

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 30639 of 2016
and
W.M.P NOs.26549 & 26550 of 2016

B. Vallal Perumal .. Petitioner

Vs.

1. The Deputy Registrar of
Co-operative Societies
Thirukoilur
Villupuram District.
2. The Sale Officer / Co-operative
Sub Registrar/ Field Officer
Thiyagadurugam
Kallakurichi Taluk
Villupuram District.
3. The General Manager
Villupuram Central Cooperative
Bank, Villupuram,
Villupuram District.
4. Tamil Nadu State Transport Corpn.
Rep. By its Chairman cum
Managing Director
Villupuram Division
Villupuram.
5. F.T.65 Tamil Nadu State Transport
Corporation Employees' Cooperative
Thrift and Credit Society Ltd.,
Rep. By its secretary
Vazhudhareddy
Villupuram District.

(R4 & R5 Suo notice impleaded as per
order dt.17.10.16 in WP.30639/16)

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent in his auction notice published in News Paper "Dinamalar" dated 12.08.2016 and quash the same and pass further orders.

For Petitioner : Mr. M. Selvam

For Respondents : Mrs. T. Girija,
Govt Advocate for R1 & R2

Mr. L.P. Shanmughasundaram
Spl. Government Pleader

for R3

Mr. P. Paramasivadosh for
R4

Mrs. R. Meena for R5

O R D E R

This Writ Petition has been filed seeking to quash the auction notice published by the 2nd respondent in the News Paper "Dinamalar" dated 12.08.2016.

2. According to the petitioner, he is in possession of land earmarked in his favour, by a registered partition deed dated 07.12.2007, which is his ancestral property and is undertaking agricultural operations. His father Thiru Balasundaram is the President of the 5th respondent Society/ Tamil Nadu State Transport Corporation Employees' Co-operative Thrift and Credit Society Ltd. Though it is stated that the Deputy Registrar of Co-operative Societies, Tindivanam had issued a conditional order of attachment on 04.03.2009 in A.R.C. No.687/2009, the petitioner has not received any communication from the respondents. Subsequently, an order of attachment was passed by the 1st respondent, bringing the subject property of the petitioner for auction, as if the property belongs to my father. The petitioner preferred his objection under Rule 135 of the Tamilnadu Co-operative Societies Rules. Again, the 1st respondent decided to conduct auction sale and issued notices under Form-8 & Form -9. The 2nd respondent being the Sale Officer, advertised in the newspaper "Dinamalar" dated 12.08.2016, about the auction sale of the petitioner property on 12.09.2016 at Kallalurichi. Challenging the said notice, the petitioner has preferred the present writ petition.

3. At the time of admission, this Court granted an order of interim stay of the auction notice and so no auction was conducted, as per the impugned auction notice. Mr. L.P.

Shanmughasundaram, learned Special Government Pleader submitted that if the objection/ claim filed by the petitioner is still pending before the 2nd respondent, the same would be considered, in accordance with law, as per the provisions of Rule 135 of the Tamilnadu Cooperative Societies Rules.

4. Mr. C. Paramasivam, learned Government Advocate adopted the submissions made by the learned Special Government Pleader.

5. It is relevant to extract Rule 135 of the Tamil Nadu Cooperative Societies Rules, 1988, hereunder :-

"135. 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 merits: Provided that no such investigation shall be made when the sale officer considers 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, the 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 petitioner'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 or the judgment debtor be recoverable from the defaulting purchaser 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.'

6. In view of the submissions made by the learned counsel for the respondents, without considering the grounds raised by the petitioner in the writ petition, the 2nd respondent is directed to consider the claim/ objection preferred by the petitioner on 12.08.2016, on merits and in accordance with law, and pass orders, as expeditiously as possible.

7. The writ petition is disposed of, with the above direction. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

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To

1. The Deputy Registrar of
Co-operative Societies
Thirukoilur, Villupuram District.
2. The Sale Officer / Co-operative
Sub Registrar/ Field Officer
Thiyagadurugam
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3. The General Manager
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Bank, Villupuram,
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4. The Chairman cum Managing Director
Tamil Nadu State Transport Corpn.
Villupuram Division, Villupuram.
5. The Secretary
F.T.65 Tamil Nadu State Transport
Corporation Employees' Cooperative
Thrift and Credit Society Ltd.,
Vazhudhareddy
Villupuram District.

+1cc to Mr.P.Paramasivados, Advocate sr.20866

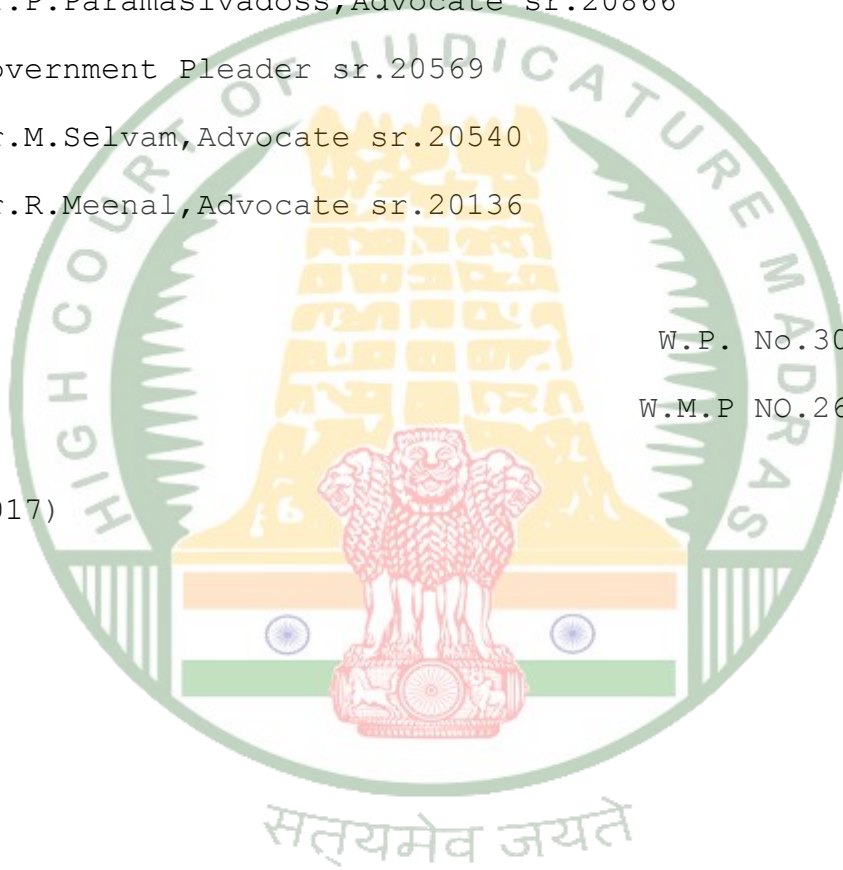
+1cc to Government Pleader sr.20569

+1cc to Mr.M.Selvam, Advocate sr.20540

+1cc to Mr.R.Meenal, Advocate sr.20136

W.P. No.30639 of 2016
and
W.M.P NO.26550 of 2016

ca (co)
ss (15/6/2017)



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