



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD).No.14307 of 2011
and
M.P.(MD).No.1 of 2011

S.Malligadevi

... Petitioner

Vs

1.The Deputy Registrar of Co-operative Society,
Madurai Division, Tallakulam,
Madurai-2.

2.The Joint Registrar cum Liquidator,
Madurai Urban Co-operative Bank Ltd,
Goodshet Street, Madurai-1

... Respondents

This Writ Petition has been filed under Article 226 of the Constitution of India praying for a WRIT OF MANDAMUS forbearing the respondents to conduct any Public Auction pertaining to the property in proceedings of the 1st Respondent in C.E.P.No.225/2010-11 in S.C.No.10/2006-07 dated 14-11-2011 without disposing the Claim Petition dated 29-11-2011 filed by the Petitioner.

For Petitioner :Mr.R.Aravindan

For Respondents :Mr.AK.Baskarapandian

Special Government Pleader

ORDER

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

By consent, the Writ Petition itself is taken up for final disposal.

2. The petitioner in the affidavit filed in support of this Writ Petition would aver among other things that she is working as General Manager in Madurai District Central Co-operative Bank Limited and she had availed a housing loan in the name of her employer and also by way of utilising her own funds purchased a vacant site comprising Survey No.101/4 at Thirupparankundram Village, bearing Plot Nos.11 and 12, through a



registered sale deed dated 07.06.1990 and constructed a house on the above mentioned site and thereafter, she had put up superstructure and it is also subjected to statutory levies. The petitioner would further state that her husband, namely, M.Sakthivel, is an employee of the Madurai Cooperative Urban Bank Limited and it is under liquidation. The second respondent has been appointed as Liquidator. He has taken charge of the affairs of the said Bank. It is the specific claim of the petitioner that insofar as the allegations levelled against her husband as an employee of the said Bank, she has nothing to do with it and to her shock and surprise, an impugned notice of attachment of immovable property was issued, vide its order dated 14.11.2011, stating among other things that her husband is due and payable a sum of Rs.89,50,400/- under Surcharge Order, dated 30.05.2008, obtained from the second respondent bank along with interest at the rate of 14% per annum and he was called upon to pay the said amount within ten days from the service of notice, failing which, the property annexed to the schedule will be attached and sold. Along with the said notice, a Dstraint Order under Rule 121 of the Tamil Nadu Co-operative Societies Rules, 1998 has also been issued on the same date and challenging the legality of the same, the present Writ Petition has been filed.

3. Learned Counsel for the petitioner would submit that she is in possession of the relevant documents to show that the vacant site has been purchased and constructions have been put up within the loan availed from her employer, namely, Madurai District Central Co-operative Limited and without affording any opportunity, whatsoever, the impugned notice as well as the demand notice have been issued and also drawn the attention of this Court to Section 143 of the Tamil Nadu Co-operative Societies Act, 1983, (in short 'the Act') and Rules 135 of the Tamil Nadu Co-operative Societies Rule, 1988 (in short 'the Rules') and would submit that admittedly, before issuing those notices, the procedure contemplated under the said section and rule have not been followed by the respondents and the petitioner in this regard has also submitted a representation, dated 29.11.2011, to the first respondent pointing out the said fact and despite the same, further proceedings were initiated by the respondents and therefore, the petitioner approached this Court by filing this Writ Petition and it was entertained and an order of interim stay was granted, by this Court, on 14.12.2011 and hence, he prays for setting aside the orders impugned in this Writ Petition.

4. Per contra, Mr.AK.Baskarapandian, learned Special Government Pleader, appearing on behalf of the respondents would submit that since the petitioner is having an effective alternative remedy under Section 153 of the Act in the form of jurisdictional Joint Registrar of Co-operative Societies, this Writ Petition is not maintainable and even otherwise, the first respondent, with due and proper application



of mind, has rightly issued the impugned notices and prays for the dismissal of this Writ Petition.

5. This court has considered the rival submissions made on either side and perused the materials available on record.

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6. For better appreciation of the facts, it is more useful to extract Chapter XVI of the Tamil Nadu Co-operative Societies Act, 1983 which deals with the execution of decrees, decisions, awards and orders:-

"143. Power of the Registrar to recover certain sums by attachment and sale of property:-

The Registrar or any person subordinate to him empowered by the Registrar in this behalf may, subject to the rules and without prejudice to any other mode of recovery provided by or under this Act, recover-

(a) any sum due under a decree or an order of a civil court, a decision or an award of the Registrar or any person subordinate to and empowered by the Registrar or arbitrator or arbitrators or an order of the Registrar.

