

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 31260 of 2016
and WMP Nos.27134 & 27135 of 2016

Sivasakthi

.. Petitioner

Vs.

1. The Deputy Registrar of Co-op Societies,
Thirukoilur,
Villupuram District.
2. The Sale Officer/Co-op Sub Registrar -
Field Officer,
Thiyaghadurgam,
Kallakurichi Taluk, Villupuram District.
3. The General Manager,
Villupuram District.,
Central Co-op Bank, Villupuram.
4. Tamil Nadu State Transport Corporation
Rep by its Chairman Cum Managing Director,
Villupuram Division, Villupuram.
5. F.T.65 Tamil Nadu State Transport Corporation
Employees' Co-operative Thrift and Credit
Society Limited, Rep by its Secretary,
Vazhudhareddy, Villupuram District.

.. Respondents

R-4 & R-5 are Suo-motu impleaded as per
order dated 17.10.2016 in
WP Nos. 30639 & 31260/2016

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 'Thinathanthi' dated
11.08.2016 and quash the same.

For Petitioner : Mr.M.Selvam
For RR 1 & 2 : Mrs.T.Girija, GA

For 3rd Respondent : Mr.V.Selvaraj, AGP

For 4th Respondent : Mr.P.Paramasiva Doss

For 5th Respondent : Mrs. R.Meenal

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 "Thinathanthi" dated 11.08.2016.

2. Heard the learned counsel for the petitioner and the learned counsels for the respondents.

3. According to the petitioner, he is working as the Superintendent in the office of the Tamil Nadu Government Transport Corporation at Thiruvannamalai in Villupuram Region. The petitioner was elected as a Director of the Board of Management too in the year 2003. There were nearly 400 members of the society and individually each one of them has borrowed to the tune of Rs.1,50,000/- and thus making the over all borrowings of the society to the tune of Rs.35 crores at any point of time. The financing Bank having faced with some over dues filed an Arbitration claim against the society as early as on 4.3.2009 under Section 90 of the Tamil Nadu Co-operative societies Act. The Deputy Registrar, Villupuram has gone further to pass an award on the petitioner as well as other 8 Directors in person a decree to the tune of Rs.35,74,64,071/- in his proceedings in A.R.C.No.687/2008-2009 dated 21.07.2009. The claim of the 3rd respondent itself is against the Tamil Nadu Transport Corporation Employees Co-operative Thrift and Credit Societies and hence he could not have passed a decree against all Directors as if a surcharge is imposed. The 1st respondent has issued the impugned notice of auction sale of the petitioner's property on 12.9.2016. The balance of convenience is in the petitioner's favour and if the sale is allowed to be conducted it will ruin his entire family conditions and he being penalized for no fault on him under the provisions of law and rules which is not at all applicable to him. The 2nd respondent issued paper publication on 11.08.2016 scheduling the auction of the petitioner's property on 12.9.2016. Hence, the petitioner has filed the present Writ Petition.

4. At the time of admission, this Court directed the respondents to defer the auction. The learned 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.

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 11.08.2016, on merits and in accordance with law, and pass orders, as expeditiously as possible. In the case of the petitioner has not submitted the petition or claim under Section 135 of the Tamil Nadu Co-operative Societies Rules, 1988 before the Sale officer, liberty is granted to the petitioner to file a claim/objection under Section 135 of the Tamil Nadu Co-operative Societies Rules, before the Sale Officer.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Jv

To

1. The Deputy Registrar of Co-op Societies,
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Villupuram District.
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Kallakurichi Taluk, Villupuram District.
3. The General Manager,
Villupuram District.,
Central Co-op Bank, Villupuram.
4. The Chairman Cum Managing Director,
Tamil Nadu State Transport Corporation
Villupuram Division, Villupuram.

5. The Secretary,
F.T.65 Tamil Nadu State Transport Corporation
Employees' Co-operative Thrift and Credit Society Limited,
Vazhudhareddy, Villupuram District.

+1cc to M/S.P.Paramasiva Doss, Advocate Sr. 20865

+1cc to M/S.R.Meenal, Advocate Sr. 20621

+1cc to M/S.M.Selvam, Advocate Sr.20539

W.P. No. 31260 of 2016

NR(CO)
VR(15/06/2017)



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