

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 16-02-2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5650 OF 2016

Seralathan

...Petitioner

-vs-

- 1.The Deputy Registrar of Co-operative Societies,
Krishnagiri,
Krishnagiri District.
 - 2.The Sale Officer,
Office of the Deputy Registrar of Co-operative Societies,
Krishnagiri,
Krishnagiri District.
 - 3.The President,
D.K.78, Anjur Primary Agricultural Co-operative Bank,
Anjur Post,
Krishnagiri Taluk,
Krishnagiri District.
- ...Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, forbearing the respondents not to proceed further pursuant to the auction Sale notice No.8 and 9 of the immovable property in E.P.No.480/2008-2009, dated 18.01.2016, pending disposal of C.M.A.(C.S.)3/2016 on the file of Co-operative Tribunal/Principal District Judge, Krishnagiri.

For petitioner : Mr.S.Sairaman

For respondents 1 & 2 : Ms.T.P.Savitha,
Addl.Govt.Pleader (Co-Op.)

For respondent 3 : Mr.M.S.Palanisamy

O R D E R

Petitioner has approached this Court, challenging the Sale Notice issued by the second respondent in order to recover the amount, which has been quantified by the first respondent, in an order passed under Section 87 of the Tamil Nadu Co-operative Societies Act,1983.

2. Earlier, the petitioner approached this Court, by filing W.P.No.40614 of 2015, questioning the order of surcharge, dated 26.03.2008, and the consequential attachment and auction sale notice, dated 22.05.2015. The said Writ Petition was disposed of by an order, dated 22.12.2015, directing the petitioner to pay a sum of Rs.1,00,000/- to respondents 2 and 3 therein within a timeframe and with a further direction to the petitioner to file an appeal before the Co-operative Tribunal. At this stage, it would be worthwhile to extract the order passed in the said Writ Petition, which reads as under :

"The petitioner, who was the then Director has come forward to file this writ petition challenging the Surcharge order No.2/2002 dated 26.3.2008 and the consequential attachment and sale notice dated 22.5.2015.

2. Though the learned counsel appearing for the petitioner submitted that some other person has already approached this Court and obtained interim order, this Court is not inclined to entertain this writ petition for two reasons. Firstly, the consequential order issued by the respondent is a Co-operative Society and therefore, no writ would lie. Secondly, as against the Surcharge order, the remedy is available before the Tribunal.

3. However, considering the submissions made and the Surcharge proceedings has been initiated against the number of other persons including the petitioner, who was directed at the relevant point of time, the writ petition stands disposed of by giving liberty to the petitioner to file an appeal against the Surcharge order dated 26.3.2008 within a period of four weeks from the date of receipt of a copy of this order. The period of limitation for filing the appeal is condoned on condition that the petitioner pays a sum of Rs.1 lakh to respondent Nos.2 and 3 within a period of four weeks from the date of receipt of a copy of this order. As and when, the petitioner files the appeal as indicated above, in the time granted, the appropriate authority will have to dispose of the appeal without rejecting it on the ground of limitation.

Writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed."

3. Pursuant to the direction issued by this Court, the petitioner has paid the amount of Rs.1,00,000/- and the same has been acknowledged by the respondents vide receipt, dated 11.01.2016. The petitioner has also complied with the further condition and filed the appeal before the Principal District Court/Co-operative Tribunal, Krishnagiri, and the said appeal has been entertained as C.M.A.(CS) No.3/2016. Along with the said appeal, the petitioner also filed a Stay Petition vide I.A.No.4 of 2016, which is pending before the Tribunal. In the interregnum, the property is sought to be brought for auction, by the respondents.

4. In the light of the fact that the petitioner has already remitted a sum of Rs.1,00,000/- and that the Stay Petition filed in the appeal is now pending before the Co-operative Tribunal, Krishnagiri, there will be a direction to the Tribunal, to decide the said petition as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of a copy of this order, and till the Stay Petition is heard and decided by the Tribunal, the second respondent shall not auction the property, shall adjourn the auction fixed on 24.02.2016 and await the orders, to be passed by the Tribunal in I.A.No.4 of 2016.

5. Writ Petition is disposed of accordingly. No costs. Consequently, the connected W.M.P.No.5007 of 2016 is closed.

6. Registry is directed to forward a copy of this order to the Principal District Court/ Co-operative Tribunal, Krishnagiri.

Sd/-

Assistant Registrar

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

WEB COPY

To

- 1.The Deputy Registrar of Co-operative Societies,
Krishnagiri,
Krishnagiri District.

2.The Sale Officer,
Office of the Deputy Registrar of Co-operative Societies,
Krishnagiri,
Krishnagiri District.

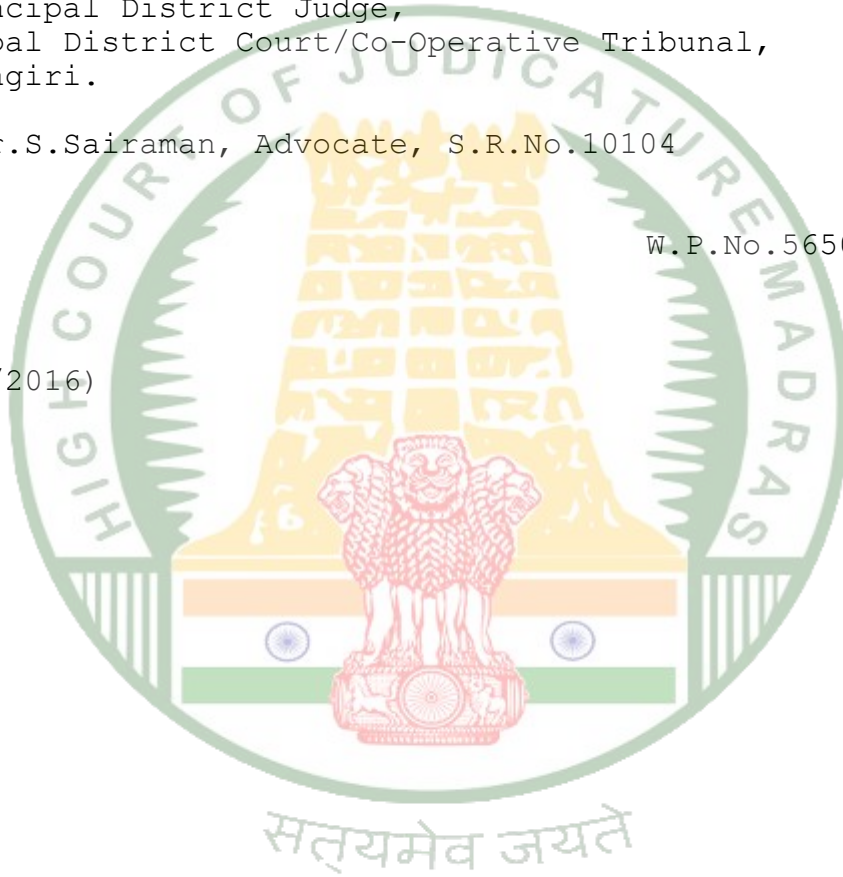
3.The President,
D.K.78, Anjur Primary Agricultural Co-operative Bank,
Anjur Post,
Krishnagiri Taluk,
Krishnagiri District.

4.The Principal District Judge,
Principal District Court/Co-Operative Tribunal,
Krishnagiri.

+1cc to Mr.S.Sairaman, Advocate, S.R.No.10104

W.P.No.5650 OF 2016

kk(CO)
srg(25/02/2016)



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