



W.P.(MD) No.1736 of 2017

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

AND

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.(MD)No.1736 of 2017
and
W.M.P.(MD)No.1414 of 2017

Adarsh

... Petitioner

-Vs-

- 1.The District Collector,
Kanyakumari District, At Nagercoil.
- 2.The Revenue Divisional Officer,
Nagercoil, Kanyakumari District.
- 3.The Authorized Officer (Chief Manager) /
Assistant General Manager,
Indian Bank, No.33, Madurai Road,
Tirunelveli Junction, Tirunelveli.



W.P.(MD) No.1736 of 2017

WEB COPY

4.The Assistant General Manager,

Indian Bank, No.33, Madurai Road,
Tirunelveli Junction, Tirunelveli.

5.The General Manager,

Indian Bank, Corporate Office,
No.254-260, Avai Shanmugam Salai,
Chennai-14.

6.The Deputy General Manager,

Indian Bank, GRR Building, Zonal Office,
Perumalpuram, Tirunelveli.

7.V.S.K.Radhakrishnan

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents 1 to 6 from taking forcible possession of the petitioner's property situated at No.242, Gopal Road, Vathyanathapuram, Kottar, Nagercoil, Kanyakumari District except due process of law contemplated under the Rent Control Act vide representation dated 23.12.2016.



WEB COPY

W.P.(MD) No.1736 of 2017

For Petitioner : Mr.P.Banuprasath
For R1 and R2 : Mr.S.P.Maharajan,
Special Government Pleader
For R3 and R4 : Mr.C.Jawahar Ravindran
For R5 to R7 : No Appearance

ORDER

[Order of the Court was made by R.MAHADEVAN, J.]

The prayer sought for in the Writ Petition is to forbear the respondents 1 to 6 from taking forcible possession of the property situated at No.242, Gopal Road, Vathyanathapuram, Kottar, Nagercoil, Kanyakumari District except by due process of law by considering his representation dated 23.12.2016.

2.The case of the petitioner is that he is a lessee of the property in question, which belongs to the 7th respondent. The petitioner has been regularly paying rent to the 7th respondent. In the meantime, the respondents 3 to 6 visited the property in question and informed that the 7th respondent has borrowed loan



W.P.(MD) No.1736 of 2017

WEB COPY

from the respondent Bank and since he failed to pay the dues, SARFAESI proceedings were initiated as against the property in question. In this regard, the petitioner has made a representation dated 23.12.2016 to the 1st respondent to prevent the 2nd respondent from taking forcible possession, followed by a reminder on 24.12.2016, but the same were not considered. Hence, this Writ Petition.

3.The learned counsel for the petitioner submitted that the petitioner is a tenant under the 7th respondent. As per the decision of the Hon'ble Supreme Court of India rendered in the case of *Vishal N.Kalsaria Vs. Bank of Indian and others* reported in **2016 (2) CTC 319**, once tenancy is created, a tenant can be evicted only after following due process of law as prescribed under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection given to the tenant. Thus, the learned counsel for the petitioner would pray for allowing this Writ Petition.



W.P.(MD) No.1736 of 2017

WEB COPY

4. Heard the learned counsel for the petitioner, the learned Special Government Pleader for the respondents 1 and 2 and the learned counsel for the respondents 3 and 4. There is no appearance for the respondents 5 to 7.

5. Admittedly, the 7th respondent is a defaulter of the respondent Bank. Hence, the respondent Bank initiated SARFAESI proceedings against the subject property, where the petitioner is residing as a tenant. As per the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, a tenant can be evicted only after following due procedure prescribed therein. Hence, it is always open to the respondent Bank to proceed further only by following due process of law.

6. With the above observation, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] & [J.S.N.P., J.]

21.09.2022

Index : Yes / No

Internet : Yes / No

Myr

Page 5 of 6



WEB COPY



W.P.(MD) No.1736 of 2017

R.MAHADEVAN, J.

AND

J.SATHYA NARAYANA PRASAD, J.

Myr

To

1.The District Collector,
Kanyakumari District, At Nagercoil.

2.The Revenue Divisional Officer,
Nagercoil, Kanyakumari District.

W.P.(MD)No.1736 of 2017

21.09.2022

Page 6 of 6