

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.01.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.1193/2021
& WMP.No.1344/2021

[Video Conferencing]

K.Mariappan

.. Petitioner

Versus

1.The Manager
Authorised Officer
Dewan Housing Finance
Corporation Ltd., Kalpalathika Towers
New No.36, Old No.24, Dr.Ambedkar
Road, Ashok Nagar Main Road,
Kodambakkam, Chennai 600 024.

2.The Inspector of Police
Central Crime Branch [CCB/EDF-1]
Chennai.

3.Ravikumar

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent 'symbolic possession' notice dated 11.03.2020 and quash the same and further direct the 1st respondent not to take any possession of petitioner property.

For Petitioner : Mr.S.Nambirajan

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

(1)The petitioner, in the affidavit filed in support of this writ petition, would aver among other things that his father namely, Thiru.Kali, had purchased landed property along with the superstructure bearing Door No.25, New No.18, Gokulam Colony, Triplicane, Chennai-5, in Old S.No.3386, Old RS.No.1030/2 part new RS.No.1030/2-1 of Mylapore Village, admeasuring to an extent of 750 sq.ft., through a registered Sale Deed bearing Doc.No.2281/1960 dated 12.12.1960. The petitioner would further state that his father has executed a registered Settlement Deed bearing Doc.No.2586/1999 dated

11.11.1999 for an extent of 375 sq.ft., and it was followed by another registered Settlement Deed dated 05.05.2000 bearing Doc.No.984/2000 admeasuring to the balance extent of 375 sq.ft. It is also stated by the petitioner that all the other legal heirs have also executed a registered Release Deed bearing Doc.No.2408/1992 dated 17.11.1992 in his favour and that apart, his brother and sister-in-law also executed registered Sale Deed dated 21.11.2000 bearing Doc.No.2893/2000, conveying an extent of 375 sq.ft., and thus, claims to be the absolute owner of the land and in possession and enjoyment of the same. The petitioner would further aver that on account of the fact that he suffered huge financial loss, he was in dire need of money and a known person introduced the petitioner to the 3rd respondent and promised to arrange loan and accordingly, they opened a Bank Account in the name of the petitioner in Axis Bank, Saligramam Branch and received the Cheque Book and Debit Card and the 3rd respondent also took the original title deeds of the petitioner. Subsequently, the 5th respondent called the petitioner to the office of the Sub Registrar on 11.12.2015 and asked him to subscribe the signature in a document and the petitioner was not allowed to read the contents of the same and also believed that the said document was only for loan purpose. However, to his shock and surprise, he received the Symbolic Possession Notice dated 11.03.2020 which disclosed the fact that the 5th respondent had given the property of the petitioner as a security and alleging fraud and deceit on the part of the 5th respondent, also lodged a complaint on the file of the Inspector of Police, CCB-1, Chennai / 2nd respondent herein and based upon the said complaint, a case in Cr.No.110 of 2019 dated 25.03.2019 came to be registered against the 3rd respondent herein, Renuka Devi, Murugan, Pon Ganesan, Prem Kumar and Rajesh Kanna, for the commission of the offences under Section 406, 409, 420 and 34 of IPC.

- (2) The learned counsel for the petitioner would submit that in the light of the fraud played by the 3rd respondent and his associates, the Symbolic Possession Notice issued by the 1st respondent-Bank is, per se, unsustainable and prays for interference.
- (3) This Court has carefully considered the arguments advanced by the learned counsel for the petitioner and also perused the materials placed before it.
- (4) The petitioner is having an effective alternative remedy under Section 17 of the SAFAESI Act, and that apart, in the light of the allegations of fraud, deceit etc., it may be open to him to approach the competent Civil Forum also in the event of he being advised to do so.
- (5) This Court, taking into consideration, the above facts and circumstances, is of the considered view that the points urged by the learned counsel for the petitioner would revolve around adjudication of disputed questions of fact and this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot venture

into such an exercise.

(6) In the result, the writ petition is dismissed and if the petitioner is so advised and if it is available to him under law, he is at liberty to work out his remedies before the competent Forums. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

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2. The Inspector of Police
Central Crime Branch [CCB/EDF-1]
Chennai.

+4cc to Mr.S.Nambirajan, Advocate, S.R.No. 2973

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BS (CO)
GN (16/02/2021)

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