



W.P.No.32121 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : **10.04.2023**

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

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K.Dharma Prakash

... Petitioner

Versus

- 1.The District Collector,
Coimbatore District,
Coimbatore.
- 2.The Chief Manager/Authorized Officer,
Canara Bank, ARM Branch, (Asset Recovery Management),
West T.V. Samy Road,
R.S. Puram,
Coimbatore – 641 002.
- 3.The Tahsildar,
Madukkarai Taluk,
Taluk Office,
Madukkarai, Coimbatore.
- 4.The Inspector of Police,
Podanur Police Station, Podanur,
Coimbatore.
- 5.Mr.Natesan
- 6.MSE Industries,
Registered Partnership Firm,
Rep. by Mahesh Kumar,
No.57B, Anamalai Amman Kovil Street,



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L & T Bye-Pass Road,
Vellalore,
Coimbatore- 641 111.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents 1 to 5 to assist the Advocate Commissioner to take over possession of the auction property situated in G.S.No.74 /1B-2 an extent of 1.09^{1/2} Acres, in g.S.No.75/1-A an extent of 0.02 Acres, altogether 1.11^{1/2} Acres of land and building, Vellalore Village, Madukkarai Taluk, Coimbatore District by implementing the order passed by the Learned Chief Judicial Magistrate, Coimbatore in C.M.P.No.11612 of 2022, dated 15.06.2022 and hand over the same to the petitioner at the earliest point of time consequently to take appropriate action against the 6th respondent.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.P.Muthukumar,
State Government Pleader.
(for R1, R3 & R4)

: Mr.K.Rajesh, (for R2)

ORDER

Hon'ble Acting Chief Justice & D.Bharatha Chakravarthy. J.,

The Writ Petitioner is an auction purchaser of the subject matter property in the proceedings initiated under SARFAESI Act. However, inspite of an Order passed under Section 14 of the Act to enable the Bank to secure the possession of the secured asset, possession could not be taken and hence the writ petition.



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2. After considering the matter at length, in spite of the repeated attempts made by the Advocate Commissioner, as no police protection was given that too, even after a specific letter by the Learned Chief Judicial Magistrate, Coimbatore, on 30.03.2023, we passed the following order, which reads as follows:-

“K.Dharma Prakash, son of Kullasamy, a resident of No.1/865 T2, Prakash Garden, Pinethamil Nagar, Chettipalayam Road, Malumichampatti, Coimbatore, has been declared as a successful bidder in the public auction held by the Authorized Officer of Canara Bank, ARM Branch, Coimbatore, the second respondent herein, on payment of the entire bid amount. A sale certificate was issued by the second respondent on 30.5.2022 and the same was registered on 1.6.2022. When the second respondent took steps to take possession of the mortgaged property, the sixth respondent, who is a borrower, threatened the petitioner and the bank officials and enjoined them from taking possession, which compelled the respondent bank to approach the learned Chief Judicial Magistrate, Coimbatore, with an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for brevity, “the Act of 2002”] and the learned Chief Judicial Magistrate, Coimbatore, has also passed an order on 15.6.2022 in Crl.M.P.No.11612 of 2022 appointing an Advocate Commissioner to take physical possession of the property in question.

2. Learned counsel appearing for the petitioner would submit that when the Advocate-Commissioner made an attempt to take physical possession of the property belonging to the sixth respondent, the sixth respondent again threatened the Advocate



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Commissioner. Therefore, the Advocate-Commissioner has filed a memo before the learned Chief Judicial Magistrate, Coimbatore, who in turn, addressed a communication on 24.8.2022 to the Tahsildar, Madukkarai Taluk and the Inspector of Police, Podanur Police Station, respondents 3 and 4 herein, to extend assistance to the AdvocateCommissioner to take possession of the property.

3. Learned counsel for the petitioner further submitted that despite the order issued by the learned Chief Judicial Magistrate on 15.6.2022 in Crl.M.P.No.11612 of 2022, the Inspector of Police, Podanur, refused to give assistance to the Advocate-Commissioner which shows that the Inspector of Police is giving scant disregard to the order passed by the learned Chief Judicial Magistrate, Coimbatore. The non-rendering of the assistance by the Inspector of Police, Podanur, caused huge prejudice to the petitioner.

4. Learned counsel for the petitioner urged that, when the respondent bank held a public auction on 9.3.2022 of the property of the borrower so as to realise the loan amount, under the bonafide belief that the property going to be sold in the public auction by the second respondent is free from all encumbrances, the petitioner took part in the auction and on payment of the entire bid amount, he was declared as the successful bidder, following which sale certificate was issued in favour of him and the same was registered way back on 1.6.2022. However, on account of the non-cooperation of the Inspector of Police, Podanur, in extending requisite assistance to take physical possession of the property, for over almost one year, the petitioner, who is the auction-purchaser, is unable to reap the benefit of the auction sale.



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5. Adding further, learned counsel for the petitioner submitted that when there is a specific direction of the learned Chief Judicial Magistrate, Coimbatore, vide communication dated 24.8.2022 addressed to the Inspector of Police, Podanur; Tahsildar, Madukkarai and the Village Administrative Officer of Vellalore Village, to give assistance to the Advocate-Commissioner to take possession of the property, neither of them has come forward to provide assistance, which shows that they have scant disregard to the direction of the learned Chief Judicial Magistrate, Coimbatore. In view of the callous approach adopted by the Inspector of Police, Podanur; the sixth respondent has removed the fittings and machineries from the mortgaged property. Therefore, the petitioner has been advised to come to this Court.

