

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.19268 of 2014
and
M.P.Nos.2 & 3 of 2014

- 1.C.Chennaiyan
- 2.Sekar
- 3.Shanmugam
- 4.Shabapathi
- 5.Thanaraj
- 6.Ranganadhan
- 7.Murugan

.... Petitioners

Vs.

1. The Deputy Registrar of
Co-operative Societies,
Collectorate, Coimbatore District
Coimbatore.
2. The Sub-Registrar of Co-operative
Societies (Prosecution),
O/o.The Deputy Registrar of
Co-operative Societies,
Coimbatore Zone, Coimbatore.
3. K 2079 Primary Agricultural
Co-operative Society,
rep. By its Secretary
Mettupalayam, Coimbatore District
Coimbatore.

4. M.R. Palanichamy

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the public auction notice dated 13.06.2014 issued by the 2nd respondent vide form No.8 under Rule 126 of Tamil Nadu Co-operative Societies Rule 1988, in E.P. No. 64/1999 Sa.Pa.3 in Tha.Va.No.228/1999 Sa.Pa.1 and quash the same and to forbear the respondents from selling the petitioners' property and to pass such further orders.

For Petitioners : Mr. A. Edwin Prabakar

For Respondents : Mrs. T. Girija,
Government Advocate for R1 & R2
Mr. L.P. Shanmugasundaram for R3
Mr. N. Manokaran for R4

O R D E R

This Writ Petition has been filed challenging the public auction notice dated 13.06.2014 issued by the 2nd respondent vide form No.8 under Rule 126 of Tamil Nadu Co-operative Societies Rule 1988, in E.P. No. 64/1999 Sa.Pa.3 in Tha.Va.No.228/1999 Sa.Pa.1 and quash the same and to forbear the respondents from selling the petitioners' property .

2. The Petitioners are the owners of the schedule property. The petitioners gave Power of Attorney to the 4th respondent, to develop the schedule property into a layout and sell the property to the third parties. Whiles, the impugned auction notice has been issued bringing the schedule property for public auction, for discharge of the loan obtained by the 4th respondent. According to the petitioners, they executed only a Power of Attorney in favour of the 4th respondent and that they are not a borrower or a guarantor to loan amount obtained by the 4th respondent. Hence, the impugned notice issued by the 2nd respondent against the petitioners, is illegal and without jurisdiction. Challenging the same, he has filed the present writ petition.

3. The learned Government Advocate appearing for the respondents 1 and 2, would submit that the petitioners have an efficacious alternative remedy, under Section 135 of the Tamil Nadu Cooperative Societies Rules, 1988, to approach the Sale Officer to file an objection or claim instead of approaching this Court. Hence, the writ petition is liable to be dismissed, as not maintainable.

4. According to the petitioners, the Power of Attorney has been executed by the petitioners in favour of the 4th respondent for the purpose of development of the property and selling the same, as plots to third parties. Therefore, the said fact is a disputed fact, as to whether the Power of Attorney has been granted only for sale of the property and not for mortgage and borrow the loan from the society. These aspects cannot be gone through in a writ petition filed under Article 226 of the Constitution of India. As pointed out by the learned Government Advocate and on the basis of the common counter affidavit filed by the 3rd respondent, wherein paragraph

10, it is stated that if there is any grievance or claim in the attachment of property, the petitioners have to approach the Sale Officer, who is the competent authority, under Section 135 of the Tamil Nadu Co-operative Societies Rules, 1988. In the light of the said provisions of the Rules, this Court is not inclined to entertain this writ petition.

5. Therefore, the writ petition is disposed of, with liberty to the petitioners to file appropriate application before the competent authority, i.e., the Sale Officer, within a period of four weeks from the date of receipt of a copy of this order. Till such time, the auction proceedings shall be deferred. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Registrar of
Co-operative Societies,
Collectorate, Coimbatore District
Coimbatore.

2. The Sub-Registrar of Co-operative
Societies (Prosecution),
O/o.The Deputy Registrar of
Co-operative Societies,
Coimbatore Zone, Coimbatore.

3. The Secretary
K 2079 Primary Agricultural
Co-operative Society,
Mettupalayam, Coimbatore District
Coimbatore.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.52181

+1cc to Mr.A.Edwin Prabakar, Advocate, S.R.No.52793

+1cc to the Government Pleader, S.R.No.53004

W.P.No.19268 of 2014
and

M.P Nos.2 & 3 of 2014

KGK(CO)
CA(21/09/2017)