

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 24232 of 2017

and

W.M.P No. 25611 of 2017

1. Bakkiyammal
 2. S. Ponnusamy
 3. Kasthuri
 4. S. Nagaraj
- ..Petitioners

Vs.

1. The Deputy Registrar of
Co-operative Societies (Housing)
Salem Region
Salem.
 2. The Secretary
The Erode Co-operative
Housing Society Ltd., (No.9782)
54, Balasubbarayalu Street
Erode - 1.
 3. The Registrar of the District/
The Sales Officer
Salem Region
Salem - 16.
- ..Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in respect of the auction sale notice in Thava. No. 5940/2004-2005 and Ni.Ma.No. 103/2006-07 dated 20.07.2017 issued by the 3rd respondent and quash the same and pass such further orders.

For Petitioner : Mr. T. Meganathan
For Respondents : Ms. T. Girija
Government Advocate R1 & R3

Mr.L.P. Shanmugasundaram
Apl. Government Pleader for R2

O R D E R

This writ petition has been filed seeking to quash the auction sale notice issued in Thava. No. 5940/2004-2005 and Ni.Ma.No. 103/2006 dated 20.07.2017, by the 3rd respondent.

2. The learned counsel for the petitioners submitted that the petitioners have borrowed a housing loan of Rs.1,00,000/- from the 2nd respondent on 07.05.2002. Thereafter, due to financial crisis, the petitioners were unable to repay the same. Hence, on 20.07.2017, the 3rd respondent issued auction cum sale notice to the petitioners to bring their property for auction. The auction has been scheduled on 19.09.2017 at 3.00 p.m for non-payment of the loan amount of Rs.4,29,585/- with interest and costs. According to the petitioners, the respondent has issued the auction notice without following proper procedure. Hence, he has filed this writ petition before this Court.

3. Mr. L.P. Shanmugasundaram, learned Special Government Pleader takes notice for the 2nd respondent and Ms. T. Girija, learned Government Advocate takes notice for the respondents 1 and 3. By consent of both the parties, the matter is taken up for final disposal.

4. On 13.09.2017, this Court directed the petitioner to file an Undertaking Affidavit to show his bonafide to pay the due amount to the Society, in instalments. In view of the same, today, the learned counsel for the petitioner filed an Affidavit dated 14.09.2017, wherein the petitioner has undertaken to pay a sum of Rs.50,000/- to the 2nd respondent prior to the date of auction i.e. 19.09.2017 and subsequently Rs.70,000/- within four weeks. In so far as the balance due amount is concerned, the petitioner undertakes to pay a sum of Rs.20,000/- every month to the Bank, without any default.

5. Mr. R. Venkatesh Kumar, the Manager of the 2nd respondent Society is present in the Court today. Based on his instructions, the learned Special Government Pleader accepted the said undertaking affidavit of the petitioner dated 14.09.2017. He further submitted that if there is any default in payment of the said amount, liberty may be granted to the respondents to proceed with the sale auction, against the petitioners.

6. The Undertaking Affidavit filed by the petitioners dated 14.09.2017 shall form part of the records. The petitioners are directed to settle the due amount as per the undertaking affidavit dated 14.09.2017, without any default. If

the petitioner fails in payment of the said amounts, liberty is granted to the respondents to proceed with the auction sale of the property. The respondents are directed to defer the auction sale till the conditional order is complied with.

7. Recording the submissions made by both the parties and the undertaking affidavit filed by the petitioners, the Writ Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

avr

To

1. The Deputy Registrar of
Co-operative Societies (Housing)
Salem Region
Salem.
2. The Secretary
The Erode Co-operative
Housing Society Ltd., (No.9782)
54, Balasubbarayalu Street
Erode - 1.
3. The Registrar of the District/
The Sales Officer
Salem Region
Salem - 16.

+1cc to the Government Pleader Sr. 67746
+1cc to Mr.Meganathan, AdvocateSr. 67270
+1cc to Mr.L.P.Shanmugasundaram, Advocate Sr. 67464

W.P. No. 24232 of 2017
and
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AR(CCC)
VR(18/09/2017)