

Valluvar Guide Technical vs M.Dinakaran on 22 February, 2016

Bench: Satish K. Agnihotri, M.Venugopal

In the High Court of Judicature at Madras

Reserved on : 15.02.2016

Dated : 22.02.2016

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.41051 of 2015
and
M.P.Nos.1 & 2 of 2015

Valluvar Guide Technical
Training College
rep. by its Correspondence G.Anjali,
Karur Main Road, Solar Pudur,
Modakkurichi Union,
Erode-638 002.

.. Petitioner

Vs.

1.M.Dinakaran

2.T.Devakumar

3.M/s.Indian Bank
rep. by its Authorised Officer,
Mr.A.S.Kalyanakumar,
The Authorised Officer/Chief Manager,
E.R.A.Puram Branch,
Chennai-600 028.

4.The District Collector,
Erode District, Erode.

5.The Land Revenue Inspector,
Modakurichi Circle,
Erode.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ o

For Petitioner : Mr.L.Chandrakumar
for Mr.M.Mariappan

For R 1 : Mr.A.Arumugam for
Mr.J.Arul Prakasam

For R2 : No Appearance

For R3 : Mr.Jayesh B.Dolia for
M/s Aiyar & Dolia

For R4 & R5 : Mr.P.V.Sivashanmugasundaram
Special Government Pleader

O R D E R

M.VENUGOPAL, J.

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the entire records pertaining to the proceedings of the Third Respondent/Bank in its letter dated 16.12.2015 and to quash the same. Further, it has sought for restraining the Respondents 3 to 5 from in any manner taking possession of the property situated in Site Nos.12, 17 & 18 in R.S.No.9/1 of Punjai Lakkapuram Village, Erode Taluk comprising an extent of 7130 sq. ft except otherwise then in accordance with the guidelines issued by the Hon'ble Supreme Court in Harshad Govardhan Sondagar V. International Assets Reconstruction Co., Ltd., & Others [CDJ 2014 (SC) 297].

2.According to the Correspondence of the Petitioner's Training College, she is running the institute at land and building situated in Site Nos.12, 17 & 18 in R.S.No.9/1 of Punjai Lakkapuram Village, Erode Taluk comprising an extent of 7130 sq. ft. For running the Technical Training Centre, permission from the authorities was obtained in the year 1979 and further that the Institute is functioning at Karur Main Road, Solar Pudur, Mudakurichi Union, Erode on a monthly rent of Rs.15,000/-.

3.The stand of the Petitioner is that the First Respondent is the owner of the land and building in question. As a matter of fact, the 'Tenancy Agreement' dated 05.02.2010 is for a period of 11 months and to be renewed from time to time. In fact, the tenancy expires on 04.06.2016. The Third Respondent/Indian Bank, Chennai with the assistance of Land Revenue Inspector, Mudakurichi Circle, Erode by the impugned proceedings had taken inventory and sealed the institution.

4.The prime plea taken on behalf of the Petitioner is that as a valid tenant, the Petitioner was not issued with any notice in regard to the impugned proceedings and on enquiry with the First Respondent/Landlord, the First Respondent/Landlord had stated that the property in question was given as collateral security on 15.02.2010 by means of 'Deposit of Title Deeds' for the amount borrowed by the Second Respondent. Moreover, for the fraud committed by the Second Respondent, a FIR dated 30.09.2010 was registered by the Superintendent of Police, CBI/ACB, Chennai and charge sheet was also filed.

5.The real grievance of the Petitioner is that there are about 70 students undertaking the studies and the examinations is due to commence from 21.01.2016 to 22.02.2016 and further regular classes are conducted. Under such circumstances, on 16.12.2015, the Third Respondent/Indian Bank through the Fifth Respondent/Land Revenue Inspector, Mudakurichi Circle, Erode had locked the premises and directed to make arrangements for lifting the movable properties listed in the impugned proceedings by 31.12.2015.

6.The Learned counsel for the Petitioner urges before this Court that in the impugned proceedings in Na.Ka.No.96636/D2 dated 16.12.2015, it was mentioned that the possession was taken but the Petitioner was not served with any notice and also the possessory right of the Petitioner was not enquired into (which comes to an end on 04.06.2016). As such, the impugned proceedings dated 16.12.2015 of the Third Respondent/Bank are in breach of the Principles of Natural Justice.

7.The Learned counsel for the Petitioner projects an argument that the Petitioner is in possession of the property from 05.02.2010 prior to the mortgage dated 15.02.2010 and its tenancy has not been determined till date. Therefore, the plea taken on behalf of the Petitioner is that the impugned proceedings are unsustainable in the eye of Law.

8.The Learned counsel for the Petitioner submits that the Rental Agreement dated 05.02.2010 between the First Respondent and the Petitioner (originally for a period of 11 months from 05.02.2010 to 04.01.2011) was extended periodically for 11 months and lastly, it was extended for 11 months on 26.07.2015 which expires on 25.06.2015.

