

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE K.K.SASIDHARAN

W.P. No.28570 of 2015
and
M.P.No.1 of 2015

A. Dawood

...Petitioner

Vs.

1 M/s.L & T Housing Finance Ltd.
(Inter Alia Branch) 6th Floor, KGN Towers,
No.62 Ethiraj Salai,
(Commander-in-Chief Road),
Egmore Chennai-600 085
rep. by its Authorised Officer
Mr.P. Srinivasan

2 The Chief Metropolitan
Magistrate Court,
Egmore, Chennai.

3 R.Zainudeen

4 Mrs.Shoba Chetty

5 Alphonse Packiaraj

...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the impugned order of the 2nd respondent passed in Crl.M.P.No.1464/2015 in Crl.M.P.No.6448 of 2014 dated 24.8.2015 and quash the same and consequently forbear the 1st

respondent, their men, agents from interfering with the physical possession of the petitioner and from in any manner evicting the petitioner from the property situated at old Door No.28, New Door NO.24 (First Floor) Vellala Street, Villivakkam, Chennai 600 049 comprised in Survey No.348/1, T.S.No.172, Block NO.57 of No.71 Konnur Village, Purasawalkam -Perambur Taluk within the limits of corporation of Chennai except following due process of law.

For Petitioner : Mr. R. Sagadevan

For Respondents : Mr. D. Pradeepkumar - for R1

ORDER

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

With consent, the writ petition is taken up for final disposal.

2 This writ petition is filed seeking to quash the order dated 24.08.2015 passed by the 2nd respondent and consequently, forbear the first respondent and their men from interfering with the physical possession of the petitioner and from in any manner evicting him from the property in question.

3 Learned counsel appearing for the petitioner does not want to contest the case on merits, at this stage. He submits that the petitioner is in possession of the property in question and he may be permitted to continue for a period of two months, inasmuch as his children are pursuing their education. Further, the petitioner is ready and willing to file an affidavit of undertaking that he will vacate and handover the premises peacefully to the first respondent - financial institution, without creating any encumbrance or third party right on the same, on or before 30.11.2015.

4 Learned counsel appearing for the first respondent-financial institution strongly opposes for granting time on the ground that once the matter has been considered and decided, the petitioner has no right to continue in possession thereafter.

5 Be that as it may, we cannot ignore the humanitarian aspect, though, on merits, the petitioner cannot have a right to continue his possession. However, having regard to the fact that the petitioner is in possession of the property and his children are prosecuting their studies, removal of the petitioner, at this stage, from the property in question, may not be appropriate.

6 In that perspective, exercising our discretion and also on equity, we are of the considered view that the petitioner shall continue in possession for a period of two months from today, subject to filing of an undertaking within a period of one week from today before this Court as well as the first respondent - financial institution, stating therein that any encumbrance or third party interest will not be created and that he will handover vacant and peaceful possession of the property in question to the first respondent-financial institution, on or before 30.11.2015.

7 With the above observations, this writ petition is disposed of. Connected miscellaneous petition is closed. No costs.

Post on 06.10.2015 for filing aforesaid affidavit of undertaking.

ra

28/09/2015

This matter having been listed under the caption for Reporting Compliance on 06.10.2015 pursuant to the order of this court dated 28.09.2015 and made herein in the presence of the abovesaid counsels on the either side the court made the following order:

This matter is listed today under the caption "for reporting compliance".

In compliance of the order of this Court dated 28.09.2015, the petitioner has filed an affidavit undertaking to vacate and handover the peaceful possession of the property

to the first respondent on 30.11.2015 and the same is recorded.

*Encl : The Xerox copy of the
Affidavit of Undertaking

RA

06.10.2015

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Metropolitan Magistrate,
Egmore, Chennai.
2. The Section Officer, Writ Section,
High Court, Madras (For Further posting)

1 CC to Mr. R. Sagadevan, Advocate SR.No. 52551

1 CC to Mr.T. Dhanyakumar, Advocate SR.No. 52607

W.P. No.28570 of 2015

GR (CO)
PSI (05.10.2015)

MG (CO)
PSI 28.10.2015

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