IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.07.2016

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

W.P.No.21097 of 2016
and WMP. No.18041 of 2016

K.Dhanapal ... Petitioner

Vs

1.K.Shivakumar

2.State rep.by
The Inspector of Police [L&O],
K-4, Anna Nagar Police Station,
Chennai-600 040.

3.Punjab National Bank rep. by
The Branch Manager,
ARM Branch, I Floor,
Khivraj Building, Anna Salai,
Chennai-600 006. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus, directing the 2nd respondent not to interfere with the petitioner's peaceful possession and enjoyment and to direct the 2nd respondent to direct the 1st respondent not to interfere with the ownership legal rights of peaceful possession and enjoyment of the writ petitioner on the immovable property of land with a building, situated in Plot No.4390, presently NO.3/27, W Block, 1st Street, Anna Nagar, Chennai-600040, measuring 1 Ground and 975 Sq.ft. in R.S.No.15 Part and 16 Part of Mullam Village, owned by him in a Public Sale on 27.10.2009 through D.R.T. I Proceedings in O.A. No.137/2003.

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For Petitioner : Ms.R.Meenalochini

For Respondents : Mr.P.K.Rajagopal for R1
Mr.C.Emalias, APP for R2
Mr.M.L.Ganesh for R3

O R D E R

The petitioner has filed this Writ Petition praying for

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a Writ of Mandamus to direct the 2nd respondent not to interfere with the petitioner's peaceful possession and enjoyment and to direct the 2nd respondent not to interfere with the ownership legal rights of peaceful possession and enjoyment of the writ petitioner on the immovable property of land with a building, situated in Plot No.4390, presently No.3/27, W Block, 1st Street, Anna Nagar, Chennai-600040, measuring 1 Ground and 975 Sq.ft. in R.S.No.15 Part and 16 Part of Mullam Village, owned by him in a Public Sale on 27.10.2009 through D.R.T.-I Proceedings in O.A. No.137 of 2003.

2. Heard the learned counsel for the petitioner; learned counsels appearing for the respondents 1 and 3; learned Additional Public Prosecutor appearing for the 2nd respondent and perused the materials placed on record.

3. One Asiya Banu, who is the owner of the property located at No.3/27, W Block, 1st Street, Anna Nagar, Chennai - 40 had mortgaged the property on 23.04.1998 with Punjab National Bank and had defaulted in repaying the loan. In the meantime, the said Asiya Banu appears to have borrowed money from K.Shivakumar and had mortgaged the same property on 28.03.2008. When Asiya Banu defaulted, the Bank took various steps under the Debt Recovery Tribunal proceedings and the round of litigations went up to the Hon'ble Supreme Court twice. Thereafter, the Bank had brought the property to sale and the petitioner herein/Dhanapal had purchased the property from the Bank in an auction. While so, Dhanapal took possession of the property on 08.09.2014 and when he attempted to demolish to put up new construction after getting due permission from the Corporation of Chennai, the 2nd respondent Police interfered and prevented him from proceeding with the demolition, based on the complaint given by K.Shivakumar/1st respondent on 28.04.2016.

4. Mr.Rajagopal, learned counsel appearing for the 1st respondent would submit that the purchase of the property by Dhanapal is fraught with illegalities and that the sale itself is a vexatious one.

5. Per contra, learned counsels appearing for the Punjab National Bank and Dhanapal would submit that the mortgage entered into between Asiya Banu and K.Shivakumar on 28.03.2008 is itself a sham transaction, in order to defeat the rights of the bank.

6. In the considered opinion of this Court, these disputed questions cannot be gone into in this proceedings.

7. Learned Additional Public Prosecutor submitted that

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on the complaint given by K.Shivakumar, petition enquiry is being conducted.

8. This Court is of the view that the direction be issued to the 2nd respondent Police to ensure sufficient protection to Dhanapal from aggression by anyone, so that he enjoys the fruits of his purchase. All other matters are left open to be decided before the appropriate forum.

9. In the result, the respondent Police is directed to give protection to the petitioner herein/Dhanapal and ensure that no law and order problem occurs in the property. The Police shall not disturb Dhanapal's peaceful enjoyment of the property at Plot No.4390, presently No.3/27, W-Block, 1st Street, Anna Nagar, Chennai-600040.

With the above direction, this petition is ordered. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police [L&O],
K-4, Anna Nagar Police Station, Chennai-600 040.

2.The Branch Manager,
Punjab National Bank,
ARM Branch, I Floor, Khivraj Building,
Anna Salai, Chennai-600 006.

3.The Public Prosecutor, High Court, Madras.

2 ccs to M/s.R.Meenalochini, Advocate, sr.39147
1 cc to M/s.L.Ganesh, Advocate, sr.39179

W.P.No.21097 of 2016
and WMP No.18041 of 2016

tm co, kra 18.07.2016

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