

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.5448 of 2010

and

M.P.Nos.1 and 2 of 2010

E.Kandasamy

.. Petitioner

vs.

1. The Joint Registrar of Housing
Co-operative Societies,
Salem Region, Salem.

2. The Registrar of the District
Co-operative Societies (Housing)
Salem Region,
Salem.

3. The Secretary
S-1719, Ayothiyappatanam Housing
Co-operative Society Ltd.,
Ayothiyapattanam,
Salem 636 103.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent dated 04.12.2009 in reference Ni.Ma.615/ 04-05/dispute No.1717/03-04 and set aside the same and further direct the respondents to grant the concession of waiver of penal interest by granting 2 months time to repay the loan with normal interest and pass such further orders.

For Petitioner : Ms.A.Arulmozhi

For Respondents : Mr.L.P.Shanmugasundaram
Spl. Govt. Pleader R1 to R3

ORDER

This writ petition is filed challenging the sale notice issued by the 3rd respondent in reference Ni.Ma.615/04-05/dispute No.1717/03-04 dated 04.12.2009 and further direct the respondents to grant the concession of waiver of penal interest by granting 2 months time to repay the loan with normal interest.

2. The learned counsel for the petitioner submitted that the petitioner obtained loan of Rs.2,00,000/- from the 3rd respondent Society in June 2001, for construction of house. Due to financial crisis, the petitioner could not pay the instalments regularly. Without considering the payments already made by the petitioner and his willingness to settle the dues as One Time Settlement by availing the exemption granted by the Government, the respondent issued the auction notice, fixing the date of auction as 27.01.2010, without giving any notice to the petitioner. Since the petitioner paid a sum of Rs.1,50,000/- during January 2010, the auction was not conducted on that date. The 3rd respondent also obtained a decree under Rule 126 of the Tamil Nadu Co-operative Societies Act, 1983 in Dispute No.1717/03. Hence, the petitioner submitted a request dated 26.02.2010 to the 3rd respondent requesting to extend the waiver benefit for the penal interest and grant two months time to repay the principal amount with normal interest.

3. The learned counsel for the petitioner submitted that the petitioner has died. According to the petitioner, the petitioner was willing to repay the principal amount with the normal interest as One Time Settlement and hence requested the 3rd respondent for waiver of interest and penal interest. But, his request was neither considered nor the impugned auction notice was withdrawn. Hence, the petitioner has filed the present Writ petition seeking the aforesaid prayer.

4. The learned Special Government Pleader for the respondents would submit that although auction notice was issued, auction was not conducted, in view of the interim orders granted by this Court. Further, the petitioner is having an efficacious alternative remedy under Section 135 (1) of the Tamil Nadu Cooperative Societies Rules, 1988 and so the legal heirs of the deceased should approach the competent authority, namely, The Registrar of Co-operative Housing Societies, Salem to file an objection or claim instead of approaching this Court. Hence, this writ petition is liable to be dismissed.

5. As submitted by the learned counsel for the petitioner and the respondents, the petitioner is dead. The deceased petitioner has challenged the auction notice before this Court. Pursuant to the interim orders granted by this Court, the auction was not conducted. However, as rightly pointed out by the learned counsel for the respondent society, if the legal heirs of the deceased petitioner is aggrieved by the said auction notice, they have to approach the competent authority, as per the said Rules.

6. In view of the above, nothing survives in this writ petition. However, the legal heirs of the deceased petitioner is granted liberty to approach the competent authority, to file their objection or claim, under Section 135 of the Rules, if so advised.

7. Therefore, the Writ Petition is dismissed, with the above direction. Consequently, the connected M.Ps are closed. No costs.

sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

avr

To

1. The Joint Registrar of Housing
Co-operative Societies,
Salem Region, Salem.
2. The Registrar of the District Co-operative Societies
(Housing) Salem Region,
Salem.
3. The Secretary
S-1719, Ayothiyappatanam Housing
Co-operative Society Ltd.,
Ayothiyapattanam,
Salem 636 103.

+1 CC M/S.A.ARULMOZHI Advocate SR.No.64012

+1 CC GOVT.PLEADER,HIGH COURT, MADRAS Advocate SR.No. 64897

PPA(CO)
EGR 14/11/2017

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