



W.P(MD)Nos.6899 to 6901 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.04.2023

CORAM :

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

**W.P(MD)Nos.6899 to 6901 of 2023
and
WMP(MD)Nos.6451, 6455 and 6454 of 2023**

A.Rajagopal	... Petitioner in W.P.6899/23
Natwarlal	... Petitioner in W.P.6900/23
Udhay Singh	... Petitioner in W.P.6901/23
vs.	

1. The Chief Judicial Magistrate,
District Court Buildings, Madurai.

2. The Authorized Officer,
Catholic Syriyan Bank Ltd.,
Asset Recovery Branch,
2nd floor, Siva Complex,
54, Old post office road,
Coimbatore.

3. G.R.T.Thangapandian ... Respondents in all WPs

PRAYER in all WPs : Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the 2nd respondent to de seal and restore the possession of the tenant premises in New Door No.42, T.S.No.379, Velliambala Street, Madurai Town, by considering the petitioners' representation dated 24.03.2023.



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For Petitioners(in all WPs)	: Mr.A.B.Jeeva
For R2	: Mr.S.Babu
For R3	: Ms.A.Banumathy

COMMON ORDER

(Order of the Court was made by R.SUBRAMANIAN, J.)

These writ petitions are by persons who are claiming to be tenants of a secured asset, possession of which has been taken by the Bank with the active help of its counsel on record in execution of the order of the Chief Judicial Magistrate passed under Section 14 of the SARFAESI Act. Though the presence of the counsel for the Bank at the premises raises eyebrows, we do not propose to go into that at present, as the other controversy is much more serious than the conduct of the counsel in being present at the spot of execution.

2. The petitioners who claim to be tenants of the building would submit that they have no notice prior to taking possession. The learned counsel for the borrower would submit that the application of the borrower challenging the possession order, filed pursuant to the direction of this Court in the earlier writ petition, is pending before the Debts Recovery Tribunal at the condone delay



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stage. The counsel for the Bank appeared before the Debts Recovery Tribunal, took time for counter and before the next hearing date, the Bank took possession in execution of the order of the Chief Judicial Magistrate. The conduct of the Bank in taking possession after having taken adjournment before the Debts Recovery Tribunal is in bad taste. While the counsel for the petitioners would rely upon the judgment of the Division Bench of this Court in **A.Mohamed Bowmi and others vs. The Chief Judicial Magistrate, Dindigul and others (W.P(MD)Nos.16622 to 16634 of 2022, dated 01.08.2022)**, the learned counsel for the Bank would rely upon the judgment in **Bajarang Shyamsunder Agarwal vs. Central Bank of India and another** reported in **(2019) 9 SCC 94**.

3. We have our own doubts as to whether the Bank could take possession of a premises from a third party without notice to such third party. If we are to accept the argument of the learned counsel for the Bank that the Bank is entitled to take possession from any person without notice to such person immaterial of the rights claimed by such person, Section 17(4A) of the SARFAESI Act,



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which empowers the Debts Recovery Tribunal to decide on the validity of the leases and the protection that could be given to genuine tenants, would be rendered a dead letter.

4. Section 17(4A) of the SARFAESI Act empowers the Debts Recovery Tribunal to examine whether a lease has expired or stood determined or is contrary to Section 65A of the Transfer of Property Act, 1882, or is contrary to the terms of the mortgage or is created after the issuance of notice of default and demand by the Bank under sub-section (2) of Section 13 of the SARFAESI Act. Once the Debts Recovery Tribunal is empowered to consider these issues, it has to be assumed that a person who claims certain rights over the secured asset as a tenant has to have notice of the action of the Bank, so that he could approach the Debts Recovery Tribunal. If we are to hold otherwise, all applications claiming tenancy will be by tenants who are dispossessed by the Bank in execution of the order of the Chief Judicial Magistrate. No doubt, the Debts Recovery Tribunal is given the power to restore possession.

5. We have an unfortunate situation where the Debts



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Recovery Tribunal at Madurai is not manned and the unfortunate tenant of the borrower has to approach the Debts Recovery Tribunal situate at 450 kilometers away at Coimbatore which often refuses to entertain Madurai matters even on urgency. Creation of Tribunals and creation of mechanisms in such Tribunals to decide certain dispute is the domain of the law makers, but such Tribunals created should also be manned properly, so that the rights of the litigants are protected. It is claimed in the case on hand, a mother and her six month old child were booted out of the premises and the premises was locked.

6. We do not think that, for the sin of the borrower in not repaying his debt, a tenant should suffer such ignominy, at least, that is not the purpose for which Courts exist. Emotions apart, the Bank has to get its money. It is stated that a sum of Rs.38,46,814/- is due as of today.

7. Considering the circumstances and with a view to protect the interest of all the parties, the writ petitions are disposed of with a direction to the Bank to restore possession to the petitioners on



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payment of Rs.10,00,000/- (Rupees Ten Lakhs only) by the third respondent/borrower to the Bank. The remaining amount shall be paid in six equated monthly instalments commencing from 20th of May 2023. The subsequent instalments shall be paid on or before the 20th of succeeding months. The interest that accrues during the interregnum shall be paid along with the last instalment. In the event of default in payment of the money as aforesaid, the Bank will be at liberty to take re-possession. No costs. Connected miscellaneous petitions are closed.

(R.SUBRAMANIAN, J.) & (L.VICTORIA GOWRI, J.)
06.04.2023

Index : Yes / No
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Neutral Citation : Yes / No
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To

The Chief Judicial Magistrate,
District Court Buildings,
Madurai.



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

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COMMON ORDER MADE IN
W.P(MD)Nos.6899 to 6901 of 2023
DATED : 06.04.2023