

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2018

CORAM

The Hon'ble Mr. Justice T.Raja

W.P.No.14537 of 2018

and

W.M.P.Nos.17160 and 17161 of 2018

1. D. Kesavan
 2. Mrs. K.Manjula
- ...Petitioners

-vs-

1. Deputy Registrar of Co-operative Societies,
Vellore Region, Vellore - 6.
2. C. 1225 Arakonam Co-operative Urban Bank Ltd.,
rep. by its Managing Director/Deputy Registrar,
No.37, Kamarajar Salai, Arakonam,
Vellore District.
3. Sales Officer/Co-operative Field Officer,
Arakonam, O/o. Co-operative Joint Registrar,
Ranipet, Vellore District.

Respondents

Writ Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari to call for records, pertaining to the impugned auction notice in C.E.P.No.21/2005-06, in ARC No.3192-2003-2004, dated 28.05.2018, on the file of the third respondent issued against the petitioner's property comprised in Survey No.324/1A in Palanipettai, Gandhi Road, Arakonam Town, Vellore District, having an extent of 3348 sq. ft and to quash the same.

For Petitioners :: Mr.R. Neelakandan

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

ORDER

Heard Mr. R. Neelakandan, the learned counsel appearing for the petitioner and Mr.L.P.Shanmugasundaram, the learned Special Government Pleader, accepting notice on behalf of the

respondents. With consent of the learned counsel on either side, the Writ Petition is taken up for disposal.

2. The petitioners have filed this Writ Petition seeking to quash the impugned notice issued by the third respondent, dated 28.05.2018, whereby, the third respondent has proposed to bring the petitioners' property for auction.

3. The facts of the case, which led to the filing of this Writ Petition are as follows:-

i) In the year, 1998, the petitioners have borrowed a sum of Rs.10,00,000/- as mortgage loan from the second respondent, a Co-operative Urban Bank, out of which, the petitioners have paid Rs.5,00,000/-. Thereafter, the petitioners were unable to repay the balance amount. Hence, the second respondent/Bank initiated recovery proceedings against the petitioners by filing a suit and obtained decree in their favour and in order to put the decree in execution, filed an Execution Petition, wherein, a demand notice was issued to the petitioners, demanding Rs.45,25,370/- in total. Challenging the said demand notice, the petitioners have filed a Writ Petition before this Court, in W.P.No.10324 of 2015, and this Court, by order, dated 03.11.2015, disposed of the Writ Petition issuing the following direction:-

i) If the petitioner is so advised, he can challenge the decree in the manner known to law, however, subject to limitation ; (or)

ii) The petitioner can approach the third respondent/Bank and submit a proposal to the Bank clearly indicating within what time, he will settle the outstanding. If there are any Government Orders or Circulars issued by the Registrar, granting any waiver of penal interest or any Circulars regarding re-schedulement, the same shall also be considering by the third respondent.

ii) As per the aforesaid order, the petitioners approached the third respondent and submitted a representation, dated 18.11.2015, requesting to grant waiver of interest by virtue of Government Orders or Circulars, if any, issued by the Registrar of the Co-operative Societies and also sought for clarification of the outstanding dues. The petitioners were under the fond hope that the representation made by them would be considered, but, to their shock and surprise, the impugned notice has been issued by the third respondent, proposing to bring their property for auction. Hence, this Writ Petition, challenging the said auction notice.

4. When the Writ Petition is taken up for hearing today, the learned counsel appearing for the petitioner, on instructions from his client (petitioner) submits that as on date the petitioners have paid a sum of Rs.7,00,000/-. This submission has been stoutly refuted by the learned Special Government Pleader for the respondents stating that the petitioners have paid only a sum of Rs.4,09,045/-. Intervening at this stage, the learned counsel for the petitioners submitted that he would produce necessary documents in regard to the payments effected by the petitioners as proof, and further submits that the petitioners are ready and willing to pay another 25% to show their bona fide.

5. In the given facts of the case, this Court is of the view that the question of quashing the impugned notice does not arise. Thus, this Court, while declining to grant the relief sought for by the petitioner, is simultaneously inclined to issue the following directions, as the same would meet the ends of justice:-

6. Accordingly, this Writ Petition is disposed of, by directing the petitioners to pay a sum of Rs.7,00,000/- (Rupees Seven Laksh only) to the respondents on or before 02.07.2018. It is made clear that, if the petitioners effects such payment, then, the respondent concerned can negotiate with the petitioners with regard to the re-schedulement of the balance amount on the basis of Circulars or Government Orders, if any. In case, if the petitioners fails to effect the payments, the benefit of this order will not enure to them and it is well open to the respondents to proceed with the impugned auction notice. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sd

To

1. Deputy Registrar of Co-operative Societies,
Vellore Region, Vellore - 6.

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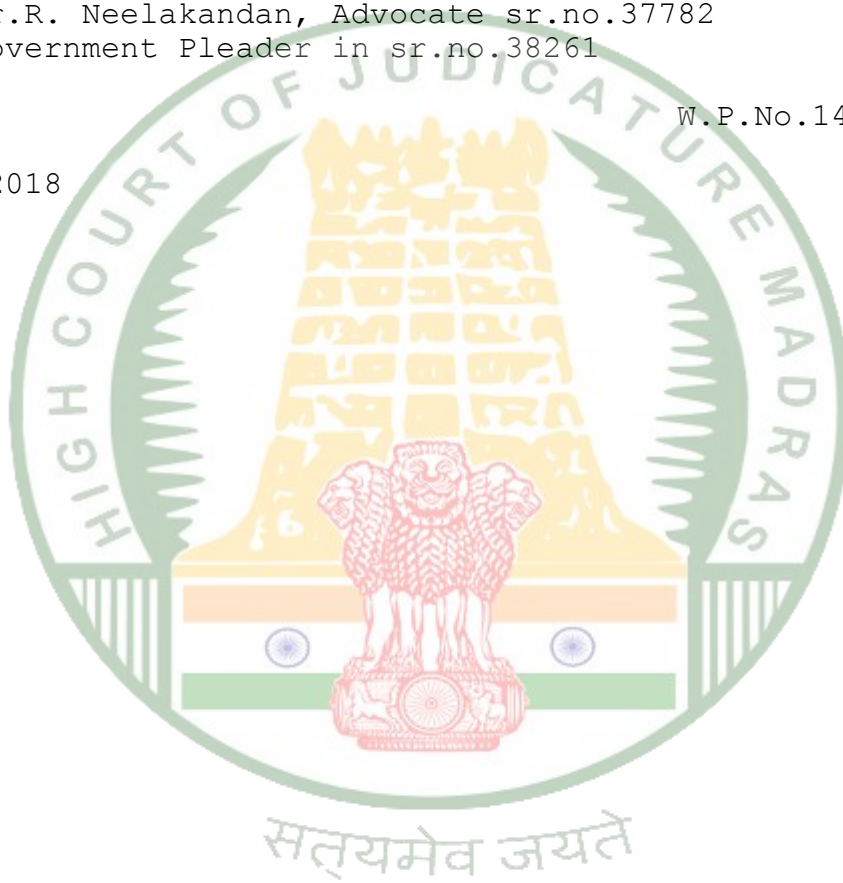
+1cc to M/s.T.Girija, Advocate sr.no.37783

+1cc to Mr.R. Neelakandan, Advocate sr.no.37782

+1cc to Government Pleader in sr.no.38261

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