



2026:KER:45095

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P. V. BALAKRISHNAN

MONDAY, THE 22<sup>ND</sup> DAY OF JUNE 2026 / 1ST ASHADHA, 1948

WP(C) NO. 20874 OF 2026

**PETITIONER:**

PHOENIX ARC LIMITED,  
(FORMERLY PHOENIX ARC PVT LTD)  
(ACTING IN ITS CAPACITY OF TRUSTEE OF PHOENIX  
TRUST FY 17-11) 3RD FLOOR, WALLACE TOWERS,  
139-140/B/1,  
CROSSING OF SAHAR ROAD AND WESTERN EXPRESS  
HIGHWAY, VILE PARLE EAST, MUMBAI,  
REPRESENTED BY ITS AUTHORISED SIGNATORY  
SURESH M VARIYAM, PIN - 400057

BY ADVS.  
SRI.NIDHI SAM JOHN  
SRI.A.KEVIN THOMAS  
SRI.LIJO JOSEPH (THOPPIL)  
SMT.CELIA SANTHOSH  
SRI.ASHWIN VENKATESH  
SRI.A.V.THOMAS (SR.)

**RESPONDENTS:**

- 1 STATE OF KERALA,  
DEPARTMENT OF REVENUE,  
REPRESENTED BY ITS SECRETARY,  
SECRETARIAT, THIRUVANANTHAPURAM,  
PIN - 695001
- 2 DISTRICT COLLECTOR,  
ERNAKULAM, CIVIL STATION, KAKKANAD,  
ERNAKULAM, PIN - 682030



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**3 SPECIAL TAHSILAR (RR),  
KANAYANNUR TALUK, ERNAKULAM,  
PIN - 682011**

**SRI. RAKESH SHARMA, GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 22.06.2026, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:**



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**P.V. BALAKRISHNAN, J.**

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**W.P.(C) No.20874 of 2026**  
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**Dated this the 22<sup>nd</sup> day of June, 2026**

**JUDGMENT**

The petitioner is a company incorporated under the Companies Act, 1956. The State Bank of Travancore (SBT) had granted and renewed various credit facilities to M/s.Ernakulam Tourist Bungalow (a partnership firm), after availing immovable property as security. Thereafter, when a default occurred, the SBT initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act', for short) against the defaulter.

2. In the meantime, by an assignment agreement dated 30.03.2017, the SBT assigned its right, title and



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interest pertaining to the account of M/s.Ernakulam Tourist Bungalow in favour of the petitioner as per Section 5 of the SARFAESI Act. Thereafter, the petitioner filed an application under Section 14 of the SARFAESI Act before the Additional Chief Judicial Magistrate Court, Ernakulam. In that petition, the Tahsildar, Ernakulam filed a petition and got himself impleaded and raised a claim regarding dues to the Government, for sales tax arrears.

3. The petitioner then approached this Court by filing W.P.(C) No.27147/2016 seeking possession of the secured asset from the Government. This Court disposed of the said writ petition as per Ext.P5 judgment, holding that the petitioner is entitled to proceed against the property in question for recovery of the debt *dehors* the attachment made by the revenue authorities. It further directed the authorities to deliver back possession of the property in question to the petitioner.



4. The State of Kerala preferred W.A.No.2449/2019 against the said judgment and the same was disposed of as per judgment dated 06.01.2023, holding that the State has first charge over the property and the charge runs with the property irrespective of the sale conducted by the financial institutions as per the provisions of the SARFAESI Act. The petitioner and other financial institutions challenged the afore judgment before the Hon'ble Apex Court in SLP (C) No.6652/2023 and the Hon'ble Apex Court, as per Ext.P7 order, has stayed the judgment passed by the Division Bench of this Court. The petitioner, hence, could not take any further steps under the SARFAESI Act. While so, the petitioner approached the Special Tahsildar (RR), Ernakulam requesting access to the property, for conducting valuation. But, nothing transpired. The secured asset is now in the custody of the respondents and is lying unmaintained.



5. Thereafter, the petitioner also submitted Ext.P16 letter to the District Collector, requesting access for revaluation and requesting a No Objection Certificate to conduct sale subject to the outcome of the SLP pending before the Hon'ble Apex Court. However, there is no response till date. It is the grievance of the petitioner that due to the inaction from the part of the respondents, the property is now deteriorating and it will cause considerable loss to both the petitioner and the respondents. It is in such circumstances, the petitioner approached this Court by filing this writ petition, seeking the following reliefs:-

“i) Issue a writ of mandamus or other appropriate writ, order or direction to respondents 2 to 3 to grant access to the petitioner to carry out valuation of the property comprised of 28.32 Ares of land in Survey Nos.584/1, 584/4 and 592/1 of Ernakulam Village, Kanayannur Taluk, Ernakulam District, along with building;

ii) Issue a writ of mandamus or other appropriate writ, order or direction thereby allowing the petitioner to initiate the sale proceedings under SARFAESI Act, 2002, for immediate realisation of the sale price of the mortgaged property covered by Ext.P2 and Ext.P3, which amount will be kept before this Hon'ble Court and



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would be distributed as per the decision of Hon'ble Supreme Court in pending Special Leave Petition bearing SLP (C) No. 6652 of 2023.”