9.The Learned counsel for the Petitioner strenuously contends that the Fourth Respondent/District Collector, Erode have enquired about the possessory right of the Petitioner and also that the Third Respondent/Indian Bank, Chennai ought to have intimated the Fourth Respondent/District Collector, Erode about its rights. Till date, no such acts were performed either by the Third Respondent or Fourth Respondent, on that score also the impugned proceedings are liable to be quashed.

10.In oppugnation, the Learned counsel for the Third Respondent/Bank submits that on earlier occasion, the First Respondent projected W.P.Nos.13423 to 13425 of 2012 before this Court assailing the measures taken by the Bank under the SARFAESI Act and later, the writ petitions were dismissed as withdrawn. At this stage, the Learned counsel for the Third Respondent/Bank brings it to the notice of this Court that the property in question was mortgaged to the Bank by the First Respondent who stood as a guarantor for the loan availed by the Second Respondent. Inasmuch as

the borrower committed default in repaying the amounts due, a demand notice under Section 13(2) of the Act was issued during September 2010 and that possession of the property was taken under Section 13 (4) of the Act. Indeed, in two newspapers viz., Trinity Mirror and Makkal Kural dated 19.10.2010, publication was effected.

11.The Learned counsel for the Third Respondent/Bank proceeds to take a stand that the borrower/guarantor took no steps to repay the due sum of Rs.55,39,888/- payable as on 20.08.2010, the sale notice was published in the newspaper on 13.03.2011 inviting tenders to be opened on 20.04.2011. Since there was no bidder, the sale was renotified for the auction sale to be conducted on 09.08.2011. On 09.08.2011, one N.G.Loganathan, who offered a sum of Rs.35.05 lakhs was declared as successful and the sale was confirmed in his name. Ultimately, W.P.Nos.13423 to 13425 of 2012 filed by the First Respondent were dismissed as withdrawn on 05.08.2014.

12.Advancing his argument, the Learned counsel for the Third Respondent/Bank draws the attention of this Court to the fact that the aforesaid Loganathan had remitted the entire sale consideration and therefore, the sale certificate was issued in his favour on 31.08.2015 and the same was registered on 10.09.2015 in the office of the Sub Registrar of Assurances, Aralpoondurai. It appears that the auction purchaser is not impleaded as a party in the present Writ Petition filed by the Petitioner.

13.Expatiating his contention, the Learned counsel for the Third Respondent/Bank submits that by means of proceedings in Na.Ka.No.96636/D2 dated 18.04.2014, the Fourth Respondent/District Collector, Erode had issued a direction for taking possession of the 'Secured Assets' and in fact, a copy of the proceedings was forwarded to the Principal of the Petitioner's Institute namely, one Santhakumar. In reality, the copy of the proceeding was also transmitted to the First and Second Respondents, which fact was suppressed by the Petitioner. Added further, the First Respondent challenged the proceedings of the Fourth Respondent/District Collector, Erode dated 18.04.2014 before this Court in W.P.No.13525 of 2014 and the same was dismissed by this Court on 05.08.2014.

14.The Learned counsel for the Third Respondent/Bank submits that in W.P.No.13423 of 2012, a counter was filed by the Bank to the effect that during the subsistence of a valid mortgage, the First Respondent sold the property/Secured Assets to one V.Durairaj under Document No.3047 of 2011. As such, the First Respondent is not the owner of the property and the tenancy is sham and nominal.

15.The Learned counsel for the Third Respondent/Bank contends that the purported 'Rental Agreement' dated 05.02.2010 was entered into between the Petitioner and the First Respondent after the creation of 'Equitable Mortgage' during November 2009. As such, it is the stand of the Bank that the mortgagor should have obtained their consent prior to renting out of the Secured Assets in favour of the Petitioner. Also, it is the stand of the Third Respondent/Bank that when the Bank took possession of the Secured Assets on 16.12.2015, there were no College/Institute activities inside the premises except few tables and chairs in the custody of the care taker by one Dharmadas and inventory of the movables was taken by the Fifth Respondent/Land Revenue Inspector and the signature of the care taker mentioned aforesaid was obtained in the inventory and that the premises

was locked and sealed by the Fifth Respondent. Later, the Fifth Respondent handed over the key of the premises to the Third Respondent/Bank.

16.The Learned counsel for the Third Respondent/Secured Creditor seeks in aid of the decision of the Hon'ble Supreme Court in Vishal N. Kalsaria V. Bank of India and others reported in 2016 (1) Scale at page 472 and at special page 488, wherein at paragraph 29, it is observed as follows:

9.As far as granting leasehold rights being created after the property has been mortgaged to the bank, the consent of the creditor needs to be taken. We have already taken this view in the case of Harshad Govardhan Sondagar (supra). We have not stated anything to the effect that the tenancy created after mortgaging the property must necessarily be registered under the provisions of the Registration Act and the Stamp Act.

17.This Court has heard the Learned counsel appearing for the parties and noticed their contentions.

