

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.34355 of 2015
and
M.P.Nos.1 and 2 of 2015

K.Amutha

.. Petitioner

Vs.

1. The Deputy Registrar of Coop. Societies,
Cheyyar Circle, Cheyyar,
Thiruvannamalai District.
2. The Sale Officer,
O/o.Deputy Registrar of Coop. Societies,
Cheyyar Circle, Cheyyar,
Thiruvannamalai District.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the entire records relating to the impugned public auction notice dated 12.10.2015 in Form Nos. 4 and 5 issued by the 2nd respondent and quash the same.

For Petitioner .. Mr.C.Prakasam

For Respondents.. Mrs.T.P.Savitha
Government Advocate (Co.op)

ORDER

Heard Mr.C.Prakasam, learned counsel for the petitioner and Ms.T.P.Savitha, learned Government Advocate [Coop] appearing for the respondents and with their consent, the writ petition is taken up for final disposal.

2. The petitioner has challenged the notice issued by the 2nd respondent dated 12.10.2015 in Form V under Rule 121 of the Tamil Nadu Cooperative Societies Rules, 1988. By virtue of the said notice, the petitioner was informed that the movable properties belonging to her namely a vehicle, is liable to be brought for sale, if she does not clear the dues of the judgment debtor to the Arni Cooperative Marketing Society. The petitioner was granted time till 30.10.2015,

failing which, informing the petitioner that the property will be sold in public auction.

3. At the time when the writ petition was entertained, the respondents were directed not to sell the vehicle in question. It is not in dispute that the petitioner is the owner of the vehicle which is the Lorry bearing Registration No.TN-45-AW-4055 and a Van bearing Registration No.TN-45-X-2952. It is the specific case of the petitioner that she purchased the said vehicles by mobilising the fund by selling her jewels which were given by her parents at the time of her marriage 25 years back. She obtained loan from SRIRAM Finance and therefore, she is the absolute owner of the vehicles in question. It is also not in dispute that the petitioner's husband S.Kamalanathan, was working as the Manager in Arni Agricultural Producers Coop. Marketing Society Ltd., Arni and against whom proceedings have been initiated under section 81 of the Tamil Nadu Cooperative Societies Act, 1983 [The Act] and recovery proceedings were initiated.

4. Learned Government Advocate submitted that since the petitioner's husband had no source of income, the authorities have proceeded against the vehicles owned by the petitioner and seized the same and brought the said vehicles for auction for recovery of the amount payable by her husband. who had misappropriated the funds of the society.

5. The petitioner challenged the impugned notice on the ground that she is neither an employee of the said Cooperative Society nor she was a Board of Director at any point of time and the 2nd respondent without enquiring into these aspects and without affording an opportunity to the petitioner to put forth her case stating that the vehicles were purchased from and out of her own funds, the question of bringing the movable properties for sale does not arise, has passed the impugned order.

6. After hearing the learned counsel for the parties and perusing the materials placed on record, it is evidently clear that the procedure contemplated under the rules has not been followed prior to bringing the properties for sale. Rule 121 is the rule pertaining to the seizure and sale of movable properties and it stipulates detailed procedure as to how the properties should be brought for auction. In the instant case it is not in dispute that the petitioner is not the person against whom a decree has been passed and she is not the judgment debtor. In such circumstances, the properties standing in the name of the petitioner would be brought for sale by attaching the same, after due notice to the petitioner and following the procedure under Law. Since the said procedure has not been followed, the impugned notice is liable to be set aside. However, liberty is granted to the 2nd respondent to issue notice to the petitioner and proceed in accordance with law. It is stated that the vehicles are in the care and custody of the Society concerned

from 09.07.2015 and the same shall continue to remain with the Society and the 2nd respondent shall issue fresh notice to the petitioner, hear the petitioner's objections and thereafter, pass appropriate orders in accordance with law. The above direction shall be completed within a period of three weeks from the date of receipt of a copy of this order.

7. The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.
Sgl

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub-Assistant Registrar

To

1. The Deputy Registrar of Co-operative Societies,
Cheyyar Circle, Cheyyar,
Thiruvannamalai District
2. The Sale Officer,
O/o.Deputy Registrar of Co-operative Societies,
Cheyyar Circle, Cheyyar,
Thiruvannamalai District

+1 C.C. To MR.L.P.Shamugasundaram, Advocate in SR.NO.63443

+1 C.C. To MR.C.Prakasaam, Advocate in SR.NO.63699

+1 C.C. To Government Pleader in SR.NO.63527

W.P.No.34355 of 2015

SVI (CO)
sd : 07/12/2015

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