6. Heard the learned counsel for the petitioner on admission.

7. Admittedly, the property in question has been mortgaged to the petitioner for availing a loan and that the petitioner is entitled to proceed under the provisions of the SARFAESI Act. It is also an admitted fact that in the meantime, the respondents have initiated revenue recovery proceedings against the very same property and has taken possession of the same, claiming dues under the Sales Tax Act. The records show that the Division Bench of this Court in W.A.No.2449/2019 has upheld the claim of the respondents that they have first charge over the property in question. It is again an admitted fact that the petitioner has challenged the judgment of this Court in W.A.No.2449/2019 before the Hon'ble Apex Court and the Hon'ble Apex Court has stayed



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the operation of the impugned judgment.

8. In such circumstances, I am of the considered view that unless and until the petitioner obtains appropriate orders from the Hon'ble Apex Court or till the SLP is finally disposed of, the relief as sought for by the petitioner seeking sale of the secured asset cannot be considered/granted.

Ergo, this writ petition is dismissed.

Sd/-

**P.V. BALAKRISHNAN**  
**JUDGE**

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**APPENDIX OF WP(C) NO. 20874 OF 2026**

**PETITIONER'S EXHIBITS**

- Exhibit P1** TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE RESERVE BANK OF INDIA TO THE PETITIONER
- Exhibit P2** TRUE COPY OF THE MEMORANDUM OF DEPOSIT OF TITLE DEED DATED 21/12/2012
- Exhibit P3** TRUE COPY OF THE DEMAND NOTICE ISSUED UNDER SECTION 13(2) OF THE SARFAESI ACT
- Exhibit P4** TRUE COPY OF THE IMPEADING PETITION DATED 30.08.2018 AND DOCUMENTS FILED BY THE TAHSILDAR, ERNAKULAM IN MC 34/2019 BEFORE THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM
- Exhibit P5** TRUE COPY OF THE JUDGMENT DATED 30.07.2019 IN WP(C)27147 OF 2018
- Exhibit P6** TRUE COPY OF THE JUDGMENT OF THE DIVISION BENCH OF THIS HON'BLE COURT REPORTED AS TAHSILDAR (RR) VS. NIZAMUDEEN (2023 (1) KHC 248)
- Exhibit P7** TRUE COPY OF THE ORDER DATED 01.05.2023 IN SLP N06652 OF 2023
- Exhibit P8** TRUE COPY OF THE REPRESENTATION DATED 23.10.2024 SUBMITTED BY THE PETITIONER BEFORE THE DISTRICT COLLECTOR
- Exhibit P9** TRUE COPY OF THE REPRESENTATION DATED 05.11.2024 SUBMITTED BY THE PETITIONER BEFORE THE SPECIAL TAHSILDAR (RR), ERNAKULAM
- Exhibit P10** TRUE COPY OF THE LETTER DATED 12.11.2024 SUBMITTED BY THE PETITIONER BEFORE THE SPECIAL TAHSILDAR (RR), ERNAKULAM
- Exhibit P11** TRUE COPY OF THE LETTER DATED 21.11.2024 SUBMITTED BY THE PETITIONER BEFORE THE SPECIAL TAHSILDAR (RR),



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| <b>Exhibit P12</b> | <b>ERNAKULAM, ALONG WITH POSTAL RECEIPT<br/>TRUE COPY OF THE LETTER DATED<br/>08.01.2025 SUBMITTED BY THE PETITIONER<br/>BEFORE THE SPECIAL TAHSILDAR (RR),<br/>ERNAKULAM, ALONG WITH POSTAL RECEIPT</b> |
| <b>Exhibit P13</b> | <b>TRUE COPY OF THE EMAIL DATED<br/>26.11.2024</b>   |
| <b>Exhibit P14</b> | <b>TRUE COPY OF THE EMAIL DATED<br/>27.11.2024</b>   |
| <b>Exhibit P15</b> | <b>TRUE COPY OF THE EMAIL DATED<br/>09.01.2025</b>   |
| <b>Exhibit P16</b> | <b>TRUE COPY OF THE LETTER DATED<br/>12.02.2025 SENT BY THE PETITIONER TO<br/>THE DISTRICT COLLECTOR AND THE SPECIAL<br/>TAHSILDAR (RR), ERNAKULAM ALONG WITH<br/>ACKNOWLEDGMENT CARDS</b>               |
| <b>Exhibit P17</b> | <b>COPIES OF PHOTOGRAPHS TAKEN AT THE<br/>TIME VISIT THE PROPERTY</b>  |
| <b>Exhibit P18</b> | <b>TRUE COPY OF THE REPORT DATED<br/>07.05.2026 PUBLISHED IN TIMES OF INDIA</b>  |