

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.11199 of 2009 and
MP No.1 of 2009

A.Raja Christoper

..Petitioner

Vs.

The Sale Officer / Deputy Registrar,
of Cooperative Societies,
H.H.575, Vallam Primary Agricultural
Cooperative Bank Ltd.,
Cheyyar-604 407,
Tiruvannamalai District

..Respondent

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus forbearing the respondent herein, his subordinates and persons authorised by him, from in any manner selling the petitioner's house property bearing Door No.8A-29-2, Potti Naidu Street, K.V.T.Nagar Extension, measuring 1800 sq.ft. and comprised in S.Nos.536/1 and 537/3B, Vandavasi Town and Taluk, Tiruvannamalai District in public auction or in any other manner on 24.06.2009 or any other future date.

For Petitioner : Mr.P.Mani

For Respondent : Mr.L.S.Hasan Fizal

ORDER:

According to the learned counsel for the petitioner, the petitioner is the owner of the property bearing Door No.8A-29-2, Potti Naidu Street, K.V.T.Nagar Extension, measuring 1800 sq.ft and comprised in S.Nos.536/1 and 537/3B, Vandavasi Town and Taluk and Tiruvannamalai District. Originally the property belonged to one, Mrs.L.Palaniammal, who had availed a loan for a sum of Rs.1,50,000/-from Vandavasi Cooperative House Building Society Limited, Vandavasi by mortgaging the same property. When the payment was defaulted, the society brought the property for sale of public auction. At that time, the petitioner purchased

the said property and discharged a sum of Rs.3,49,000/- to the society and obtained the discharge certificate. While being so, the petitioner observed an auction sale notice published by the respondent in a daily newspaper, wherein it had been stated that the property would be sold in public auction on 24.06.2009. When the petitioner enquired, it came to know that the property had already been attached in an arbitration proceedings. The petitioner understood later that an arbitration proceedings was initiated against one, Mr.Loganathan who is the husband of the vendor Mrs.L.Palaniammal and the said property had been attached as if it belonged to Mr.Loganathan. If it is the case, the encumbrance certificate obtained from the Office of the Sub Registrar, Vandavasi should have revealed this fact. Not being so and even though the respondent is well aware that the petitioner is the bonafide purchaser of the property, the respondent proceeded with the auction sale of the property. Hence, the petitioner has approached this court to forbear the respondent from selling the petitioner's house property.

2. The learned counsel for the respondent would submit that the present writ petition is not maintainable in the light of the Full Bench Judgment of this Court in the case of K. MARAPPAN VS. DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES, NAMAKKAL reported in 2006 (4) CTC 689. The learned counsel for the respondent would further submit that the petitioner having an efficacious alternative remedy under Section 135 of the Tamil Nadu Cooperative Societies Rules, 1988 should approach the concerned authority to file an objection or claim instead of approaching this Court. Hence, the writ petition is liable to be dismissed.

3. From the submissions made by the learned counsel for the respondent and the decision cited supra, this court is not inclined to consider the petitioner's prayer as the writ petition is not maintainable. However, liberty is granted to the petitioner to approach before the competent authority under Rule 135 of the said Rules within a period of four weeks from the date of receipt of a copy of this Order.

4. The writ petition is disposed of with above terms. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

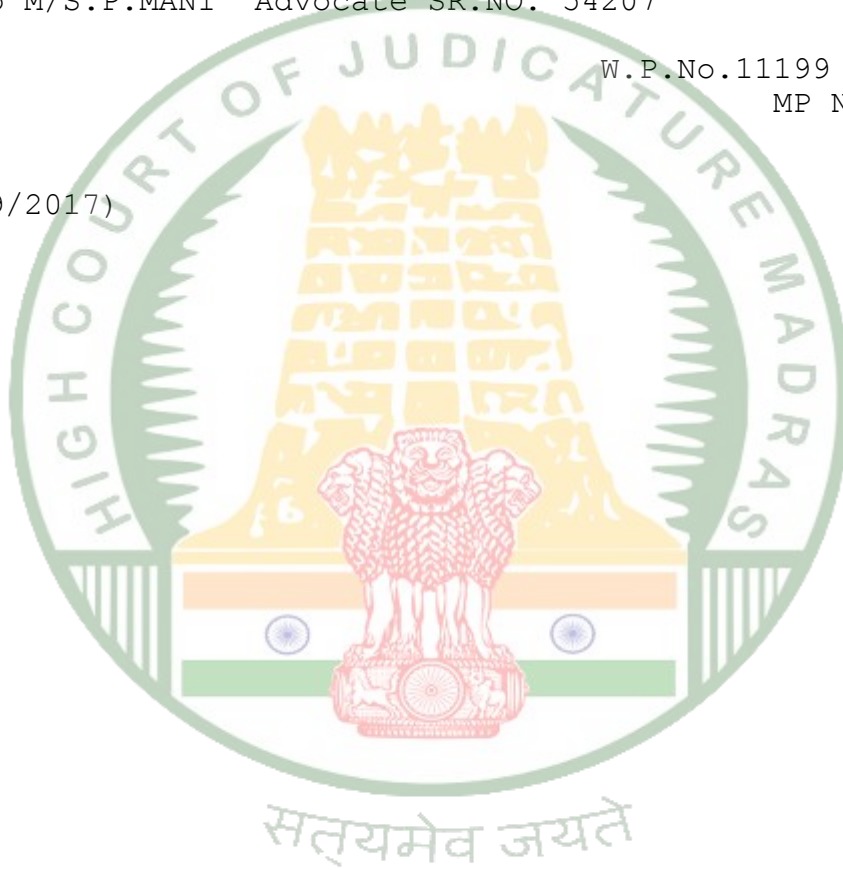
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To
The Sale Officer / Deputy Registrar,
of Cooperative Societies,
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Cooperative Bank Ltd.,
Cheyyar-604 407,
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+1 C.C. to M/S.P.MANI Advocate SR.NO. 54207

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SAI (CO)
T.R (01/09/2017)



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