

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 26084 of 2015

and

M.P. No.1 of 2015

K. Saraswathi

.. Petitioner

Vs.

1.The State of Tamil Nadu
Rep. By its Secretary to Govt.
Housing Unit and Urban
Development Department
Fort St. George
Chennai - 600 009.

2. The Registrar of Co-operative
Society (Housing)
Nandanam, Chennai-35.

3. The Deputy Registrar of
Co-operative Housing Society
Salem Region
Salem.

4. The Secretary
Erode Co-operative Housing Society
No.54, Balasubbrayalu Street
Erode - 638 001.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned auction notice dated 16.06.2015 in Ni.Ma.No. 257/2005-06 issued by the 3rd respondent and quash the same, consequently direct the respondents herein to provide the benefits of G.O. Ms. No. 40 dated 16.03.2015 to the petitioner and pass such further orders.

For Petitioner :Mr. K. Thilageswaran

For Respondents:Mr. V.Selvaraj

Addl. Government Pleader R1 to R3

:Mr. L.P. Shanmughasundaran

Spl. Govt. Pleader for R4

O R D E R

This Writ Petition has been filed seeking to quash the impugned auction notice dated 16.06.2015 in Ni.Ma.No. 257/2005-06 issued by the 3rd respondent and consequently direct the respondents herein to provide the benefits of G.O. Ms. No.40 dated 16.03.2015 to the petitioner.

2. The learned counsel for the petitioner submitted that the petitioner availed a house loan for Rs.2,00,000/- from the 4th respondent Society and constructed a house. Till 31.03.2002, the petitioner repaid a sum of Rs.1,88,000/-. Subsequently, due to the unexpected loss in agriculture, the petitioner could not repay further instalments of loan. Whiles, the 1st respondent issued G.O. Ms. No. 40 dated 16.03.2015, wherein the Government announced waiver of interest and penal interest for the Housing Board loans. But, the 4th respondent issued a demand notice dated 31.03.2015 directing the petitioner to pay a sum of Rs.4,60,899/-. Hence, the petitioner approached the 4th respondent and made a written representation to waive the interest and penal interest, in the light of the G.O.Ms.No.40. Instead of considering the representation of the petitioner, the 3rd respondent has issued the impugned auction notice against the petitioner. The public auction scheduled was fixed on 04.08.2015, subsequently postponed. According to the petitioner, the above said representation for waiver of interest and penal interest, as per the order passed by the Government in G.O.Ms.No.40 dated 16.03.2015, has not been considered. Challenging the impugned auction notice, the present Writ petition has been filed.

3. The learned Additional Government Pleader representing the respondents 1 to 3 would submit that if the petitioner repays the entire outstanding amount of Rs.9,92,929/-, the eligible waiver amount of Rs.7,02,926/- will be refunded, after obtaining the permission from the 2nd respondent. But, pursuant to the interim orders granted by this Court on 21.08.2015, the petitioner has paid only a sum of Rs.2,00,000/-. Hence, the request of the petitioner cannot be considered and the writ petition is liable to be set aside.

4. Heard the rival submissions made by the learned counsel for the petitioner, the Additional Government Pleader, learned counsel appearing for the 4th respondent and perused the material on record.

5. The contention of the learned counsel for the petitioner is that she made a representation to the 3rd respondent, seeking to extend the benefits of G.O.Ms. No.40

dated 16.03.2015 and that the said representation has not been disposed of, and the same is still pending. In the meantime, the 3rd respondent has issued the auction notice to bring the petitioner's house property for sale. It is seen from the above, that the respondent has not disposed of the said representation, claiming the benefit under the scheme of waiver of interest and penal interest to the petitioner. Further, it is stated that in view of the interim orders passed by this Court, auction was not conducted on the date fixed by the 2nd respondent.

6. In view of the above, this Court is inclined to pass the following orders :-

- i. The petitioner is directed to submit a fresh representation to the 3rd respondent, within a period of two weeks from the date of receipt of a copy of this order.
- ii. In the event of such a representation made by the petitioner, the same shall be considered on merits, in accordance with law.
- iii. In the meantime, the learned counsel for the petitioner undertakes to pay a further sum of Rs.2,00,000/- to the 3rd respondent Society, within a period of twelve weeks.
- iv. In default, the respondents are directed to proceed with the auction proceedings. In the event of compliance of the order, the respondents are directed to defer the auction proceedings till orders are passed on the representation of the petitioner.

7. The Writ Petition is disposed of, on the above terms. Consequently, the connected M.P is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

avr

To

1. The Secretary to Govt.
Housing Unit and Urban
Development Department
Fort St. George
Chennai - 600 009.

WEB COPY

2. The Registrar of Co-operative
Society (Housing)
Nandanam, Chennai-35.
3. The Deputy Registrar of
Co-operative Housing Society
Salem Region, Salem.
4. The Secretary
Erode Co-operative Housing Society
No.54, Balasubbrayalu Street
Erode - 638 001.

W.P. No. 26084 of 2015
and
M.P. No.1 of 2015

RK(CO)
Eu 13.09.17



WEB COPY