

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.7.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.5572 of 2008
and M.P.No.2 and 4 2008

R.Sasireka

... Petitioner

Vs.

- 1 The Deputy Registrar of
Cooperative Societies,
Salem Circle, Salem.
 - 2 The Sale Officer/Senior Inspector of
Cooperative Societies,
Office of the Deputy Registrar of
Cooperative Societies,
Salem Circle, Salem.
 - 3 The Special Officer,
S.411, Sooramangalam Primary Agricultural
Cooperative Bank Ltd.,
Sooramangalam, Salem 636 005.
 - 4 B.Arulanandam
 - 5 Dr.M.Selthilkumar
- Respondents

(Respondent No.5 has been impleaded as per order, dated 25.7.2008 in M.P.No.3 of 2008)

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to (1) Conditional Attachment order in C.E.P.No.593/06-07 (ARC No.1190/06-07) dated 5.1.2007 of the first respondent and (2) Sale notice dated 26.11.2007 re-auction notice, dated 12.1.2008 and auction sale notice dated 15.2.2008 of the second respondent, quash the same and consequently, direct the respondents 1 to 3 to release the property of the petitioner comprised in Housing Plot No.84 in S.No.60/1 and 70/2 in Bodinaickenpatti, measuring 1955 sq.ft. and the house thereon from attachment and sale.

For Petitioner : Mr.D.S.Thirumavalavan
For Respondents 1&2 : Mr.V.Selvaraj, A.G.P.
For Respondents 4&5 : No appearance
For Respondent No.3 : L.S.M. Hasan Fizal

O R D E R

The writ petitioner has challenged the impugned conditional attachment order passed in C.E.P.No.593/06-07 (ARC No.1190/06-07) dated 5.1.2007 by the first respondent and subsequent sale notice dated 26.11.2007 re-auction notice, dated 12.1.2008 and auction sale notice dated 15.2.2008 issued by the second respondent.

2 According to the petitioner, petitioner is a Post Graduate working as lecturer in D.P.C. Polytechnic, Muthunaickenpatti, Omalur Taluk, Salem District. The petitioner availed mortgage loan under the Adjustable Rate Home Loan Scheme linked to the Retail prime Lending Rate (RPLR) of HDFC. Since the petitioner failed to repay the loan amount, the mortgage has not been released. The first respondent issued demand notice, dated 5.1.2007 under Rules 121 and 126 of the Tamil Nadu Cooperative Societies Rules, 1988 calling upon the petitioner to remit a sum of Rs.18.80 lakhs within 10 days towards outstanding loan amount payable by the husband of the petitioner, 4th respondent herein to the third respondent society failing which the property will be attached. On the same day, i.e. on 5.1.2007, a conditional attachment order, under Section 167(2) of the Tamil Nadu Cooperative Societies Act 1983 has been passed in C.E.P.No.593/06-07 by the first respondent to furnish security towards award amount of Rs.18.80 lakhs passed in Award No.1190/06-07 against the 4th respondent. Since the petitioner failed to furnish security towards award amount, the impugned auction notice, dated 26.11.2007 and subsequently notice dated 12.1.2008 and 15.2.2008 have been issued. Challenging the impugned auction notice and the conditional attachment order, dated 5.1.2007 the petitioner has approached this Court by filing the present writ petition.

3 According to the learned counsel for the petitioner, the petitioner has filed claim application before the first respondent under Rule 135(1) and Rule 140(3) of Tamil Nadu Cooperative Societies Rules, 1988 r/w Order XXI Rule 58 and Section 151 of C.P.C. to raise the attachment order passed in C.E.P.No.593/06-07, dated 5.1.2007.

4 The learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that under Rule 135 of Tamil Nadu Cooperative Societies Rules, 1988 the second

respondent is the competent authority to decide the claim petition. The claim petition filed by the petitioner under Rule 135(1) and Rule 140(3) of Tamil Nadu Cooperative Societies Rules, 1988 is said to have been dismissed by the first respondent. However, copy of the order nor any particular has been furnished before this Court.

5 In view of the provision under Rule 135 of the Tamilnadu Cooperative Societies Rules, liberty is granted to the petitioner to make claim before the Sale Officer within four weeks from the date of receipt of a copy of this order. If any such claim or representation is received by the second respondent, the same shall be considered and pass orders on merit and in accordance with law within a period of four weeks from the date of receipt of such representation.

The writ petition is dismissed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vaan

To

- 1 The Deputy Registrar of Cooperative Societies,
Salem Circle, Salem.
- 2 The Sale Officer/Senior Inspector of
Cooperative Societies,
Office of the Deputy Registrar of
Cooperative Societies,
Salem Circle, Salem.
- 3 The Special Officer, सतयमेव जयते
S.411, Sooramangalam Primary Agricultural
Cooperative Bank Ltd.,
Sooramangalam, Salem 636 005.

+ 1 cc to Mr. L.S.M. Hasan Fizal, Advocate Sr.53452
+ 1 cc to the Government Pleader SR.53487
+ 1 cc to Mr.R. Thamarai Selvan, Advocate Sr.53139

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RJ(CO)

EU 01.09.17