

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16/11/2015

C O R A M

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.35149 of 2015
a n d
M.P.Nos.1 and 2 of 2015

P.Ravichandran

...Petitioner

Vs

1. The Deputy Registrar (Co-operative)
Thiruvannamalai District
Thiruvannamalai.

2. The Co-operative Sub-Registrar/
Field Officer and Sale Officer
Kalasapakkam
Thiruvannamalai District.

...Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorari to call for the records of the first respondent in connection with the impugned order passed by him in E.P.No.01/2014-15 dated 25/8/2014 and the subsequent order of Attachment passed by the second respondent in E.P.No.1/2014-15 dated 25/8/2015 and quash the same.

For petitioner .. Mr.S.Sivakumar

For respondents .. Mr.L.P.Shanmugasundaram
Special Government Pleader

सतयमेव जयते
O R D E R

With the consent of the learned counsel for the parties, the writ petition is taken up for final disposal.

2. Heard Mr.S.Sivakumar, learned counsel appearing for the petitioner and Mr.L.P.Shanmugasundaram, learned Special Government Pleader for the respondents.

3. This writ petition has been filed praying to call for the records of the first respondent in connection with the impugned order passed by him in E.P.No.01/2014-15 dated 25/8/2014 and the subsequent order of Attachment passed by the second respondent in E.P.No.1/2014-15 dated 25/8/2015 and quash the same.

4. The controversy in this writ petition lies in a narrow campus. The properties, which is the subject matter of question is said to have been purchased by the petitioner on 10th October 2011 from one Mr.Natarajan, S/o.Muruva Gounder, who is a retired employee/Secretary of C-952, Perayampattu Primary Agricultural Co-operative Credit Society and surcharge proceeding is initiated against the said Murugan and final orders were passed on 7th November 2012.

5. Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the respondents submitted that impugned action has been initiated to bring the property for sale for the purpose of recovering a sum of Rs.1,45,12,095/-.

6. It is seen that the first respondent had issued the impugned notice dated 25th August 2014 to the petitioner, apart from the said Murugan and others, in respect of the several other properties, so as to recover the dues payable, pursuant to the order passed in the surcharge proceedings. The petitioner said to have received the notice and explanation was given and sent by the petitioner on 13th September 2014 by Registered Post on 15th September 2014. The first respondent does not dispute the fact that the objection has been received. However, the first respondent has issued the demand notice dated 25th August 2015 and consequently, the second respondent has issued the sale notice. Therefore, the petitioner is before this Court.

7. Rule 126 of the Tamil Nadu Co-operative Societies Act, 1988 deals with the Procedure in attachment and sale of immovable property. Sub-Rule 1 of Rule 126 of the said Act states that the immovable property shall not be sold in execution of a decree unless such property has been previously attached. This is what the first respondent has done by issuing the proceedings impugned in the present writ petition.

8. Rule 135 of the said Act deals with the Investigation of claims and objections to attachment of property and Sub-Rule 1 states that where any claim is preferred to, or any objection is made to, the attachment of any property attached under these Rules on the ground that such property is not liable to such attachment, the sale officer shall investigate the claim or objection and dispose of it on merits. Provided that no such investigation shall be made when the sale Officer considers that the claim or objection is frivolous.

9. The learned Special Government Pleader submitted that the stage for considering the objections has not arisen as of now, as the first respondent had issued only Form 7 Notice under Rule 126 (2) (d). It is to be pointed out that at the first instance, the first respondent issued a notice dated 25th August 2014 under Rule 126 of the said Act. This notice is a notice prior to making an order of attachment. It is not in dispute that the petitioner herein was

called upon to submit his objections and he also submitted his objections which is also not in dispute.

10. In such circumstances, the first respondent cannot state that the petitioner has to wait and raise the objections only before the Sale Officer, especially when the first respondent has issued the show cause notice dated 25th August 2014 for which the petitioner has given his reply.

11. In the light of the above, there will be a direction to the first respondent to consider the petitioner's objection dated 13th September 2014 and afford an opportunity of personal hearing, peruse the documents produced by him and pass a speaking order and intimate the same to the petitioner, within a period of three weeks, from the date of receipt of a copy of this order. Till such orders are passed, the proceedings initiated by the second respondent for sale of the property in question alone shall be deferred.

12. With the above direction, this writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Mvs.

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1. The Deputy Registrar (Co-operative)
Thiruvannamalai District
Thiruvannamalai.

2. The Co-operative Sub-Registrar/
Field Officer and Sale Officer
Kalasapakkam
Thiruvannamalai District.

+1 C.C. To MR.L.P.Shanmugasundaram, Advocate in SR.NO.61927

+1 C.C. To MR.S.Sivakumar, Advocate in SR.NO.61975

+1 C.C. To Government Pleader in SR.NO.62324

W.P.No.35149 of 2015

CA(CO)

sd : 24/11/2015