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W.P. No. 32286 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 32286 of 2023

and

W.M.P. No. 31899 of 2023

M/s. Sri Azhagu Nachiamman Moder Rice Mill,
No. 44/4, Pasungayamangalam Road,
Kallakurichi Taluk & District – 606 202,
Represented by its Managing Partner,
Mr. K.Gananvel

... Petitioner

-VS-

1. The Tamil Nadu Industrial Investment Corporation Limited,
692, Anna Salai,
Nandanam,
Chennai – 600 035,
Represented by its Managing Director.

2. The Tamil Nadu Industrial Investment Corporation Limited
(A Government of Tamil Nadu Villupuram Branch Undertaking),
No. 23-A, Ranganathan Road (Hotel Woodlands Complex),
1st Floor, Chennai Trichy Trunk Road,
Villupuram – 605 602,
Represented by its Branch Manager.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned communication dated 07.09.2023 vide TIIC/VPM/LAO/2023-24 on the file of the Second Respondent and quash the same.



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W.P. No. 32286 of 2023

For Petitioner : Mr. V.Sundarraman

For Respondents : Mr. K.H.M.Afzal,
Standing Counsel

ORDER

Heard Mr. V.Sundarraman, Learned Counsel for the Petitioner and Mr. K.H.M.Afzal, Learned Standing Counsel, who takes notice for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. Since the Petitioner has defaulted in the repayment of the term loan borrowed from the Respondents, constructive possession of the secured assets had been taken on 05.09.2023 under Section 29 of the State Financial Corporation Act, 1951, and the Second Respondent by Proceedings No. TIIC/VPM/LAO/2023-24 dated 07.09.2023 has passed the following order:-

*“Sub: Financial assistance rendered – Default in
payment – Account foreclosed – Taken
constructive Possession of Collateral Security
(Land) – Reg.*

*Ref: Our letter No. TIIC/VPM/LAO/2023-24,
dt.08.08.2023.*



W.P. No. 32286 of 2023

WEB COPY

As you are aware that the properties mentioned below were taken constructive possession under **Section 29 of the State Financial Corporation's Act, 1951**, on **05.09.2023** (As is where is condition). A photocopy of the constructive possession magazar dated 05.09.2023 in this regard is enclosed. In spite of the recovery actions initiated by the Corporation, you have not taken any steps to regularise the loan accounts. Hence, you are hereby informed to clear the overdues within **SEVEN DAYS** from the date of receipt of this notice failing which the Corporation will bring the assets for sale by releasing advertisement in leading Daily News papers.

(In Rupees)

		67T0014	67T0018	Total
Principal	:	1,1875,663	27,00,000	1,45,75,663
Interest	:	8,04,831	2,16,578	10,21,409
Others	:	3,200		3,200
Total	:	1,26,83,694	29,16,578	1,56,00,272

***Interest charged upto 31.08.2023"**

The said order is challenged in this Writ Petition.



W.P. No. 32286 of 2023

WEB COPY

3. It is evident on a perusal of the impugned order passed by the Second Respondent that it is merely a show cause notice that has been issued to the Petitioner in this case. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in ***Union of India -vs- Kunisetty Satyanarayana*** [(2006) 12 SCC 28] that a charge memo or show cause notice cannot be challenged before the completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion. It would be useful here to extract the relevant passages from the said decision which read as follows:-

*“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide **Executive Engineer, Bihar State Housing Board -vs- Ramdesh Kumar Singh** [JT 1995 (8) SC 331], **Special Director -vs- Mohd. Ghulam Ghouse** (AIR 2004 SC 1467), **Ulagappa -vs- Divisional Commissioner, Mysore** [2001(10) SCC 639], **State of U.P. -vs- Brahm Datt Sharma** (AIR 1987 SC 943) etc.*

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is



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that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if



W.P. No. 32286 of 2023

WEB COPY

it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in the Writ Petition in reply to be submitted to the Second Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for the Court to interfere at this pre-mature stage of the matter.

4. In such circumstances, this Court without expressing any view on the merits of the controversy involved in the matter, passes the following order:-

- (i) it shall be incumbent upon the Petitioner to submit his explanation to the show-cause notice, which is impugned in this Writ Petition, if not done already, to the concerned authority within 15 days from the date of receipt of copy of this order;
- (ii) in the event of not being satisfied with the explanation submitted by the Petitioner, an enquiry shall be conducted following the prescribed procedure after affording full opportunity of personal hearing to the Petitioner to explain his position in that regard and a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written



W.P. No. 32286 of 2023

acknowledgment; and

(iii) if any adverse decision is taken, the Petitioner may pursue legal remedies in accordance with law.

In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petition is closed. No costs.

16.11.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 31.05.2024.

vjt

To

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Tamil Nadu Industrial Investment Corporation Limited,
692, Anna Salai,
Nandanam,
Chennai – 600 035.
2. The Branch Manager.
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W.P. No. 32286 of 2023

P.D. AUDIKESAVALU, J.

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