Case Citation: (2026) ibclaw.in 6396 HC

2026:KER:78500

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 12TH DAY OF OCTOBER 2026 / 20TH ASWINA, 1948

WA NO. 2531 OF 2025

AGAINST THE JUDGMENT DATED 24.09.2025 IN WP(C) NO.16819 OF 2025 OF HIGH COURT OF KERALA

APPELLANT/S:

JM FINANCIAL ASSET RECONSTRUCTION COMPANY LTD (ACTING IN ITS CAPACITY AS TRUSTEE OF JNIARC FEDERAL BANK MARCH 2013 TRUST) HAVING ITS REGISTERED OFFICE AT 7TH FLOOR, CNERGY, APPASAHEB MARATHE MARG, PRABHADEVI, MUMBAI REPRESENTED BY MR. VAIBHAV SHETTY BEING VICE PRESIDENT & AUTHORISED OFFICER, PIN - 400025

BY ADVS.
SHRI.MADHU RADHAKRISHNAN
SHRI.NELSON JOSEPH
SRI.M.D.JOSEPH
SHRI.DEEPAK ASHOK KUMAR
SHRI.JESWIN JACOB

RESPONDENT/S:

1 SIVAKUMAR G
S/O. P.V.GOPINANATHAN NAIR, `AISWARYA',
THALAKODE P.O. MULANTHURUTHY, PCONITHURA,
ERNAKULAM DISTRICT, PIN - 682314

2 POWERTURN ENGINEERING PVT LTD.,
CC 31/670 A, SA ROAD, VYTILLA, ERNAKULAM
REPRESENTED BY ITS DIRECTOR SIVAKUMAR G, PIN - 682019

3 STATE OF KERALA,
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY,
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

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4 THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT, COLLECTORATE,
KAKKANAD,ERNAKULAM, PIN - 682030

5 THE TAHSILDAR,
KANAYANNUR TALUK, TALUK OFFICE,
ERNAKULAM, PIN - 682312

6 THE VILLAGE OFFICER,
KANAYANNUR VILLAGE,VILLAGE OFFICE,
ERNAKULAM, PIN - 682312

7 LALITHA VERMA R.,
102, AISHWARYA APARTMENTS,POONITHURA, PIN - 682317

BY ADVS.
SRI.C.B.SREEKUMAR
SHRI.SAGITH KUMAR V.
SMT.DEVAPRIYA S.
SMT.MEGHA S.
SRI. T. KRISHNANUNNI, SR. FOR R1, 2 AND 7
SRI. BIJU MEENATTOOR, SR.GP FOR R3,4,5 AND 6

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12.10.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 12th day of October, 2026

Soumen Sen, C.J.

We have heard Mr. Madhu Radhakrishnan, learned counsel for the appellant, Mr. T. Krishnanunni, learned Senior Advocate assisted by Mr. Anandakrishnan A. Kartha, learned counsel for respondents 1, 2 and 7 and Mr. Biju Meenattoor, learned Senior Government Pleader for respondents 3, 4, 5 and 6.

2. This appeal arises from the judgment of the learned Single Judge dated 24th September, 2025 in W.P.(C)No.16819 of 2025 filed by the secured creditors praying inter alia for quashing or setting aside the order passed by the Tahsildar in connection with the properties in question. Briefly stated, the appellant claims to be the mortgagee of the properties over which it sought to enforce its security interest by following the procedure and mechanism prescribed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (SARFAESI Act). After issuing a notice under Section 13(2) of the SARFAESI Act and thereafter taking the measures contemplated under Section 13(4) of the said Act, the appellant filed an application, being C.M.P. No. 2816 of 2016, before the Chief Judicial Magistrate (CJM) concerned under Section 14 of the Act, seeking to take possession of the secured asset. In the said proceedings, the learned CJM passed an order dated 1st August 2016 appointing an Advocate Commissioner to take physical possession of the secured asset. The said application was contested by respondents 1 and 2 by filing W.P.(C)No. 32218 of 2016 wherein the respondents were directed to avail alternative remedy under the SARFAESI Act. The appeal carried against the said judgment, W.A.No.2208 of 2017, was also dismissed on 4th December, 2017.

