

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.20480 of 2010
and
M.P.No.1 of 2010

Jayasrikanth

... Petitioner

Vs.

1. The Deputy Registrar,
Cooperative Society(Housing),
Krishnagiri District.

2. The Sale Officer,
Cooperative Society Sub Registrar,
Cooperative Society(Housing),
Vellore Division,
Vellore District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for impugned sale notice issued by the first respondent and served on the petitioner on 22.08.2010 though it bears dated 26.07.2010 from the file of respondent ARC2647/2004-05 in CEP 414/2007-08 fixing the sale date on 07.09.2010 and quash the same and forbearing the respondents from bringing the property to sale on 07.09.2010 or any other subsequent date.

For Petitioner : Mr.R.Margabandhu

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

: Mr.T.Arul Raj for R2

O R D E R

The learned counsel for the petitioner would submit, that the petitioner availed a loan for a sum of Rs.2,50,000/- from the first respondent by creating mortgage of immovable property in 1999. The petitioner repaid a sum of Rs.1,70,000/-.

Later, an additional loan for a sum of Rs.1,50,000/- was sanctioned which was given credit to the original loan itself. According to the petitioner, the petitioner has totally paid a sum of Rs.3,20,000/-. While being so, on 22.08.2010, a sale notice was served on the petitioner by the first respondent fixing the date of sale as 07.09.2010. The learned counsel for the petitioner would further submit that the petitioner was not aware of the proceedings of ARC2646/2004-05 and sale notice proceedings CEP414/2007-08. Without issuing a demand notice, the above sale notice has been served on the petitioner on 22.08.2010 which is illegal, without any justification and contrary to the provisions of law. Hence, challenging the said sale notice, the petitioner has filed this writ petition before this Court.

2. The learned counsel for the petitioner undertakes that the petitioner is willing to pay a sum of Rs.1,00,000/- to the respondent society within a time frame fixed by this Court and request this Court to direct the respondent to consider the petitioner's claim or objection petition, and also to defer the sale proceedings till an order is passed in the above petition.

3. The learned counsel for the respondents would submit that the petitioner has challenged the impugned auction notice before this Court under Rule 135 of the Tamil Nadu Cooperative Societies Rules, 1988 and would further submit that under the said Rule, having prima facie, the petitioner is supposed to approach the authority concerned for the relief and hence the writ petition is liable to be dismissed.

4. In view of the submissions made by the learned counsel for the parties, it is made clear that in the light of the provisions under Rule 135 of the Tamil Nadu Cooperative Societies Rules, 1988, the petitioner should make an objection or claim before the sale officer and therefore the writ petition is liable to be dismissed. However, liberty is given to the petitioner to file a claim or objection petition before the competent authority within a period of four weeks from the date of receipt of a copy of this Order.

5. Further, in view of the undertaking and request made by the learned counsel for the petitioner, a further sum of Rs.1,00,000/- (Rupees One Lakh only) shall be paid by the petitioner to the respondent society within a period of four weeks from the date of receipt of a copy of this Order. On payment of such amount, the respondent shall consider the objection or claim made by the petitioner and pass orders in accordance with law.

6. It is noted that on compliance of the above undertaking, the respondent shall defer the sale proceedings till an order is passed in the above claim or objection petition filed by the petitioner.

7. The writ petition is disposed of with above directions. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Registrar,
Cooperative Society(Housing),
Krishnagiri District.
2. The Sale Officer,
Cooperative Society Sub Registrar,
Cooperative Society(Housing),
Vellore Division,
Vellore District.

+1cc to Mr.R.Margabandhu, Advocate, S.R.No.52064
+1cc to the Government Pleader, S.R.No.53000

W.P.No.20480 of 2010
and
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SR(CO)
CA(22/08/2017)

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