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W.P.(MD) No.23573 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P.(MD) No.23573 of 2023
and
W.M.P.(MD) Nos.19768, 19771 & 19772 of 2023**

V.Vishalakshi

... Petitioner

-VS-

1.The District Collector
Sivagangai
Sivagangai District

2.The Tahsildar
Taluk Office
Singampunari
Sivagangai

3.The Authorized Officer
Indian Bank
Thallakulam Branch
Madurai

4.The Manager
Canara Bank
Tenampet Branch
Annasalai, Chennai

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records in pursuant to the second respondent impugned order dated 20.09.2023 and quash the same consequently direct the first respondent to pass appropriate order in the light of the order passed in Civil Appeal No.6295 of 2015, dated 23.09.2019 and order passed in W.P.(MD) No.24885 of 2022, dated 31.08.2023, in accordance with law.

For Petitioner : Mr.J.John

For Respondents : Mr.M.Lingadurai
Special Government Pleader for R1 & R2
Mr.N.Dilip Kumar
Standing Counsel for R4

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

Mr.M.Lingadurai, learned Special Government Pleader, takes notice for the respondents 1 & 2 and Mr.N.Dilip Kumar, learned Standing Counsel, takes notice for the fourth respondent – Canara Bank.



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2. This vexatious litigation is by a person, who lost his property by way of a public auction in the year 2008.

3. It is admitted by the petitioner that he borrowed money from the third respondent – Indian Bank and on account of default in repayment of the loan amount, proceedings were initiated under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, “SARFAESI Act”) as against the mortgaged property. The property, which is the subject matter of this writ petition, was sold in a public auction in the year 2008. The petitioner, who admits the sale which took place in the year 2008, has also stated that he had a sale agreement with the auction purchaser and filed a suit for specific performance to enforce the sale agreement. It is admitted by the petitioner the auction purchaser had sold the property to a third party, by name, Ravindran.

4. In these circumstances, the petitioner is now challenging the order dated 20.09.2023, passed by the second respondent directing the petitioner to hand over the physical possession of the property and to direct the first respondent to pass appropriate orders in the light of the order, dated



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23.09.2019 passed by the Honourable Supreme Court in Civil Appeal No.6295 of 2015 and order dated 31.08.2023, passed by this Court in W.P.(MD) No. 24885 of 2022, in accordance with law.

5. It is seen that the second respondent is only the Tahsildar, who has been directed by the District Collector to take possession of the mortgaged property. When the property has been sold in the public auction and the sale has also been completed, the petitioner has no subsisting right over the property, which is already sold to the auction purchaser. The petitioner, who has lost the property, is now trying to make the property encumbered by his frivolous litigations.

6. It is now admitted before this Court that the civil appeal, which was pending before the Honourable Supreme Court, has also come to an end and the petitioner has nothing to take advantage by the disposal of the civil appeal, which is relating to the power and jurisdiction of either the Chief Judicial Magistrate or the District Collector conferred under Section 14 of the SARFAESI Act.



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7. Despite the fact that the petitioner has lost all his efforts in stalling the auction of the property at different stages, now he challenges the order, by which he will have to hand over the physical possession of the property. All along the petitioner is holding the property without any right. The sale, which has become final during 2008 itself, is acknowledged by the petitioner himself. The suit filed by the petitioner as against the auction purchaser for specific performance would only show that the petitioner is now trying to enforce his right under a contract as an agreement-holder in respect of the same property, which originally belonged to him. In these circumstances, this Court is of the view that this writ petition is liable to be dismissed with costs.

8. Accordingly, this writ petition is dismissed with costs of Rs.10,000/- (Rupees ten thousand only), payable by the petitioner within a period of two weeks from the date of receipt of a copy of this order to the credit of Account No.7567821433, Indian Bank, High Court Branch, Madurai in the name of Registrar Judicial, Madurai Bench of Madras High Court, Madurai, for donating law books to a Separate Section in the name of "Madurai Bench



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of Madras High Court” in Kalaingar Centenary Library, Madurai.
Consequently, connected miscellaneous petitions are closed.

9. After dismissal of the writ petition, learned counsel for the petitioner made a request that the petitioner may be permitted to take back his immovables and goods available inside the house, which is sought to be taken possession.

10. Learned Standing Counsel appearing for the fourth respondent – Canara Bank / Lending Bank has no serious objection for considering the above request of the learned counsel for the petitioner.

11. In view of the above, the petitioner may approach the respondent – Bank by submitting a representation for taking back his immovables and goods available inside the premises. In such an event, the respondent – Bank may positively consider the petitioner's request to take back his movables and goods by fixing a particular time.



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12. Post this writ petition 'for reporting compliance' on
16.10.2023.

[S.S.S.R., J.]

[D.B.C., J.]

27.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

1.The District Collector,
Sivagangai,
Sivagangai District.

2.The Tahsildar,
Taluk Office,
Singampunari,
Sivagangai.



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