3. Thereafter on 6th October, 2017, the CJM, Ernakulam, passed a common order in the applications preferred by the appellant as well as the 1st respondent. The order, inter alia, directed the Advocate Commissioner to proceed with the dispossession of property covered by the mortgage with the

assistance of the Village Officer. However, the respondents were also given the liberty to produce documents to show that the property sought to be taken possession of was not a secured asset. This exercise was to be carried out while identifying the property, and it was made clear that the Advocate Commissioner could take possession only of the property over which the mortgage had been created. The Advocate Commissioner took possession of the secured asset on 24th March, 2018, based on the report of the Village Officer. The respondents thereafter filed an application before the learned CJM, Ernakulam, seeking an investigation into the various offences alleged against the Village Officer and to set aside the proceedings of the Advocate Commissioner and others, alleging that, instead of the secured asset, an adjoining property belonging to the borrower had been taken into possession. The said petition was dismissed by an order dated 25th April, 2018 (Exhibit P6) in which it was inter alia observed that on going through the records, it cannot be said at this stage that the property taken possession was not the property mortgaged / secured asset. However, if at all the respondents had got any

allegation of commission of criminal offence, they have to seek the remedy under appropriate provisions in accordance with law and hence the petition filed by the petitioner challenging dispossession was set aside.

4. The Advocate Commissioner after taking possession of the alleged secured asset alleged that a group of people trespassed into the secured asset, which was taken physical possession of earlier and the security guard deployed therein was manhandled. The property was damaged. On the allegation that the order dated 25th April, 2018 was violated, the appellant filed an application, being M.C. No. 93 of 2019 before the CJM, Ernakulam under Section 14 of the SARFAESI Act to enforce the order dated 6th October, 2017 and to take re-possession of the secured asset. However, this petition was subsequently withdrawn and a fresh petition was filed for enforcement of the order dated 24th August, 2018. This application is presently pending.

5. In the meantime, the 1st respondent filed a writ petition named W.P.(C)No.11829 of 2019 seeking a direction upon the

Tahsildar to consider the complaint lodged by the petitioner on 31st March, 2018, in which serious allegations have been made against the Village Officer. Initially the writ petition was disposed of on 16th August, 2019 directing the Tahsildar to take appropriate action within two months. However, the said order was subsequently recalled on the basis of an application filed by the appellant in R.P. No. 1196 of 2019, after the learned Single Judge found that there has been suppression of material facts, the findings in the order of the CJM as regards taking possession has become final and that the writ petitioner was unable to establish any contra case.

6. In allowing the review petition, the learned Single Judge has taken into consideration the identification of the property by the Village Officer on the basis of which the order dated 25th April, 2018 was passed by the CJM. It was also observed that the writ petitioner's prayer to restrain the appellant from taking possession of the property had been rejected. An appeal against the said order was also dismissed by a Division Bench, of which one of us (Justice Syam Kumar V.M.) was a member. Thereafter

during the pendency of the application for repossession of the property in question, a writ petition was filed being W.P.(C)No. 16819 of 2025 inter alia for setting aside of Ext.P10, namely the order of the Tahsildar, by which the Tahsildar had, *inter alia*, come to a finding that the action of the Village Officer was wrong and that the contention of the writ petitioner that the property not offered as a secured asset was taken possession of was found to be substantially correct. In the aforesaid writ petition the impugned order was passed.