Explanations:- For that purpose of this clause, "Registrar" and "arbitrator" shall also include the Registrar of the State having reciprocal arrangements with the State of Tamil Nadu and any arbitrator appointed by such Registrar; or

(b) any sum due from a registered society or from an officer, former officer, member of past or deceased member of a registered society as such to the Government including any costs awarded to the Government in any proceedings under this Act; or

(c) or any sum ordered to be paid towards the expenses of a general meeting of a registered society called under sub-section (4) of section 32 or sub-clause (ii) of clause (e) of sub-section (2) of section 81; or

(d) any sum awarded by way of costs under Section 85 to a registered society including a financing bank; or

(e) any sum ordered under Section 139 to be recovered as a contribution to the assets of a registered society or as costs of liquidation; or

(f) any sum ordered under Section 87 to be repaid to a registered society or recovered as a contribution to its assets; or

(g) any amount due under a certificate granted by the Registrar under sub-section (1) of section 150,

together with the interest, if any, due on such sum and the costs of process by the attachment and sale or by the sale without attachment of the property of the person against whom the decree, decision, award, order or certificate, has been obtained or passed.



6.1. Similarly, Rule 126 of the Tamil Nadu Co-operative Societies Rules, 1988 deals with the procedure in attachment and sale of immovable property and Rule 135 deals with investigation of claims of objections to attachment of property. Hence, it is relevant to extract Rule 135 of the said Rules:-

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"135. Investigation of claims and objections to attachment of property-

(1) 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.

(2) Where the property to which the claim or objection relates has been advertised for sale, the sale officer may postpone the sale pending the investigation of the claim or objection.

(3) where a claim or an objection is preferred, the party, against whom an order is made by the sale officer, may institute a suit within six months from the date of the order to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order made by the sale officer shall be conclusive.

(4)(a) Any deficiency of price which may happen on a resale held under sub-rule (16) of rule 121 or clause (k) or (n) of sub-rule (2) of rule 126 by reason of the petitioner's default and all expenses attending such resale shall be certified by the sale officer to the Registrar and shall at the instance of either the decree-holder or the judgment debtor be recoverable from the defaulting purchaser under the provisions of these rules. The costs, if any, incidental to such recovery shall also be borne by the defaulting purchaser.

(b) Where the property may, on the second sale, fetch higher price than at the first sale, the defaulting purchaser at the first sale shall have no claim to the difference or increase"

7. As per Rule 135 of the Tamil Nadu Co-operative Societies 1988, any objection is made as to the attachment of any property, the Sale Officer shall investigate the claim or objection and dispose of it on merits. The petitioner immediately on receipt of the impugned notice had raised objection in the form of representation, dated 29.11.2011 and apprehending the further services court in jbs services/ take place without considering the said objection/ representation approached this Court.



8. In the light of Rule 135 cited supra, this Court is of the considered view that the first respondent shall consider the said representation / objection of the petitioner, dated 29.11.2011 and pass appropriate orders, on merits and in accordance with law, within the stipulated time.

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9. In the result, the Writ Petition is disposed of and the petitioner is at liberty to submit a reminder along with a copy of this order as well as a copy of the earlier objection/representation, dated 29.11.2011, submitted to the first respondent, within a period of two weeks from the date of receipt of a copy of this order and the first respondent, on receipt of the same, is directed to consider the said representation/objection, in accordance with law, in the light of the observations made hereunder and dispose of the same, as expeditiously as possible, and not later than within a period of 12 weeks from the date of representation/objection being made by the petitioner and till such time, the respondents shall defer the further proceedings in terms of the impugned notices issued to the petitioner.

Sd/
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar.

To

1.The Deputy Registrar of Co-operative Society,
Madurai Division, Tallakulam,
Madurai-2.

2.The Joint Registrar cum Liquidator,
Madurai Urban Co-operative Bank Ltd,
Goodshet Street, Madurai-1.

+1CC to the Special Government Pleader, SR.No. 62293

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AM/SS3/03.11.2016/5P/4C