

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.01.2017

DELIVERED ON: 11.01.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.16471 of 2003

C. Sundaravel

Petitioner

vs.

- 1 The Deputy Registrar (Housing)
Vellore Range
Vellore
Vellore District
- 2 The Secretary
C-2404 Tirupattur Cooperative Housing
Society Limited
No.11, Kaliyamman Koil Street
Tirupattur 635 601

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the auction sale notice A.R.C. No.556/2000-01, C.E.P. No.95/01-02 dated 13.6.2003 passed by the first respondent and quash the same as illegal, improper, unreasonable, arbitrary and against the rule of law and natural justice and thereby, direct the respondents to permit the petitioner, to pay the true balance amount in instalment basis.

For petitioner

Mr. S.R. Mani

For R1

Mr. T. Girija

Government Advocate (Cooperative)

For R2

Mr. A.S. Thambuswamy

ORDER

This writ petition has been filed challenging the auction sale notice dated 13.06.2003 passed by the first respondent and also for a direction to the respondents to permit the petitioner

to pay the true balance amount in instalment basis.

2 Concededly, the petitioner obtained a loan of Rs.1,20,000/- on 10.06.1999 from the second-respondent housing society by mortgaging his property. Since he had committed default in repayment of dues, the second respondent cooperative society initiated recovery proceedings, challenging which, the petitioner is before this Court.

3 Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the first respondent.

4 It must be borne in mind that the Tamil Nadu Cooperative Societies Act (for brevity "the Act"), while excluding the jurisdiction of civil Courts, provides for an execution machinery in terms of Section 167 of the Act and the Rules framed thereunder and more particularly Rule 135 enables an aggrieved person, whose property is, without justification, attached in furtherance of satisfaction of dues to the co-operative societies, to apply before the Sale Officer for exclusion of property. The said Sale Officer is mandated to enquire into the bona fides of the claim made by third parties. Even in case of any auction or sale notice pursuant to the decree passed under Section 90, the Act provides for an appeal under Section 152 to the Cooperative Tribunal constituted therein. It is presided over by a District Judge who is empowered to go into both the questions of facts and law and also has the power to grant an interim order and there is no condition for pre-deposit.

5 Similarly, in case of notice under Section 90 of the Act asking a person to appear for an arbitration, the objectors can always object to the arbitration on the ground of jurisdiction. If any arbitration award is passed, it is also appealable to the same Tribunal under Section 152 of the Act.

6 Even the other disputes relating to loan transaction and interest waiver, it is purely a question of contract between the parties. In case of any unreasonable act not authorised under law or in terms of an agreement, the persons who are aggrieved can always raise an arbitration under Section 90 before the Arbitral Officer. Under no circumstances, a writ petition will lie on mere notice, especially when the Act provides for a comprehensive remedy in such cases.

In view of the foregoing discussion, this writ petition is liable to be dismissed and is accordingly dismissed. Costs made easy.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

cd

To

- 1 The Deputy Registrar (Housing)
Vellore Range
Vellore
Vellore District
- 2 The Secretary
C-2404 Tirupattur Cooperative Housing
Society Limited
No.11, Kalliamman Koil Street
Tirupattur 635 601

Pre-delivery order in
W.P. No.16471 of 2003

cp(co)
aa31/01/2017

सत्यमेव जयते

WEB COPY