

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P No. 19602 of 2015
and
M.P. No.1 of 2015

R. Prabhakaran

...Petitioner

Vs.

1 The District Collector-cum-District Magistrate
Salem District

2 The Sub-Collector
O/o the Sub Collector
Mettur, Salem District

3 M/s.Sundaram BNP Paribas Home Finance Ltd.
formerly known as
Sundaram Home Finance Ltd.
No.46, Whites Road
Chennai 600 014
represented by its Authorised Officer

...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus forbearing the first and second respondents from taking possession of the property bearing Site No.27 and 28, Ward No.1, measuring to an extent of 2,783 sq. ft. comprised in Survey No.111/1 Barathi Nagar, Veerakkal Pudur, Salem District and consequently handing over the same to the third respondent pursuant to the Memo No.Na.Ka 4922-2014 (D) dated 08.05.2015 of the second respondent on the basis of the SARFAESI notice dated 02.05.2011 issued by the third respondent.

For petitioner : Mr. N. Anand
For RR 1 & 2 : Mr. P.S. Sivashanmugasundaram
Special Government Pleader

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader, accepts notice for respondents 1 and 2. With the consent of the learned counsel for the petitioner and the learned Special Government Pleader appearing for respondents 1 and 2, the writ petition is taken up for final disposal, at the admission stage itself.

2 The petitioner, admittedly, a borrower, has come up with the instant writ petition, seeking a direction forbearing the first and second respondents from taking possession of the property bearing Site No.27 and 28, Ward No.1, measuring to an extent of 2,783 sq. ft. comprised in Survey No.111/1 Barathi Nagar, Veerakkal Pudur, Salem District and handing over the same to the third respondent, pursuant to the Memo No.Na.Ka 4922-2014 (D) dated 08.05.2015 of the second respondent on the basis of the notice dated 02.05.2011 issued by the third respondent under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act").

3 The case of the petitioner rests on a communication dated 08.05.2015 issued to him by the second respondent, wherein, he has been asked to participate in the enquiry to be held on 13.05.2015 with all the relevant documents, particularly, in respect of possession of the property in question. After the relevant date, i.e., 13.05.2015, is over, the petitioner has come up with the instant writ petition, seeking a direction against the first respondent, before whom, purportedly, an application under Section 14 of the SARFAESI Act is pending consideration. It is not the case of the petitioner that an order has been passed in the said application. The case of the petitioner is that he has made almost the entire payment and only less than 20% of the principal amount is still outstanding for payment.

4 In such view of the matter, the District Collector cannot pass an order for possession of the secured asset. Be that as it may, since at this juncture, no cause of action has arisen, we restrain ourselves from considering the issue as to whether the

Collector is competent to pass an order in the application filed under Section 14 of the SARFAESI Act. However, we grant liberty to the petitioner to appear before the District Collector and put forward his case before him for taking a considered decision in the matter.

5 With the above observations, the writ petition is disposed of. Costs made easy. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

cad

To

1 The District Collector-cum-District Magistrate
Salem District

2 The Sub-Collector
O/o the Sub Collector, Mettur,
Salem District.

1 CC to Mr. N. Anand, Advocate SR.No. 33164

1 CC to the Government Pleader, SR.No. 33315

BR (CO)
PSI (15.07.2015)

W.P. No.19602 of 2015

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