

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.29412 of 2004 and

WPMP No.35727 of 2004

P.Muniyappasamy

..Petitioner

Vs.

1. The Registrar,
The District Registrar(Housing) Office,
Coimbatore
2. Deputy Registrar(Sale Officer),
The District Registrar(Housing) Office,
Coimbatore Division,
Coimbatore.
3. The Special Officer/ Secretray,
Coimbatore Cooperative Building,
Society Limited.(K 483),
Coimbatore

..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records in respect of ARC.No.687/97-98/E.P.No.287/02-03 dated 09.09.2004 passed by the first respondent herein and quash the same.

For Petitioner : Mr.K.Sathyabal

For Respondents : Mr.L.P.Shanmuga Sundaram,
Special Government Pleader
for R1 & R2

: Mr.A.S.Vijaya Raghavan for R3

ORDER:

The learned counsel for the petitioner would submit that the petitioner availed a loan for a sum of Rs.60,000/- on 08.10.1992 from the second respondent furnishing the petitioner's land as security. Due to financial crises, the petitioner could not repay

the instalments regularly. While being so, the third respondent initiated an arbitration proceedings in ARC.687/97-98 and the Sub Registrar, Cooperative Society passed an exparte award of Rs.1,62,986/-. Subsequently, the petitioner paid a sum of Rs.80,000/- after the arbitration award was passed. But the said amount was not at all credited in the petitioner's loan account. Further, the petitioner requested the third respondent to waive the interest enabling the petitioner to pay the principal amount. On 09.09.2004, the first respondent issued a notice in Form No.VIII invoking Section 121 of the Tamil Nadu Cooperative Societies Rules, 1998 stating that the petitioner's property will be auctioned on 11.10.2004. Hence, the petitioner has filed the writ petition challenging the said auction notice.

2. The learned Special Government Pleader would submit that the petitioner has admitted the award, and subsequently, the first respondent has issued the attachment cum sale notice. Hence, the above notice in ARC.687/97-98 challenged before this Court is not maintainable before this Court.

3. On perusal of the impugned order dated 09.09.2004, it is stated that the attachment cum sale notice has been issued without following the provisions as contemplated under Section 167 (1) of the Act.

4. The learned Special Government Pleader has drawn the attention of this Court relying upon the unreported order passed in Writ petitions in WP.Nos.38843 and 38843 of 2015 dated 10.12.2015 in the case of B.Ravichandran Vs. The Joint Registrar of Cooperative Societies, Namakkal Region, wherein this court has relied upon the earlier order passed by this Court in WP.Nos.11143 and 11146 of 2015 dated 17.04.2015, wherein the Paragraphs 9, 10, 11 and 12 are extracted as follows.

"9. It is relevant to extract Section 167 as well as Rule 140 of the Co-Operative Societies Act.

'167. Furnishing of Security and attachment of property.-

(1) Where the Registrar is satisfied on the application of a registered society in respect of a reference made to him under sub-Section (1) of Section 90 or on the application of a liquidator appointed under Section 138 in respect of the proceedings of such liquidator for determining the contribution to be made by a person to the assets of the society under clause (b) of sub-section (2) of Section 139 or on the application of the board or liquidator or any creditor to the society or otherwise in respect of any inquiry ordered into the

conduct of any person under Section 87 that any party to the reference or the person, as the case may be, is about to dispose of or remove from the local limits of the jurisdiction of the Registrar, the whole or any part of his property with intent to defeat or delay the execution of any decision that may be passed on the reference or of any order that may be passed against him by the liquidator or the Registrar, as the case may be, the Registrar may, by order, direct the party or the person to furnish security in such sum and within such time as may be specified in such order and to produce and place at the disposal of the Registrar when required, the said property or such part thereof as may be sufficient for the execution of any decision or order aforesaid.

(2) The Registrar may also in the order made under subsection (1), or by a separate order, direct the conditional attachment of the said property, or such part thereof and such attachment shall have the same effect as if it had been made by a competent Civil Court:

Provided that no order for conditional attachment shall be made under this sub-section unless the Registrar, for the reasons to be recorded in writing, is satisfied that the whole or any part of the property will be disposed of or removed with intent to defeat or delay the execution of any decision or order of the liquidator or the Registrar, as the case may be.

Rule 140. Mode of making attachment before judgment:

(1) Attachment of property under Section 167 shall be made in the manner provided in the foregoing rules of this chapter.