7. While deciding the said application, the learned Single Judge has observed that having regard to the order passed by the CJM, the Tahsildar cannot look into, much less make any observations on, the proceedings before the CJM. It has also been observed that the part of the enquiry conducted by the Tahsildar with respect to the matters covered by the orders of the CJM and under the provisions of the SARFAESI Act cannot be countenanced at all. However, since the complaint of the petitioner was made as early as 31st March, 2018, nothing precluded the Tahsildar from proceeding in accordance with law

on the basis of the allegations made against the Village Officer, after issuing notice to the petitioner herein. The learned Single Judge has also noticed that in the earlier proceedings the writ petition was dismissed on the ground of suppression of material facts. After considering the findings of the learned Magistrate under Section 14 of the SARFAESI Act, the learned Single Judge observed that the order passed by the Tahsildar in Exhibit P10 dated 24th October, 2019 to the extent it dealt with matters covered by the order of the Chief Judicial Magistrate's Court and also regarding the delivery cannot be sustained. The appellant is aggrieved by the other directions and observations made in the order, which are reproduced below:

> "..... However, it is made clear that the quashing of Ext.P10 to the above extent will not prevent the Tahsildar from taking appropriate steps in accordance with law on the complaint filed by the 1st respondent dated 31.03.2018, Ext R1(4), with notice to the petitioner and other affected parties, if any, in accordance with law. It is also made clear that all the contentions in O.S.1090/2019 are also left open, which shall be decided by the Trial Court, independently and on its merits."

8. The learned counsel for the appellant has submitted that while the learned Single Judge had agreed and decided that the order of the Tahsildar is required to be set aside, the further observation that the said order would not prevent the Tahsildar from taking appropriate steps in accordance with law on the complaint filed by the respondent dated 31st March, 2018 after issuing notice to the appellant and other affected parties, if any, would, in effect, be nullifying the order passed by the CJM on 25th April, 2018.

9. In view of the fact that the prayer for repossession of the property is still pending and the learned Single Judge has clearly made the observation that Ext.P10 order insofar as it deals with the matters covered by the order of the CJM's Court and also regarding the delivery cannot be sustained, the apprehension expressed by the appellant as regards the order dated 25th April, 2018 passed by the CJM at this stage may perhaps be misplaced as by reason of the impugned judgment, the order under Ext.P10 has attained finality insofar as the SARFAESI proceedings is concerned.

10. The learned Senior Advocate appearing for respondents 1, 2 and 7 has submitted that the vacant plot adjacent to the mortgaged secured assets has been illegally taken by the secured creditor and the matter is still pending before the learned CJM.

11. In view of the fact that the application for repossession is still pending before the CJM and there is no order from any court quashing Ext.P10, it would be for the learned Magistrate to decide the matter based on the finding recorded in its earlier order dated 25th April, 2018. Any order of the Tahsildar cannot affect the proceeding before the CJM and if the respondents are aggrieved by any of the measures taken by the appellant, it would be open for them to approach the Debt Recovery Tribunal under Section 17 of the SARFAESI Act. The order impugned, in our view, does not in any way impair the appellant's rights in relation to the proceedings pending before the CJM for repossession. Equally, the respondents' right to establish, on the basis of any new material, that the property sought to be taken possession of is not the secured asset cannot be

foreclosed. However, it is for the CJM to decide the application for repossession on the basis of the records and after affording the parties a reasonable opportunity of hearing.

12. The direction to the Tahsildar to take appropriate steps in accordance with law, in our view, was limited to the complaint against the Village Officer. In any event, a secured creditor cannot take possession of a property that does not form part of the secured asset. The said issue has to be decided in the proceeding pending before the CJM.

With the aforesaid observation and clarification, the appeal stands disposed of. However, in the facts and circumstances, there shall be no order as to costs.

Sd/-
Soumen Sen
Chief Justice

Sd/-
Syam Kumar V.M.
Judge

vpv

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APPENDIX OF WA NO. 2531 OF 2025

PETITIONER ANNEXURES

Annexure A1	**THE TRUE COPY OF THE PLAINT IN OS 1090/2019 FILED BY THE LST RESPONDENT**
Annexure A2	**THE TRUE COPY OF THE JUDGMENT IN WA NO. 640/2025 DATED 23/8/2025**

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