

HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.15306 of 2010 and
M.P.No.1 of 2010

S.Natarajan

..Petitioner

Vs.

1. The Regional Deputy Registrar
(Housing), Thanjavur,
Thanjavur.
 2. The Arbitrator and Cooperative
Sub-Registrar(Urban Housing),
Thanjavur.
 3. Z-3,Mayuram Co-Operative Building Society,
Represented by its Secretary,
Ganapathy Nagar,
Koranad,
Mayiladuthurai.
- ...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1st respondent in his proceedings in CEP No.73/04-05 dated 03.06.2010 and quash the same.

For Petitioner : Mr.A.Muthukumar

For R1 & R2 : Mrs.T.Girija,
Government Advocate

For R3 : Mr.J.Rajakalifulla,
Senior Counsel for
Ms. Jayandra Krishnan

ORDER

According to the petitioner, the petitioner's mother, S.Padmavathi borrowed a loan of Rs.4 lakhs from the third respondent society in the year 2001-2002 for constructing a house on the plot belongs to the petitioner's family. The petitioner's mother did not discharge the entire

due amount. So, the third respondent brought to the notice of the petitioner that the mortgaged property would be sold in a public auction on 10.03.2010. Immediately, the petitioner paid Rs.10,000/- and requested the third respondent to furnish the details of the loan transaction. Subsequently, the auction was not conducted. While so, the third respondent served a notice issued by the first respondent to the petitioner wherein the due amount had been noted as Rs.13,70,123/-. Further, the petitioner received a notice on an execution petition in CEP.No.73/04-05 dated 03.06.2010 filed for the said amount, which is now pending on the file of the first respondent. Thereafter, the petitioner requested the first respondent to furnish a copy of the award, the execution petition and Form 9 under Right to Information Act through Registered Post with Acknowledgment Due. But, the petitioner has not received the same. Hence, challenging the above notice, the petitioner has filed the present writ petition before this Court to quash the above notice dated 03.06.2010.

2. The learned counsel for the petitioner would submit that the said S.Padmavathi who had borrowed Rs.4 lakhs, died on 18.03.2006. But, the first respondent has issued the impugned notice against the dead person and so, the proceedings over the execution petition is nullity and the decision of the first respondent to sell the mortgaged property in a public auction is illegal in the eye of law. Further, if the respondents made the petitioner as a party to the above proceedings, the objection might have been raised before the respondents. Therefore, without issuing notice to the petitioner who is a legal heir of the deceased borrower, the respondents proceeding with the execution petition, has now issued the impugned notice. For these reasons, the petitioner has filed this present writ petition praying to quash the above notice.

3. The learned senior counsel appearing for the third respondent society admitted that the execution proceedings is continued against the deceased borrower. But, the petitioner has not disclosed the fact that the petitioner was a party to the award proceedings and subsequently, the petitioner also party to the execution proceedings. Being well aware of the execution proceedings, the petitioner is not entitled to get any relief in the present writ petition.

4. By considering the submissions made by the learned counsel for the parties, it is found that the petitioner's mother who borrowed the amount died only during the execution proceedings. Even though this fact was brought to the respondents, the impugned sale notice has been issued in the name of the deceased borrower. Therefore, the impugned

notice is liable to be quashed.

5. Accordingly, the writ petition is allowed and the impugned notice is quashed. However, liberty is granted to the respondents to proceed with the execution of the award in accordance with law. Consequently connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

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Thanjavur.
2. The Arbitrator and Cooperative
Sub-Registrar (Urban Housing),
Thanjavur.
3. The Secretary,
Z-3, Mayuram Co-Operative
Building Society,
Ganapathy Nagar,
Koranad,
Mayiladuthurai.

+1 CC to Mr.J. Jayandra Krishnan, Advocate sr 50028.
+1 CC to Mr.A. Muthukumar, advocate sr 50228
+1 CC to Govt. Pleader sr 51048.

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RJ (CO)
sp (08/08/2017)

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