IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:21.03.2025

Coram:

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.10339 of 2025

K.Jayashree
W/o.S.Krishnamoorthy,
No.C-7, Merchant Street,
Block-19, Neyveli- 607 803,
Cuddalore District. ..Petitioner

/versus/

1.The District Collector
Chengalpattu District,
Collectorate, GST Road,
Chengalpattu- 603 001.

2.The Tahsildhar
Chengalpattu Taluk,
Taluk Office, VOC Nagar,
GST Road, Chengalpattu-603 001.

3.The Sub Registrar,
Guduvancherry,
No.21, Grand Southern Trunk Road,
Jaibeem Nagar, Guduvancherry-603 202.

4.M/s.DVS Developers Private Limited
Rep By Its Managing Director K.Mahesh,
Door No.56, 13th Cross Street,

Natarajapuram South Colony,
Medical College Road,
Thanjavur Taluk, VOC Nagar,
Thanjavur District.

5.M/s.Sri Vignesh Builders
Rep By Its Proprietrix M.Shanthi Mahesh,
Door No.56, 13th Cross Street,
Natarajapuram South Colony,
Medical College Road, Thanjavur Taluk,
VOC Nagar, Thanjavur District.

6.The Principal Secretary,
Revenue and Disaster Management Department,
Government of Tamil Nadu,
Secretariat, St.Fort George,
Chennai. ..Respondents
(R6-suo motu impleaded as per Order
Dated 21.03.2025 in W.P.No.10339/2025 by DBCJ)

Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 1st and 2nd respondents to execute the Recovery Warrant dated 25.04.2024 in E.P.Nos. 09 of 2024 issued under Section 40 (1) of RERA Act, 2016 by Adjudicating Officer, TNRERA by way of auctioning the project property namely DVS DHARSHIN PARK situated in R.S. Nos. 346/1A1, 346/6, 349/1A, 349/2E, 349/6A, 346/1A, 346/1B1, 349/1B, 347/5, 349/2B, 349/2C, 349/2D, 346/1B2, 346/4, 346/5 346/8, 346/9, 349/9, 349/10, 349/11, 349/12A, 346/1B, 349/6B, 349/7A, 349/7B old Nos. 344/2A, New Nos.344/2A2A, 344/2A/2A, 347/5B, 347/5C in No.7

Karanaipuducheri Village, Chengalpet Taluk, Chengalpet District and direct the 3rd Respondent to not to entertain any registration of documents in the project property namely DVS Dharshin Park by considering the petitioners representation dated 01.12.2024.

For Petitioner	**:**M/s.V.Rajesh Babu
For Respondents	**:**Dr.S.Surya, A.G.P., for R1 & R2 Mr.R.Sasikumar, Govt.Advocate for R3 Mr.E.Vijay Anand, AGP for R6(Impleaded party)

ORDER

The Writ Petition is for Mandamus directing the first and second respondents to take action on the Recovery Warrant dated 25.04.2024 issued in E.P.No.9 of 2024 passed under Section 40(1) of the Real Estate Regulation Act 2016(in short “RERA Act, 2016). By taking action with reference to the specific properties, that are mentioned by the petitioner.

2.When the matter came up for admission, Dr.S.Suriya, learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 would submit that already a demand notice in Form-1 is issued directing the concerned builders to pay the amount and only on expiry of the notice period, further action can be taken.

3.It can be seen that under the RERA Act, 2016, the authority passes the award indicating the compensation/return of the price money, that is to be returned/paid by the builders concerned to the purchasers or the affected persons. The matter does not stop there. The affected persons have to file the execution petition. Once again, after enquiry in the execution petition, the recovery warrant is issued. Once the recovery warrant is issued under Section 41 of the Act, the amount becomes recoverable as the arrears of land revenue. Once the recovery warrant is forwarded to the District Collector, the District Collector has to follow the provisions of the Tamil Nadu Revenue Recovery Act, 1864, to realise the said amount. The declaration as if it is the arrears of land revenue in terms of Section 4 is done by the RERA Act, 2016 itself and as such, it becomes an amount to be recovered as per Section 5 of the Act. Therefore, there are more than one ways of recovering the said amount. The Act provides to proceed both against the movable property and against the immovable property. There is no any bar to proceed against both simultaneously.

