

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2018
CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.1087 & 1088 of 2018
and
WMP.Nos.1311 to 1314 of 2018

1. A.Gowrisankar
S/o.Late Ayyappasamy
 2. A.Ruthramathi
D/o.Late Ayyappasamy
- ... Petitioners (in both WPs)

Vs.

- 1.The Sale Officer /
Handloom Inspector
O/o.Assistant Director
Handloom and Textiles,
Coimbatore.

- 2.The Assistant Director
Handlooms and Textiles
14/11, Bharathi Park
Saibaba Colony
Coimbatore - 11.

- 3.Ichipatti Powerloom Weavers
Cooperative Society C.H.137
Rep. by its Special Officer
Murugan Rice Mill Compound
Somanur - 641 668
Coimbatore District.

... Respondents (in both WPs)

Writ petition No.1087 of 2018 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice dated 19.12.2017 in Form 8 made in E.P.No.4/2013/E in Tha.Kae.No.2/2012 passed by the 1st respondent, quash the same and consequently, direct the 1st respondent herein to defer the auction sale till the disposal of the petitioner's claim petition dated 06.01.2018 filed under Rule 135 of the Tamil Nadu Cooperative Societies Rules, 1988.

Writ petition No.1088 of 2018 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the

impugned Auction sale notice in Form 8 dated 19.12.2017 made in E.P.No.2/2011/E in Claim No.6/2011/E, dated 31.12.2012 passed by the 1st respondent, quash the same and consequently, direct the 1st respondent herein to defer the auction sale till the disposal of the petitioner's claim petition dated 06.01.2018 filed under Rule 135 of the Tamil Nadu Cooperative Societies Rules, 1988.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader

C O M M O N O R D E R

Mr.L.P.Shanmugasundaram, learned Special Government Pleader takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioners are aggrieved against the auction notices issued by the first respondent dated 19.12.2017. Consequently, they also seek for a direction to the first respondent to defer the auction sale, till the disposal of their claim petition dated 06.01.2018 filed under Rule 135 of the Tamil Nadu Cooperative Societies Rules, 1988.

3. Heard Mr.N.Manokaran, learned counsel appearing for the petitioners and Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the respondents.

4. It seems that the petitioners father namely Ayyappasamy was working as a Manager in the third respondent Society and died on 14.09.2011. During his lifetime, an enquiry has been conducted in respect of supplying free sarees and dhothies and surcharge proceedings under Section 81 of the Tamil Nadu Cooperative Society Act has been conducted, by fixing the responsibility on the petitioners father and others. Thereafter, the property belonging to the deceased was attached. The Society filed a CRP(NPD) No.2245 of 2014 before this Court, challenging the order made in CMA.No.43 of 2012 on the file of the Principal District Court, Tiruppur (C.M.A.No.109 of 2011) on the file of the District Court, Coimbatore, wherein by an order dated 03.03.2017, this Court directed the petitioners' mother to pay the liability of the amount of Rs.8,47,949/- with interest at the rate of 6% from the date of conditional attachment order dated 05.11.2011, failing which, the property of Ayyappasamy namely, half share in the property would be attached. Admittedly, the said amount was not paid by the petitioners mother, till this date. Now, the respondents have issued the

impugned auction notices to sell the property attached, by way of public auction on 22.01.2018.

5. The learned counsel for the petitioners submitted that the impugned auction proceedings cannot be permitted to go on, when the petitioners have already made their objections, under Rules 135 of the Tamil Nadu Cooperative Societies Rules, 1988 and the said objections are still pending before the respondents. According to the petitioners, their share in the property cannot be attached or brought up for sale, without considering the objections raised by them.

6. The learned Special Government Pleader appearing for the respondents submitted that when the mother of the petitioners has not paid the above said amount so far, as directed by this Court, the petitioners cannot approach this Court and file the present writ petition challenging the auction proceedings. However, he is fair enough to concede to the fact that if the objection is filed under Rule 135 of the Tamil Nadu Cooperative Societies Rules, 1988, the same shall have to be considered before bringing the property for auction. Therefore, he submitted that the objections of the petitioners will be considered before conducting the auction and however, the petitioners shall not prevent the respondents from proceeding with the auction on 22.01.2018.

7. Considering the above stated facts and circumstances and considering the admitted position that the objections raised by the petitioners under Rule 135 of the said Rules, are still pending for consideration before the respondents and also considering the fact that the petitioners mother has not paid the amount, as directed by this Court in CRP(NPD) No.2245 of 2014 dated 03.03.2017, this Court is of the view that in the interest of justice, the following order could be passed without affecting the interest of either parties. Accordingly, these writ petitions are disposed of, as follows:-

- (a) The petitioners shall deposit a sum of Rs.4 Lakhs on or before 22.01.2018 at 10.00 a.m. before the third respondent Society.
- (b) If the above said amount is deposited within the time stipulated, the respondents shall defer the auction proposed to be held on 22.01.2018.
- (c) After making such deposits, as stated supra, the petitioners are entitled to get their objections considered by the respondents in accordance with law, also by getting an opportunity of personal hearing.
- (d) The objections of the petitioners as stated supra, shall be considered and

appropriate orders shall be passed, within a period of two weeks from the date of making such deposits, as stipulated in the Condition (a).

(e) If the petitioners fail to make such deposit, the respondents are at liberty to proceed with the auction either on 22.01.2018 or on any other subsequent dates.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sale Officer /
Handloom Inspector
O/o.Assistant Director
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- 2.The Assistant Director
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Rep. by its Special Officer
Murugan Rice Mill Compound
Somanur - 641 668
Coimbatore District.

+2cc to Mr.N.Manokaran, Advocate, S.R.No.3914,3915

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.4189

+1cc to the Government Pleader, S.R.No.4039

W.P.Nos.1087 & 1088 of 2018

RRK(19/01/2018)