



W.P.(MD)No.2080 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.P.(MD) No.2080 of 2023

Jasper Raj

... Petitioner

-VS-

1.The District Collector,
Kanniyakumari District,
at Nagercoil.

2.The Branch Manager/Authorized Officer,
The Tamil Nadu Industrial Investment Corporation Ltd.,
Nagercoil Branch,
143, Cape Road,
Kannniyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to effect the delivery of physical possession mentioned in the schedule of property pursuant to the sale certificate, dated 05.05.2021 executed by the second respondent in favour of the petitioner and the proceedings in C4/43207/2021 dated 31.03.2022 on the file of the first respondent herein.



W.P.(MD)No.2080 of 2023

WEB COPY

For Petitioner : Mr.V.Illanchezian
For R-1 : Mr.V.Nirmal Kumar,
Government Advocate
For R-2 : Mr.S.Suresh for
M/s.Aiyar & Dolia

ORDER

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

This Writ Petition has been filed to issue a Mandamus directing the respondents to effect the delivery of physical possession mentioned in the schedule of property pursuant to the sale certificate, dated 05.05.2021 executed by the second respondent in favour of the petitioner and the proceedings in C4/43207/2021, dated 31.03.2022 on the file of the first respondent herein.

2. The second respondent namely Tamil Nadu Industrial Investment Corporation Limited, had brought the secured asset for sale and has sold the same to the petitioner on 04.02.2021. A certificate of sale was also issued to him on 05.05.5021. However, possession of the property was not handed over to the petitioner. Though the Corporation issued a certificate stating that the property has been delivered to the petitioner/auction



W.P.(MD)No.2080 of 2023

purchaser on 05.05.2021 and the purchaser has also signed the same, it is conceded that actual physical possession was not handed over to the auction purchaser. When the petitioner approached the District Collector, Kanniyakumari District, seeking possession, the District Collector clarified that if the secured creditor namely, the Tamil Nadu Industrial Investment Corporation Limited, files an application under the SARFAESI Act, 2002, action will be taken for delivery of possession. Thereafter, again on 31.03.2022, the District Collector, Kanniyakumari District, wrote to the second respondent Corporation annexing the documents received from the petitioner and requiring the Corporation to take action for delivery. The petitioner issued a notice to the Corporation requiring the Corporation to delivery actual physical possession to which a reply was sent by the counsel for the Corporation stating that the Corporation is not bound to hand over the possession and it had not given assurance of handing over actual physical possession. It is also pointed out in the said reply notice that the sale notice itself mentions that the Corporation has got only constructive possession.

3. The facts narrated above would show the highly irresponsible, negligible and careless manner in which the Corporation is behaved. Special provisions were made for recovery of due, to such irresponsible



W.P.(MD)No.2080 of 2023

Corporations under the SARFAESI Act, 2002. Apart from enabling them to sell the property of the debtor without intervention of the Court, a special machinery is provided under the Act to such Corporation to take possession of the property and hand over the same to the auction purchaser. All that the petitioner asked for is to invoke the provision under Section 14 of the SARFAESI Act, 2002 and seek possession through the District Collector or the Chief Judicial Magistrate. In view of the refusal to hand over possession to the auction purchaser, we firmly believe that the Corporation is in collusion with the debtor. We therefore, allow this writ petition directing the second respondent Corporation to file an application before the District Collector, within a period of ten days from today and the District Collector is directed to dispose of the said application filed under Section 14 of the SARFAESI Act, 2002, within a period of 30 days there from. It is made clear that the above time line shall be observed accurately. Any deviation therefrom will be viewed seriously. We will also not hesitate to initiate action under Section 14 of the Contempt of Courts Act, 1971. For its refusal to carry out the statutory obligations and having made the petitioner to approach this Court, the second respondent Corporation will pay cost of Rs.50,000/- (Rupees Fifty Thousand Only) to the petitioner, within a period of ten days from today.



W.P.(MD)No.2080 of 2023

WEB COPY

4. Post for compliance on 19.06.2023.

[R.S.M., J.]

[L.V.G., J.]

21.04.2023

NCC : Yes/ No

Index : Yes/No

Internet : Yes

PM



WEB COPY



W.P.(MD)No.2080 of 2023

R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

pm

W.P.(MD) No.2080 of 2023



WEB COPY



W.P.(MD)No.2080 of 2023

21.04.2023