



W.P.(MD) No.7181 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD) No.7181 of 2021
and W.M.P.(MD)No.5480 of 2021

KSM Educational and Charitable Trust,
Rep. by its Managing Trustee,
Mr.C.Bright, Melpalai,
Edaicode Post,
Edaicode Village,
Vilanvancode Taluk,
Kanyakumari District.

... Petitioner

Vs.

- 1.The District Collector,
Nagercoil,
Kanyakumari District.
- 2.The Authorized Officer,
Central Bank of India,
Regional Office, Rajamuthiah Mandram,



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Dr.Ambedkar Road,
Madurai.

3.The Thasildar,
Vilvancode Taluk,
Kanyakumari District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to unlock the College building in Survey No.R.Sy.No.445/5, 7 and 230/1, where the B.Ed., M.Ed., and M.Phil., courses are conducted so as to enable the students to continue their studies and use the library, laboratories and other instructional facilities.

For Petitioner : Mr.F.Deepak

For Respondents : Mr.M.Sarangan,
Addl. Govt. Pleader for R1 & R3
Mr.B.Rajesh Saravanan for R2

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the respondents to unlock the College building in Survey No.R.Sy.No. 445/5, 7 and 230/1, where the B.Ed., M.Ed., and M.Phil., courses are conducted



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so as to enable the students to continue their studies and use the library, laboratories and other instructional facilities.

2. It is the case of the petitioner that the Petitioner Trust is running Holy Trinity College of Education and for the purpose of running the School, the Trust has availed loan from the 2nd respondent bank, by mortgaging the property in the aforesaid survey number as security. Since there was some default in payment of the said loan amount, the second respondent initiated proceedings under the SARFAESI Act. The 2nd respondent bank issued a sale notice dated 14.12.2018. In the aforesaid sale notice, the property, in which the school and college buildings are situated, was brought to auction on 30.01.2019. Therefore, the Parents Teacher Association of Holy Trinity International School filed a writ petition before this Court in W.P.(MD)No.1296 of 2019 and this Court by order dated, 14.02.2019, dismissed the said writ petition. The second respondent thereafter, issued a fresh sale notice on 18.02.2019, fixing the date of auction on 29.03.2019, thereby the properties of the school and college were brought to sale. As against the said sale notice, the Parent Teacher Association



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has filed a writ petition in W.P.(MD)No.7457 of 2019 and this Court, by order dated 30.04.2019, dismissed the said writ petition. The 1st respondent on 08.03.2019, passed orders to take physical possession of the properties by the third respondent and hand over the same to the 2nd respondent under the SARFAESI Act. The petitioner has challenged the aforesaid order before this Court in W.P.(MD)No.11986 of 2019. This Court, by order dated 19.07.2019, dismissed the said Writ Petition, with liberty to file an appeal before the DRT concerned under Section 17 of the SARFAESI Act. As against the same, a Special Leave petition was filed before the Hon'ble Supreme Court in S.L.P.No. 12381 of 2020 and the same was dismissed by the Hon'ble Supreme Court. Pursuant to the aforesaid dismissal of the Special Leave Petition, the 3rd respondent has initiated action to lock and seal the property in question. Hence, the petitioner has filed the Writ Petition, seeking for the aforesaid relief.

3. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respective respondents and perused the materials available on record.



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4. Considering the facts and circumstances of the case, we are of the view that the prayer sought for by the petitioner is an omnibus prayer and therefore, such prayer cannot be granted in this Writ Petition. As against the order of the first respondent, the petitioner has an appeal remedy before the Debts Recovery Tribunal and without availing such remedy, the petitioner has filed this Writ Petition and therefore, this Writ Petition is not maintainable either in law or on facts and the same is liable to be dismissed.

5. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] [R.V., J.]

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Index : Yes / No

Internet : Yes / No

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and
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vsm

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