

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.07.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No.10289 of 2010

and

M.P.1 of 2010

S.Natarajan

.. Petitioner

Vs

1. The Registrar of the District
(Housing)/Sale Officer,
Office of the Deputy Registrar
(Housing), Co-operative Department,
Coimbatore -18.

2. The Coonoor Co-operative
Housing Society Limited, J-234,
represented by its
Secretary Coonoor, Nilgiris.

.. Respondents

PRAYER : This Writ Petition is filed Under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the first respondent herein comprised in the impugned Auction Sale Notice in Form No.9 in E.P. No.28 of 2010 Dated 12.04.2010 issued by the first respondent in respect of the Petitioner's dwelling house property at Survey No.108/1, New S.No.108/1A1A1A, Ward No.7 with a house bearing Door no.7/87, in R.K.S. Mundy, Attukolai, in Aruvankadu Village, Coonoor Taluk, The Nilgiris, quash the said Notice of Auction sale dated 12.04.2010 as being detrimental to the interest of the Petitioner and pass such other orders.

For Petitioner : Mr.J.Franklin

For Respondents: Ms.V.Selvaraj,
Additional Government Pleader for R1

Mr.L.P.Shanmugasundaram,
Special Government Pleader for R2

O R D E R

This Writ Petition has been filed by the petitioner challenging the Auction Sale Notice in Form No.9 in E.P. No.28 of 2010 Dated 12.04.2010 issued by the first respondent in respect of the subject property.

2. The learned counsel for the Petitioner would submit that the petitioner availed loan from the second respondent society, to construct a house. The petitioner and his wife jointly executed a mortgage deed in favour of the 2nd respondent Society pertaining to the house site along with the proposed house. Although the petitioner has repaid a considerable sum, the second respondent society invoked the arbitration clause and charged 18% huge penal interest in an arbitrary manner to the petitioner. Without giving any opportunity to the petitioner, an award in ARC. No.21/09-10 have been passed by the Arbitrator. Based on the award dated 15.12.2009, the second respondent filed E.P.No.28 of 2010 dated 12.04.2010 and the first respondent issued notices to the petitioner claiming a sum of Rs.3,34,968/-. Subsequently, the sale auction notice dated 12.04.2010 has been served to the petitioner, without following the procedures contemplated under the Rules. According to the petitioner, there is no genuineness on the part of the respondents to foreclose the dwelling property, when the quantum of interest charged, is in dispute. Therefore, the present writ petition is filed challenging the aforesaid sale auction notice.

3. Per contra, the learned counsel for the respondents would submit that the present writ petition is not maintainable before this Court, since the petitioner is having an efficacious alternative remedy under Section 135 of the Tamil Nadu Cooperative Societies Rules, 1988, he should approach the concerned authority to file an objection or claim. Hence, the writ petition is liable to be dismissed as not maintainable.

4. Heard the rival submissions of the parties and perused the material available on records.

5. Considering the above submissions made by the learned counsel for the parties, this court is not inclined to entertain the prayer of the petitioner and hence, the writ petition is liable to be rejected as not maintainable. However, the petitioner is at liberty to approach the competent authority under Rule 135 of the Tamil Nadu Cooperative Societies Rules, 1988 within a period of four weeks from the date of receipt of a copy of this order, if so advised.

6. Therefore, the writ petition is dismissed, with the above directions. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

rkp/avr

To

1. The Registrar of the District (Housing)/Sale Officer,
Office of the Deputy Registrar (Housing),
Co-operative Department, Coimbatore -18.
2. The Secretary,
The Coonoor Co-operative
Housing Society Limited, J-234,
Coonoor, Nilgiris.

+1cc to Government Pleader in sr.no.55720

W.P. No.10289 of 2010
and
M.P.1 of 2010

MG (CO)
NR 18/09/2017



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