

In the High Court of Judicature at Madras

Dated: 29.09.2015

Coram:

The Honourable Mr. Justice SATISH K. AGNIHOTRI
AND
The Honourable Mr. Justice K.K. SASIDHARAN

W.P.No.30515 of 2015

& M.P.Nos.1 to 3 of 2015

L. Gunasekaran

.. Petitioner

-Vs.-

1. The Collector-Cum-District Magistrate
Government of Puducherry
Puducherry.

2. The Authorized Officer
State Bank of India
No.208, Anna Salai
Puducherry-605 001.

3. Sumathi @ Packiriammal

4. Tahsildar
Puducherry Taluk
Taluk Office
Government of Puducherry.

5. R. Kandavel

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorified Mandamus calling for the records pertaining to the impugned order of the first respondent passed in No.13830/DRDM/C.3/SARFAESI/2014 dated 26.08.2015 and order passed by the fourth respondent dated 11.9.2015 in No.92/TOP/D/2015 and quash the same and consequently forbear the first, second and fourth respondents 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 Door No.16-A, Karumara Street, Mudaliarpet, Puducherry-605 004, comprised in Block No.4, T.S.No.16, S.No.95/1 part, Olandai Revenue Village, within the limits of Puducherry Municipality.

For Petitioner : Mr.B. Vijay

O R D E R

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

The petitioner claiming tenancy in respect of a building bearing Door No.16/A, Karumara Street, Mudaliarpeta, Puducherry, which is the subject matter of proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") challenges the order dated 26 August 2015 on the file of the Collector-cum-District Magistrate, Puducherry and the consequential order passed by the Tahsildar, Taluk Office, Puducherry dated 11 September 2015 directing him to vacate the residential house by 10.00 a.m. on 14 September 2015.

2. Heard the learned counsel for the petitioner.

3. The petitioner has come up with a claim that he took the residential building on lease from the third respondent in 2012. The third respondent executed the lease agreement subsequently on 14 March 2015 fixing the monthly rent at the rate of Rs.4,000/-. While so, the second respondent initiated proceedings under the SARFAESI Act. The second respondent after complying with the statutory requirements filed an application under Section 14 of the SARFAESI Act to take possession. The first respondent in turn passed an order on 26 August 2015 directing the Deputy Collector (Revenue) North-cum-Sub Divisional Magistrate to take possession of the property and handover the same to the second respondent. The Tahsildar, Puducherry thereafter by order dated 11 September 2015 called upon the petitioner to vacate the residential house. Feeling aggrieved, the petitioner has come up with this writ petition.

4. The documents available on record clearly shows that only after initiating proceedings under the SARFAESI Act the lease agreement in question was executed. In fact, the second respondent issued the notification under Section 13(2) of the SARFAESI Act on 3 March 2012. The Bank appears to have taken constructive possession of the property on 27 September 2012.

5. Though the petitioner contended that he took the building on lease in 2012, not even a scrap of paper is produced before this Court in support of the said contention. The lease agreement dated 13 June 2015 does not contain any reference about the commencement of lease from the year 2012. Therefore it is very clear that the lease agreement was executed only for the purpose of defeating the claim made by the second respondent and to prevent further action to be taken by the Bank under the provisions of the SARFAESI Act.

6. We therefore do not find any merit in the contention taken by the petitioner. It is open to the petitioner to make a request to the respondents 1 to 4 to give him reasonable time to vacate the property by filing an undertaking affidavit.

7. The writ petition is dismissed with the above observation. Consequently the connected MPs are closed. No costs.

-sd/-

ASSISTANT REGISTRAR(CS-II)

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

Tr

To

1. The Collector Cum District Magistrate
Government of Puducherry
Puducherry.

2. The Authorized Officer
State Bank of India
No.208, Anna Salai
Puducherry-605 001.

3. Tahsildar
Puducherry Taluk
Taluk Office
Government of Puducherry.

+1 CC to Mr.B. Vijay Advocate. SR.NO. 52799

+1 CC to Govt.Pleader(Pondicherry). SR.NO.52842

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CO-TS

JD 14/10/2015