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WP No.23815 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2026

CORAM

THE HON'BLE MR.SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

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M.Vinod Kumar
Door No.118/46-f, Convent Road, New
Fairlands, Salem Town, Salem District,
Rep. By His Power Agent, A.Ananth,
Door No.51/3, First Floor, Srinivasa Nagar,
Uppilpalayam, Coimbatore South,
Coimbatore District.

Petitioner

Vs

1. The Authorised Officer
M/s.Repco Home Financ Elimted, Namakkal
Branch, Door No.180 And 181,
Ganeshapuram, Pillaiyarkovil Street, Thuraiur
Road, Namakkal Town,
Namakkal Taluk And District.

2.S.Rajendran
D.No.125/55C, Thiruchengod Road,
Namakkal Town, Namakkal Taluk And
Namakkal District.

Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 1st respondent to hand over the physical possession of the property totally admeasuring 6¼ cent out of 2 acre 83 cents, comprised in Survey Number 300/4, Ward A, Block 6, T.S. No.7/11 situated at Door No.127/55D and 129/55E, Thiruchengode Road, Namakkal Town Namakkal District together with building and electricity service connection in service connection number 04-201-006-0764 and all other amenities or in default directing the 1st respondent to repay the entire sale consideration of Rs.1,21,65,000/- along with interest at the rate of 24 percent from 23.04.2021 till the date of payment.

For Petitioner Mr. R.Rajarajan

ORDER

(Order of the Court was made
by the Hon'ble Chief Justice)

The petitioner, who is the successful auction purchaser, has filed this writ petition under Article 226 of the Constitution of India, seeking for a direction against the first respondent to hand him over physical possession of the subject-property or in the alternative direct the first respondent to repay the entire sale consideration paid by him.



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2. At the outset, we must address a fundamental jurisdictional issue that goes to the root of the maintainability of this writ petition.

We find that the direction is sought to be issued to M/s.Repco Home Finance Limited. It is not an instrumentality of the State as defined under Article 12 of the Constitution of India.

3. It is a well-settled proposition of law that a writ petition under Article 226 of the Constitution of India can only be issued against a State, its instrumentalities, or a private body discharging a public function or statutory public duty. The first respondent bank is merely enforcing a private contractual right and security interest created by the borrower. It is not discharging any public function or sovereign duty. Therefore, a writ petition against the first respondent is not maintainable under Article 226 of the Constitution of India. The said view is fortified by a decision of the Supreme Court in *S.Shobha v. Muthoot Finance Ltd*¹, wherein it was held thus:

"9. *We may sum up thus:*

(1) For issuing writ against a legal entity, it would have to be an instrumentality or agency of a State or should have been entrusted with such functions as are Governmental or closely

¹2025 SCC OnLine SC 177



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associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental.

(2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

(3) ***Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.***

(4) ***A private company carrying on banking business as a Scheduled bank cannot be termed***



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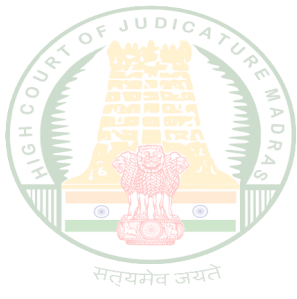
as a company carrying on any public function or public duty.

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) Merely because a statute or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.

(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action.

(8) According to Halsbury's Laws of England, 3rd Ed. Vol.30, p.682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties



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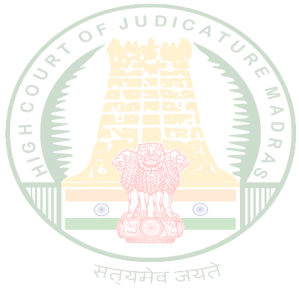
to perform, and which perform the duties and carries out its transactions for the benefit of the public and not for private profit". There cannot be any general definition of public authority or public action. The facts of each case decide the point."

[emphasis supplied]

4. From the law enunciated by the Supreme Court, it is lucid that the first respondent cannot be subjected to writ jurisdiction unless there is a clear violation of public law duties or statutory obligations imposed by the State.

5. In view of the above, the writ petition is not maintainable against the first respondent and, accordingly, the same is dismissed. There will be no order as to costs.

6. At this juncture, learned counsel for the petitioner submits that the securitization application filed by the petitioner is still pending before the Debts Recovery Tribunal and no proceedings has taken place for the past five years.



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7. The petitioner would be at liberty to file appropriate application before the DRT concerned, seeking early hearing of the pending securitization application.

(SUSHRUT ARVIND DHARMADHIKARI, CJ.) (G.ARUL MURUGAN, J.)
07.07.2026

Index : Yes/No
Neutral Citation : Yes/No
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G.ARUL MURUGAN, J.

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