18.At this juncture, this Court cites the Division Bench order of this Court dated 17.11.2015 in W.P.Nos.27802 & 27803 of 2015 [V.Juvalamukhi in W.P.27802/15 & P.Govindaraj in W.P.No.27803/2015 V. The District Magistrate-cum-District Collector, Collectorate Building, Coimbatore-641 018 and others] where one of us i.e., Hon'ble Mr.Justice Satish K. Agnihotri is a member, whereby and whereunder at paragraph 16, it is observed as follows:

6.As aforesaid, a demand notice under Section 13(2) of the SARFAESI Act was issued on 08 October 2012. The petitioners have not produced any renewal in respect the first lease after 30 June 2011 and 06 April 2011 respectively. The second lease deeds were executed after service of demand notice under Section 13(2), *ibid*, indisputably, without the consent of the secured creditor and as such, the same were not valid, necessitating protection under the same. It appears that lease deeds were executed for a period of 11 months to circumvent the mandatory registration under the provisions of the Registration Act, 1908. In that event, after the expiry of period of 11 months, the renewal of lease deeds, made after the demand notice under Section 13(2), *ibid*, was served, were not valid, as it is not the case of the petitioner that the subsequent renewal was made with the consent of the secured creditor, which is a *sine qua non* for protection from the ambit of the provisions of Section 14, *ibid*. Thus, the petitioners have not entered into the premises in question on the basis of valid lease deeds under the provisions of Section 65-A of the TP Act.

19.In this connection, this Court aptly points out the decision of the Hon'ble Supreme Court in Harshad Govardhan Sondagar V. International Assets Reconstruction Co., Ltd., & Others reported in 2014 (6) SCC at page 1 and at Special page 34] wherein at paragraph 36, it is observed and laid down as under:

6.We may now consider the contention of the respondents that some of the appellants have not produced any document to prove that they are bonafide lessees of

the secured assets. We find that in the cases before us, the appellants have relied on the written instruments or rent receipts issued by the landlord to the tenant. Section 107 of the Transfer of Property Act provides that a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument and all other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Hence, if any of the appellants claim that they are entitled to possession of a secured asset for any term exceeding one year from the date of the lease made in his favour, he has to produce proof of execution of a registered instrument in his favour by the lessor. Where he does not produce proof of execution of a registered instrument in his favour and instead relies on an unregistered instrument or oral agreement accompanied by delivery of possession, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, will have to come to the conclusion that he is not entitled to the possession of the secured asset for more than a year from the date of the instrument or from the date of delivery of possession in his favour by the landlord.

20.As far as the present case is concerned, the First Respondent had mortgaged the property as collateral security for the loan borrowed by the Second Respondent on 15.02.2010. The original 'Rental Agreement' dated 05.02.2010 between the First Respondent and the Petitioner was for a period of 11 months from 05.02.2010 to 04.01.2011 on a monthly rent of Rs.15,000/- etc. According to the Petitioner, the Tenancy/Rental Agreement between the parties was periodically extended by means of endorsements (not by way of Rental Agreement) and in fact, on 26.07.2015, the said Agreement, of course by means of endorsement, was again extended for a period of 11 months i.e., till 25.06.2016. Indeed, after the original expiry of period of 11 months of Rental Agreement from 05.02.2010 to 04.01.2011, the renewal of the Rental Agreement was not in the form of any Deed/Document and furthermore, the crucial aspect is that when the property in question was mortgaged with the Third Respondent/Bank as collateral security on 15.02.2010 as stated supra, the consent of the Third Respondent/Secured Creditor was not obtained by the First Respondent, (of course, after the expiry of the original 'Rental Agreement' dated 05.02.2010) and thereafter, the Agreement was renewed by means of periodical endorsements made on the back/ left hand side of the Rental Agreement dated 05.02.2010. Suffice it for this Court to point out that inasmuch as the subsequent/ periodical renewal of 'Rental Agreement' was not entered into between the parties with the consent of the Third Respondent/ Secured Creditor/Bank, the Petitioner is not entitled to seek an embargo under Section 14 of the SARFAESI Act. Therefore, it is not entitled to continue in the property in question or to derive any protection or benefit based on the purported renewal of Rental Agreement. Viewed in that perspective, the Petitioner is not entitled to seek the relief of quashing of the letter/proceedings of the Third Respondent/Bank dated 16.12.2015. Consequently, the Writ Petition fails.

21.In the result, the Writ Petition is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petitions are also closed.

[S.K.A., J.] [M.V., J.] 22.02.2016 Index:Yes Internet:Yes DP To

1.M/s.Indian Bank rep. by its Authorised Officer, Mr.A.S.Kalyanakumar, The Authorised Officer/Chief Manager, E.R.A.Puram Branch, Chennai-600 028.

2.The District Collector, Erode District, Erode.

3.The Land Revenue Inspector, Modakurichi Circle, Erode.

SATISH K. AGNIHOTRI , J.

and M.VENUGOPAL, J.

DP Order made in and M.P.Nos.1 & 2 of 2015 22.02.2016