



W.P.(MD)No.21280 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

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1.M.Lingaraja

2.T.Ravichandran

... Petitioners

Vs.

1.The Authorised Officer,
Canara Bank,
Meenakshipuram,
Nagercoil.

2.The Manager / The Authorized Officer,
Canara Bank,
St. Rita's Convent Branch,
Ramanputhur Junction,
Nagercoil – 629 002.

3.K.Jeyaraghavan
(R3 is added vide Court Order dated
31.08.2023 in W.P.(MD) No.21280
of 2023 by CJ and CKJ)

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to directing the respondents to take necessary steps in



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accordance with law to put the petitioners in the Possession of the Property at New S.No.270/20, to a total extent of 3.5 Cents including the House and vacant site situated in Puthanthurai Post, Thamarapuram, Kanyakumari @ Nagercoil Sub Registration District, on the basis of Sale Certificate dated 23.02.2021 issued by the First Respondent under the SARFAESI Act, based on the representation of the petitioner dated 15.07.2023 on merits and in accordance to law within time frame.

For Petitioners : Mr.M.Dinesh Kumar

For Respondent : Mr.Deepak,
Standing Counsel for R1 & R2

Mr.G.Cenil for R3

ORDER

(Order of the Court was made by ***S.M.SUBRAMANIAM, J.***)

The Writ of Mandamus has been instituted to direct the respondents to take necessary steps in accordance with law to put the petitioners in the possession of the property at New S.No.270/20, to a total extent of 3.5 Cents, including the House and vacant site situated in Puthanthurai Post, Thamarapuram, Kanyakumari @ Nagercoil Sub Registration District, on the basis of Sale Certificate dated 23.02.2021 issued by the first respondent under the SARFAESI Act.



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2. It is not in dispute between the parties that the subject property was auctioned through public auction. The petitioners are the successful purchasers and deposited the entire sale price. Accordingly, Sale Certificate was issued under Rule 9(6) of SARFAESI Rules. Sale Certificate issued by the authorised officer was registered under the Registration Act vide document No.2461 of 2021.

3. The grievances of the petitioners are that the authorised officer has failed to hand over possession of the property. In this regard, the learned counsel appearing on behalf of the bank made a submission that the Advocate Commissioner appointed had already taken possession of the subject property and it is kept under lock and key. The bank is unable to open the lock and key in view of possible dispute between the borrower and the purchaser.

4. Learned counsel appearing on behalf of the third respondent / borrower made a submission that an application seeking appropriate relief is pending before the Debts Recovery Tribunal.

5. We have considered the facts and circumstances raised between the parties. Auction Sale was completed, Sale Certificate was issued and it was



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registered. Therefore, the auction purchasers are entitled to take possession. If at all the borrower succeeds before Debts Recovery Tribunal, he is at liberty to take further actions. However, now the auction purchasers need not be deprived of taking possession un-necessarily since the auction purchasers had already deposited the entire sale price.

6. In view of the facts and circumstances, the lock and seal in the subject property is directed to be removed in the presence of the borrower, authorised officer and the auction purchasers. The borrower / erstwhile owner is permitted to take his belongings and movables from the subject premises and cooperate for handing over of possession to the auction purchasers. The said exercise is directed to be completed by all the parties jointly within a period of four weeks from the date of receipt of a copy of this order. In this regard, the respondent Bank is directed to issue notice to all the parties by fixing the date and time for handing over of possession and for removal of belongings of the erstwhile owners.



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7. Accordingly, the Writ Petition stands Allowed. No costs.

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(S.M.S., J.) & (R.K.M., J.)
03.11.2023

NCC : Yes / No
Index : Yes / No

SJ



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