

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 34233 of 2016

&

W.M.P. Nos. 29551 & 29552 of 2016

K. Chinnathai Gounder

..Petitioner

Vs.

1. The Deputy Registrar of Co-operative Societies (Housing),
No.15, West Main Road, Gandhi Nagar,
Vellore District.
 2. The Secretary,
C.2613 Vaniyambadi Co-operative Societies Ltd.,
No. 141, C.L. Road, Kathar Pettai,
Vaniyambadi Taluk, Vellore District.
 3. The Sales officer,
C.2613 Vaniyambadi Co-operative Societies Ltd.,
No. 141, C.L. Road, Kathar Pettai,
Vaniyambadi Taluk, Vellore District.
- ...Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the entire records relating to the proceedings C.E.P. No. 435/2016-2017, A.R.C. No. 1081/2007-2008 dated 22.08.2016 of the 1st respondent, Sale Notice dated 15.09.2016 passed by the 3rd respondent and quash the same.

For Petitioner :: Mr.T. Meganathan

For Respondents:: Mr.V. Selvaraj,
Addl. Govt. Pleader (Co-op.) for R1
Mr.L.P. Shanmugasundaram,
Special Govt. Pleader for R2 & R3

O R D E R

The petitioner has challenged the proceedings of the 1st respondent, vide C.E.P. No. 435/2016-2017, A.R.C. No. 1081/2007-2008 dated 22.08.2016 , for recovery of loan amount payable by the petitioner.

2. The petitioner, who is a member of the 2nd respondent Society, availed house loan from the 2nd respondent on 02.07.2005 to the tune of Rs.89,347/-. Totally, he paid a sum of Rs.23,735/- till 2013. Thereafter, the petitioner was unable to pay the balance amount. Therefore, the 2nd respondent initiated proceedings before the 1st respondent against the petitioner in ARC No. 1081 of 2007-2008 under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 and the petitioner received summons dated 15.04.2015 in which the 2nd respondent had claimed a sum of Rs. 1,95,943/-. On receipt of summons, the petitioner made representations to the authorities concerned, putting forth his objections and also sought time for paying the arrears amount. However, there was no response from the said authorities. Thereafter, eventhough the petitioner received summons to appear before the 1st respondent, he did not appear before the 1st respondent. Therefore, an ex parte decree came to be passed and to execute the ex parte decree, for recovery of the amount due under the award, the impugned sale notice dated 22.08.2016 was issued by the 1st respondent stating that the petitioner had to pay Rs.2,31,850/- on or before 28.09.2016 failing which the house property of the petitioner would be auctioned. Subsequently, the petitioner made representation dated 10.09.2016 to the 2nd respondent requesting him to stall the auction proceedings. However, the 3rd respondent issued the auction notice dated 15.09.2016. Hence, the present writ petition.

3. Heard Mr.T. Meganathan, learned counsel for the petitioner, Mr.V. Selvaraj, learned Additional Government Pleader for the 1st respondent and Mr.L.P. Shanmugha Sundaram, learned Special Government Pleader for respondents 2 and 3.

4. It is admitted by the petitioner that he availed loan and that he did not repay the entire loan amount. In spite of proceedings initiated before the 1st respondent, he remained ex parte. Only to execute the ex parte decree obtained, the auction sale notice had been issued. When the petitioner has committed default and failed to repay the loan amount, this Court cannot prevent the authorities from proceeding with the auction. Therefore, the interim order granted by this Court is vacated

and W.M.P. No. 29552 of 2016 is dismissed. The writ petition fails and the same is also dismissed. The respondents are at liberty to proceed with the auction sale notice. No costs. W.M.P. No. 29551 of 2016 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nv
To

1. The Deputy Registrar of Co-operative Societies (Housing),
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3. The Sales officer,
C.2613 Vaniyambadi Co-operative Societies Ltd.,
No. 141, C.L. Road, Kathar Pettai,
Vaniyambadi Taluk, Vellore District.

+1 cc to Mr.T.Meganathan Advocate sr 61402
+1 cc to M/s.L.P.Shanmugasundaram Advocate sr 60698
+1 cc to Government Pleader sr 60774

सत्यमेव जयते

W.P. No. 34233 of 2016

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