municipality as well as the respondents 5 to 8 and to conduct an enquiry and then pass a speaking order, on merits and in accordance with law. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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 District Collector,
Dindigul District,
Dindigul.
2. The Revenue Divisional Officer,
Kodaikanal,
Dindigul District.
3. The Tahsildar,
Kodaikanal Taluk,
Dindigul District.
4. The Commissioner,
Kodaikanal Municipality,
Kodaikanal,
Dindigul District.

+1 CC to M/s.T.S.MOHAMED MOHIDEEN, Advocate (SR-21115[F] dated 05/07/2021)

+1 CC to M/s.SPL GP (SR-21351[F] dated 06/07/2021)

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02.07.2021

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RC (13.07.2021) 4P 7C