4.In all cases of recovery, the District Collector shall endeavour to proceed in both manner. Firstly, after ascertaining the address of the concerned person, and the kind of movables that are there, the Collector, through the concerned Tahsildar and the Revenue Inspector/ Village Administrative Officer, endeavour to ascertain the address of the defaulting concern and ascertain the movables that are present in their address. Whatever the moveables that are present, for example in case of in an office, sofa set, television, air conditioner, fans, chairs, almirahs, telephones etc., can be ascertained and immediately thereof, the procedure under Section 8 can be followed for passing the distraint order. The distraint procedure envisages the issue of a demand in writing, that is also termed as a distraint notice, wherein an opportunity is given to the concerned person to pay the amount, failing which the movable is mentioned therein, will be distrained. Thereafter, it has to be followed by the second notice of distraint. If the amount is paid, the same can be recorded as per Section 10. The amount is not paid, then the procedure under Section 9 onwards have to be followed. The distraint warrant has to be transmitted and the movable properties have to be taken away and sold as per the Provisions of the Act, specifically Sections 20 to 24 of the Act. This apart, if the aggrieved party provides the particulars of the immovable properties, or in the absence thereof, the District Collector either personally or through the Tahsildar or the Subordinate Officials, may take steps to identify the immovable properties, that are owned by the defaulting concern. Once the immovable properties are ascertained, the notice of demand as per Section 25 has to be issued thereof. If the amount is not paid, thereafter, the authorities have to sell the properties by following the procedure of attachment under Section 27 and sale under Section 36.

5.In this case, though it is clear that the demand is issued under Section 25, the authorities will proceed further with the attachment and the sale. The petitioner himself has furnished the RS numbers that are owned by the said defaulting persons. Therefore, straight away further action with reference to attachment and sale, can be resorted to once the amount is not paid as per the demand notice. In the meanwhile, the distraint proceedings can also be taken with reference to the movable properties. The authorities shall act within a period of one week, from the date of receipt of the web copy of the order, with reference to the movable properties. Also, the authorities may ensure the early recovery of the amount. The Writ Petition is disposed of at the admission stage with the above directions. No costs.

6. It is made clear that the this Court has not decided the finality of the order as no notice was served on the respondents 4 and 5. If the respondents 4 and 5 produce any order of the Appellate Authority, then it would be open for the District Collector to act as per the said order.

7. For the clarity of the authorities, Standing Order No.41 of the Board of Revenue Standing Orders lucidly explains, how these procedures

have to be followed with reference to both the moveables as well as immovables. The same can be adhered to. The authorities have to take action not only with reference to the person like, the petitioner. In many cases the authorities are finding it difficult even to recover the similar amounts due, such as penalties issued under the Mines Minerals Act etc., which are due to the Government. Therefore, a copy of this order shall be marked to the Principal Secretary to Government, Revenue and Disaster Management, Secretariat, Fort St.George, Chennai. While reiterating the Standing Order, the Secretary may endeavour to issue a circular whereby, the procedure as detailed under the Act and the standing order, can be lucidly explained to the authorities and a further time-line can also be drawn and issued to the authorities, in detail, so that it will be easier for the concerned authorities,namely District Collectors or the authority, whosoever it may be to follow the same. Care must be taken to include such authorities to periodically issue communications to the concerned authorities on the progress made, because in many cases, this Court finds that even though fine was imposed under Rule 36-A in the years 2002, 2003 etc., no proceedings at all have been initiated under the Revenue Recovery Act ever after 20 or 23 years and the file is kept pending for years together.

8. Therefore, there must be a time-line and if necessary, an integrated portal can also be created for the purpose of taking action under the Revenue Recovery Act, in which both the request-making authority and the enforcing-authority can have a preview of it and follow up the timely action.

9. Post the matter on 17.04.2025 for "reporting compliances".

21.03.2025

Neutral citation:no

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D.BHARATHA CHAKRAVARTHY,J.

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