

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 9503 of 2010
and
M.P. Nos. 1 of 2010

B.Nagarajan

... Petitioner

Vs.

1. The Deputy Registrar of the District (Housing)/Sale Officer, Office of the Registrar (Housing), Co-operative Department, Coimbatore.
 2. The Coonoor Co-operative Housing Society Limited, No.J.234, represented by its Special Officer, Coonoor, Nilgiris.
- Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the 1st respondent comprised in the impugned auction sale notice in Form No.9 in E.P.No.25/2010 dated 12.04.2010 issued by the 1st Respondent in respect of the petitioner's dwelling house property situated in Survey No.571/1, Ward NO.13 in Peria Bicketty in Aruvankadu, Nilgiris, quash the said impugned Sale Notice as being detrimental to the interest of the petitioner and pass such other or further orders.

For Petitioner : Mr.J.Franklin

For Respondents : Mr.V.Selvaraj,
Additional Government Pleader for R1
Mr.S.Sivashanmugam for R2.

O R D E R

The Petitioner has filed the present Writ Petition challenging the impugned auction sale notice in Form No.9 in E.P.No.25/2010 dated 12.04.2010 issued by the 1st Respondent.

2. The learned counsel for the petitioner would submit that the petitioner as a member of the 2nd respondent society, availed loan of Rs.2,00,000/- to construct a house. Although the petitioner has repaid a considerable sum, the second respondent society invoked the arbitration clause and charged huge penal interest in an arbitrary manner to the petitioner. Without giving any opportunity to the petitioner, an award in Case No.1724/03-04 have been passed by the Arbitrator. Based on the award dated 31.10.2009, the second respondent filed E.P.No.25 of 2010 and the first respondent issued notices to the petitioner claiming a sum of Rs.4,04,805/-. 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, the notices have been issued without dealing his case in a fair and dispassionate manner, without providing an opportunity of hearing the petitioner. 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 said facts and since there is an appeal remedy available under Section 135 of the Tamil Nadu Co-operative Societies Rules, 1988, to make his objections and claims before the concerned authorities, this 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, if so advised, within a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

rkp/avr

To

1. The Deputy Registrar of the
District (Housing)/Sale Officer,
Office of the Registrar (Housing),
Co-operative Department,
Coimbatore.
2. The Special Officer,
The Coonoor Co-operative Housing
Society Limited, No.J.234
Coonoor, Nilgiris.

+ 1 cc to Mr.S.Sivashanmugam, Advocate,SR.55216
+ 1 cc to The Govt.Pleader, SR.55724

W.P. No. 9503 of 2010
and
M.P. Nos. 1 of 2010

MG (CO)
NR 18/09/2017

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