

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 12.10.2018
CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P. 26353 of 2018
&
W.M.P.s 30623 and 30625 of 2018

S.Siva

... Petitioner

-Versus-

1. The Cooperative Sub-Registrar
(Execution),
The Salem District Central Co-operative Bank Ltd.,
Salem District, Salem.

2. The Special Officer/Secretary,
S.685, Akkamapettai Primary
Agricultural Cooperative Bank Ltd.,
Mavelipalayam,
Akkamapettai,
Sankagiri Via, Salem Dt.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the 1st respondent pertaining in his auction sale notice dated 23.08.2018 and quash the same.

For Petitioner : Mr.K.S.Karthik Raja

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

ORDER

This writ petition has been filed for issuing Writ of Certiorari calling for the records of the 1st respondent pertaining to his auction notice dated 23.08.2018 and to quash the same.

2. The brief facts that are necessary for this Writ Petition are as follows :-

It is stated that the petitioner has borrowed a sum of Rs.9,23,000/- from the 2nd respondent by creating a mortgage dated 24.05.2002 to purchase a lorry. Due to continuous non-payment of monthly instalments, it is stated that the 2nd respondent has initiated proceedings against the petitioner for recovery of amount. As per the award of Deputy Registrar cum

Chief Revenue Officer dated 17.04.2006, the liability of the petitioner was fixed around Rs.10 lakhs along with interest. Since the properties of the petitioner had been mortgaged with the 2nd respondent, the 1st respondent brought the properties of the petitioner for auction. The grievance of the petitioner is that it is not necessary to sell both items of property mortgaged with the 2nd respondent, as the value of the property described as first item itself will be sufficient to satisfy the award. From the auction notice, it is seen that there is no valuation. Hence, it is contended that the respondents have failed to follow the procedures. From the notice, it can be seen that the valuation for the property has not been done. In the said circumstances, considering the grievance of the petitioner and the statutory provisions, particularly Rule 126 (2)(h) of the Tamil Nadu Cooperative Societies Rules, this Court is inclined to pass the following order :-

"The impugned notice dated 23.08.2018 is set aside in so far as the second item of property viz., the property in Survey No.228/2 of Sankagiri Village. The respondents are permitted to bring the first item of property viz., the property in Survey No.227/1 in Sangakiri Village. In case, the property in Survey No.227/1 does not fetch the price to satisfy the award obtained by the respondents against the petitioner, it is open to the respondents to bring the other property viz., the property in Survey No.228/2 for auction sale to recover the balance, if any payable by the petitioner to the respondents."

The learned counsel appearing for the respondents is directed to inform the 1st respondent about the order passed by this Court, so that there will not be any embarrassment to any third party.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The Cooperative Sub-Registrar
(Execution),
The Salem District Central Co-operative
Bank Ltd.,
Salem District, Salem.

2. The Special Officer/Secretary,
S.685, Akkamapettai Primary
Agricultural Cooperative Bank Ltd.,
Mavelipalayam,
Akkamapettai,
Sankagiri Via, Salem Dt.

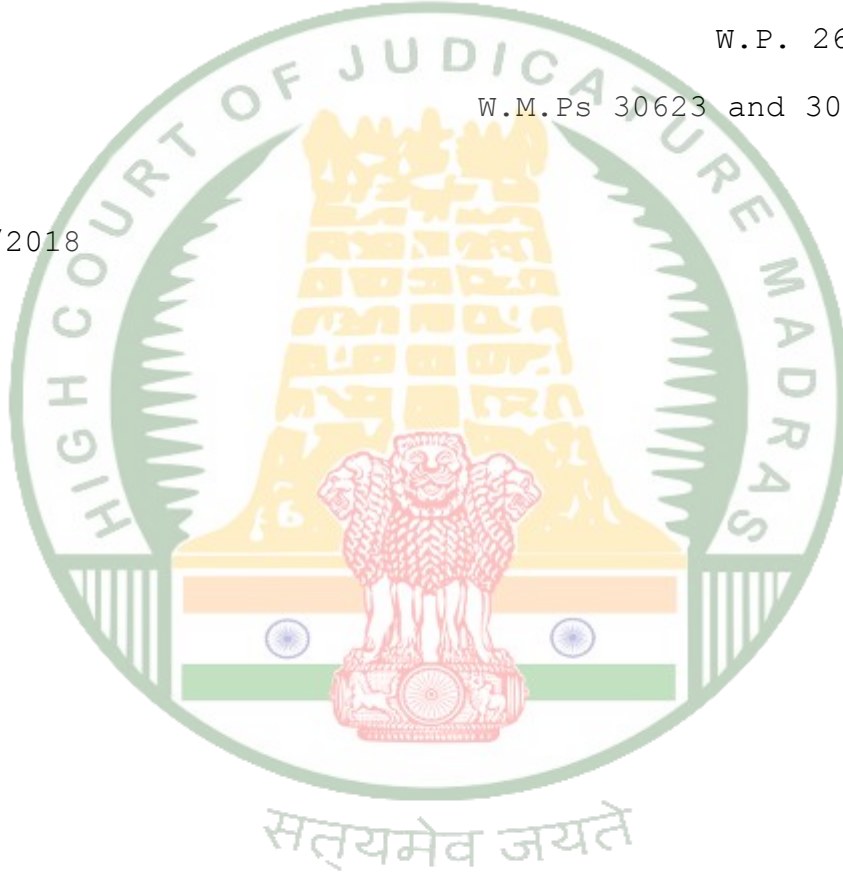
+1cc to Mr.K.S.Karthik Raja, Advocate, S.R.No.71301
+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.71710
+1cc to the Government Pleader, S.R.No.72021

W.P. 26353 of 2018
and

W.M.Ps 30623 and 30625 of 2018

PPA(CO)

rrs 01/11/2018



WEB COPY