6. Learned State Government Pleader appearing for respondents 1, 3 and 4, requested this Court to grant some time to ensure compliance of the direction issued by the learned Chief Judicial Magistrate, Coimbatore.

7. Considering the facts and circumstances of the case, we do not find any justification in granting time as sought by learned State Government Pleader. Despite repeated directions given by the learned Chief Judicial Magistrate, Coimbatore, till date the fourth respondent did not extend the requisite assistance to take possession of the secured asset. We, therefore, direct the fourth respondent to remain present in this Court on the next date of hearing along with an explanation (i) as to why action, including disciplinary action, should not be initiated against him for not rendering requisite assistance; and, (ii) as to why the fourth respondent should not be directed to reimburse the expenses incurred by the petitioner to pursue the present writ petition due to lapse committed by him.



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List the matter on 06.04.2023 at 2.15 P.M.”

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3. Pursuant thereto, *Mr.Natesan*, the Inspector of Police, Podanur Police Station, *Podanur*, was present before this Court for the hearing on 06/04/2023 and a counter/report is filed.

4. *Mr.P.Muthukumar*, Learned State Government Pleader, appearing on behalf of the respondent Nos.1, 3 & 4, filed the counter, in which it is submitted that now after the order of this Court, protection has been given and possession is handed over to the auction purchaser. The Inspector of Police has attempted to justify the conduct in not providing Police protection to the Advocate Commissioner for taking delivery of the property in the past. It is stated that on the first occasion, when the Advocate Commissioner gave a letter on 25.08.2022 for taking possession, on 29.08.2022, he was unable to provide the protection since there was a murder on the said date in the locality and he was engaged in the investigation of the said offence. Again, it is stated that when the Advocate Commissioner gave another letter on 26.09.2022, there was a tense situation prevailing in and around Coimbatore city on account of the ban on an organisation named “Popular Front of India”, and therefore, he could not give protection. Again in the month of October, 2022, there was a



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Cylinder blast, and therefore, he could not give protection.

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5. We are unable to accept the said explanation. It goes without saying that as the Inspector of Police, Podanur Police Station, *Podanur*, every day, the fourth respondent will be having duties to be attended to. It does not in any manner justify his continuous refusal to provide protection for the Advocate Commissioner to take possession of the property.

6. Needless to reiterate that the Advocate Commissioner is an Officer of the Court and that he is there to discharge the mandate in the Warrant issued by the Court. Therefore, it is the bounden duty of the fourth respondent to provide protection as sought for by the Advocate Commissioner.

7. Additionally in this case, considering the delay in the matter, the Chief Judicial Magistrate, noting that his orders are not carried into, had also issued a communication on 24.08.2022, inspite of which, the protection was not granted. If the fourth respondent had some other emergency situations, nothing prevented him from informing the Advocate Commissioner, of the time which would be convenient for him to provide



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protection. In this case, for about six months, absolutely no reply or response was given to the Advocate Commissioner.

8. The result is that, in the meanwhile, the erstwhile owner of the property, had illegally and stealthily removed the industrial shed and other fixtures, which are permanently attached to the property and which were sold to the auction purchaser, and thus, the auction purchaser is being put to grave prejudice.

9. Under these circumstances, only due to the clear failure on the part of the Inspector of Police, the order passed by the learned Chief Judicial Magistrate appointing an Advocate Commissioner could not be implemented, as a result, the borrower, in clear collusion with the Inspector of Police, had sold away the property. Secondly, the purpose for which the writ petitioner approaching the learned Chief Judicial Magistrate by moving the application has been defeated. Thirdly, the justification sought to be given by the Inspector of Police in the affidavit that there was an untoward incident on 29.08.2022, therefore, he was unable to provide police protection, in our considered opinion, is only a lame excuse. The reason is that it is the obligation and bounden duty cast upon the Inspector



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of Police to comply with the warrant by providing police protection, which

he has conveniently omitted to do so. That clearly indicates the act of misconduct and insubordination to the order passed by the Court, for which suitable departmental proceedings shall be initiated by issuing a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955 against the fourth respondent. Therefore, we direct the Superintendent of Police, Coimbatore to initiate appropriate departmental proceedings against the Inspector of Police, Podanur Police Station, who has been arrayed as the fifth respondent in his individual capacity, by issuing a charge memo and complete the inquiry within a period of six months time. This apart, we also direct the fifth respondent, to pay costs of Rs.25,000/- payable to the ***“Tamil Nadu Advocate Clerks Association, Chennai”*** within a period of two weeks from the date of receipt of a copy of this order.

10. The petitioner/auction purchaser will be at liberty to initiate appropriate proceedings, both civil and criminal against the erstwhile owner/borrower in accordance with law for high-handedly removing the permanent structures, which were auctioned/sold to him.



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11. With the above directions/observations, the Writ Petition

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(T.R., ACJ.) (D.B.C., J.)
10.04.2023

Index : Yes
Neutral Citation : Yes
Speaking Order

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To

- 1.The District Collector,
Coimbatore District,
Coimbatore.
- 2.The Tahsildar,
Madukkarai Taluk,
Taluk Office,
Madukkarai, Coimbatore.
- 3.The Inspector of Police,
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**T.RAJA, ACJ.,
AND
D.BHARATHA CHAKRAVARTHY, J.,**

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