(2) Where a claim is preferred to property attached under sub-rule (1) such claim shall be investigated in the manner and by the authority specified in the foregoing rules of this chapter.

(3) Where a direction is made for the attachment of any property under sub-rule (1), the Registrar shall order the attachment to be withdrawn.-

(a) when the party concerned furnishes the security required together with the security for the cost of the attachment; or

(b) When the Registrar makes an order under sub-section (1) of Section 167 that the party concerned need not repay or restore any money or property or contribute any sum to the assets of the society by way of compensation; or

(c) when the dispute referred to in sub-section (1) of section 90 has been decided against the party at whose instance the attachment was made; or

(d) when the liquidator determines under clause (b) of sub-section (2) of section 139 that no contribution need be made by the party concerned.

(4) Attachment made under sub-rule(1) shall not affect the rights existing prior to the attachment of persons not parties to the proceedings in connection with which the attachment was made, not bar any person holding a decree against the person whose property is attached from applying for the sale of property under attachment in execution of such decree.

(5) Where property is under attachment by virtue of the provisions of this rule and a decree is subsequently passed against the person whose property is attached, it shall not be necessary upon an application for execution of such decree to apply for re-attachment of the property.'

10. A perusal of the impugned order would disclose that in terms of Section 167(1), no order has been passed calling upon the petitioners to furnish security in such sum and within such time as may be specified in such order and to produce and place at the disposal of the Registrar when required, the said property or such part thereof as may be sufficient for the execution of any decision or order aforesaid. Admittedly, the impugned order is dated 09.04.2015 and the petitioners were called upon to furnish security for the said sum on the very same date. According to the petitioners the notices were served on them by force on the very same date.

11. In the light of the said infirmity, it is not necessary for the writ petitioners to invoke the alternative remedy available as pointed by the learned counsel appearing for the respondents 1 to 5.

12. In the result, all the writ petitions are partly allowed and the impugned order dated 09.04.2015 is set aside and the matter is remitted back to the third respondent for fresh adjudication in accordance with Section 167 of the Tamil Nadu Co-Operative Societies Act r/w. Rule 140 of the Tamil Nadu Co-Operative Societies Rules. It is made clear that in the interregnum, the petitioners shall not alienate or encumber or create third party rights in respect of the immovable properties. The third respondent shall make every endeavour to pass fresh orders in terms of the above said provisions within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed. "

It cannot be disputed by the respondents that the legal issue involved in these writ petitions is squarely covered by the order passed by this Court in W.P.Nos.11143 to 11146 of 2015, referred to above.

Following the aforesaid judgment, this Court in W.P. Nos. 38843 & 38844 of 2015, by its order dated 10.12.2015, has set aside the impugned order and the matter was remitted back to the 2nd respondent therein, for fresh adjudication, in accordance with Section 167 of the Tamil Nadu Co-operative Societies Act r/w Rule 140 of the Tamil Nadu Co-operative Societies Rules.

5. Considering the above submissions and in the light of the aforesaid decision of this Court, I have no hesitation to set aside the impugned order passed by the 1st respondent and therefore I am inclined to pass the following order :

- i. The impugned order passed by the 1st respondent in his proceedings No.ARC.No.687/97-98/E.P.No.287/02-03 dated 09.09.2004 is set aside and the matter is remitted to the 1st respondent for fresh adjudication, under Section 167 of the Tamil Nadu Co-operative Societies Act r/w Rule 140 of the Tamil Nadu Co-operative Societies Rules.
- ii. In the meantime, the respondents shall not alienate or encumber the immovable properties, which is the subject matter of this writ petition.
- iii. The 1st respondent shall consider the matter afresh and pass appropriate orders, in accordance with the above said provisions of law, within a period of twelve weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition is partly allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Registrar,
The District Registrar(Housing) Office,
Coimbatore
2. Deputy Registrar(Sale Officer),
The District Registrar(Housing) Office,
Coimbatore Division,
Coimbatore.
3. The Special Officer/ Secretray,
Coimbatore Cooperative Building,
Society Limited.(K 483),
Coimbatore

+1 CC to Government Pleader, High Court, Chennai Sr.No.66448

+1 CC to Mr.K.Sathyabal, Advocate Sr.No.66114

सत्यमेव जयते

W.P.No.29412 of 2004 and
WPMP No.35727 of 2004

NM(CO)
KP(15.11.2017)

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