

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.07.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.3821 of 2011

and

M.P.No.2 & 3 of 2011

K.R.Anand

... Petitioner

- Vs -

1. The District Registrar
O/O Deputy Registrar of Co-operative Societies,
Gobi Circle,
Gobichettipalayam,
Erode District.

2. Savundapur Primary Agricultural
Co-operative credit Society No.K1369
Rep.by its Special Officer,
Savundapur,
Gobichettipalayam,
Erode District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice dated 11.01.2011 made in Form Nos.8 & 9 in E.P.No.25/2000-01 issued under Rule 126(2) of the Tamil Nadu Cooperative Societies Rules, 1988 by the 1st respondent herein, quash the same and consequently direct the 1st respondent herein to adjudicate the petitioner's claim dated 31/01/2011 filed under Rule 135.

For Petitioner : Mr.N.Manokaran

For 1st Respondent : Mr.V.Selvaraj
Additional Govt.Pleader

For 2nd Respondent : Mr.P.Anbarasan

O R D E R

The petitioner has filed the writ petition against the impugned auction order.

2. The petitioner is the absolute owner of the property of Savundapur Primary Agricultural Co-operative Credit Society. The petitioner's father working under the 2nd respondent society and enquiry was conducted under Section 85 of the Cooperative Societies Act and surcharge order passed by the respondent against the petitioner's father for a sum of Rs.64,39,894/- on 29.09.2005 in Na.Ka.No.9077/2004/A. Subsequently, the respondent has initiated recovery proceedings and attached the property which have been sold in the name of the petitioner on 04.09.1998 and the petitioner is in possession of the property. Hence, the petitioner made objection on 15.01.2010 under Rule 135 of the Tamil Nadu Cooperative Societies Rules.

3. The extract of the rules reads as under:-

'Investigation of claims and objections to attachment of property-

(1) Where any claim is preferred to, or any objection is made to, the attachment of any property attached under these Rules on the ground that such property is not liable to such attachment, the Sale Officer shall investigate the claim or objection and dispose of it on merit. Provided that no such investigation shall be made when the Sale Officer consider that the claim or objection is frivolous.

(2) Where the property to which the claim or objection relates has been advertised for sale, the Sale Officer may postpone the sale pending the investigation of the claim or objection.

(3) Where a claim or an objection is preferred, the party, against whom an order is made by the Sale Officer, may institute a suit within six months from the date of the order to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, and order made by the Sale Officer shall be conclusive.

(4) (a) Any deficiency of price which may happen on a resale held under sub rule (16) of Rule 121 or clause (k) or (n) of sub-rule (2) of Rule 126 by reason of the purchaser's default and all expenses attending such resale shall be certified by the Sale Officer to the Registrar and shall, at the instance of either the decree-holder of the judgment debtor, be recoverable from the defaulting purchase under the provisions of these rules. The costs, if any, incidental to such recovery shall also be borne by the defaulting purchaser.

(b) Where the property may, on the second sale, fetch higher price than at the first sale, the defaulting purchaser at the first sale shall have no claim to the difference or increase.''

4. Without considering the said objection and Rule 135 of the Tamil Nadu Co-operative Societies Rules, the respondent has passed the impugned order dated 11.01.2001. Subsequently, the impugned judgment and sale notice was also issued under Rule 126 (2) of the Tamil Nadu Co-operative Societies Rules by the 1st respondent. The said order has been challenged before this Court.

5. The learned counsel for the petitioner would submit that the objection made on 15.09.2010 is pending with the authority concerned and without passing any orders, the impugned auction sale notice issued is illegal and the impugned order is liable to be quashed.

6. The learned counsel appearing for the 2nd respondent society would submit that the said objection petition dated 15.09.2010 will be considered by the 1st respondent concerned authority in accordance with law.

7. The learned Additional Government Pleader would submit the said objection submitted by the petitioner will be considered in accordance with law.

8. In view of the submission made by the learned counsel for the parties, pursuant to the sale notice, the impugned auction notice issued by the respondent, this Court has granted stay and therefore, further auction proceedings is deferred. Hence, the contention of the petitioner is that the petitioner's objection dated 15.09.2010 is pending before the 1st respondent without passing any orders in the said objection, the present impugned order passed by the respondent is liable to be quashed. Therefore, this Court has no hesitation to quash the impugned proceedings passed by the 1st respondent. Respondent is directed to consider the petitioner's petition dated 15.09.2010 on merits and in accordance with law as early as possible, till the decision taken in the objection petition, the proceedings shall be deferred.

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9. With the above direction, this writ petition is allowed.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The District Registrar
O/O Deputy Registrar of Co-operative Societies,
Gobi Circle,
Cobichettipalayam,
Erode District.

2.The Special Officer
Savundapur Primary Agricultural
Co-operative Society No.K1369
Savundapur,
Gobichettipalayam,
Erode District.

+1 cc to M/s.N.Manokaran Advocate sr 50189

+1 cc to M/s.P.Anbarasan Advocate sr 50304

W.P.No.3821 of 2011
and
M.P.No.1 of 2011

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