

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

W.P.No.17356 of 2019

and

W.M.P.No.16857 of 2019

V.Umanath

... Petitioner

Vs.

1.The Registrar of Cooperative Societies, (Housing),
No.48, Ritherton Salai, Veppery,
Chennai - 600 017

2.The Deputy Registrar(Housing),
Chinthamani Super Market Complex,
North Coimbatore, Coimbatore

3.The Official Liquidator/Sale Officer,
V.O.C.Industrial Cooperative Housing Society,
C/o.The Deputy Registrar(Housing),
Chinthamani Super Market Complex,
North Coimbatore, Coimbatore

4.Jayaraman

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the second respondent to consider and pass orders on merits by disposing the written representation made by the petitioner under Rule 128 of Tamil Nadu Cooperative Societies Act on 22.04.2010 within a stipulated time as this Court fixes.

For Petitioner : Mr.C.Prakasam

For R1 and R2 : Mrs.T.Girija,
Government Advocate

For R3 : Mr.L.P.Shanmuga Sundaram,
Special Government Pleader

For R4 : Mr.R.Bharathkumar

ORDER

The writ petition has been filed to direct the second respondent to consider and pass orders on merits by disposing the written representation made by the petitioner under Rule 128 of Tamil Nadu Cooperative Societies Rules 1989 on 22.04.2010 within a stipulated time as this Court fixes.

2. Heard the learned counsel for the petitioner.

3. The petitioner herein has borrowed a sum of Rs.2.5 lakhs in the year 1999 from the cooperative society, but failed to pay the due. Hence, the property was brought to auction and the same was challenged by the petitioner herein in W.P.No.4832 of 2010 and the auction notice was stayed on condition the petitioner shall deposit a sum of Rs.2.5 lakhs. The petitioner however did not pay the money as directed by this Court as a condition to grant stay. Later the property was put to auction and the third respondent is the successful bidder and he has paid the entire sale consideration. The petitioner herein thereafter preferred CMA.No.98 of 2004 before the District Court / Cooperative Tribunal, Coimbatore to set aside the Judgment in OS.No.883 of 2002 dated 17.06.2004. The fourth respondent herein being the successful bidder and who has paid the entire sale consideration has filed a suit for recovery of possession and decree has also been passed in O.S.No.71 of 2012 on 27.02.2019. In the said circumstances, the petitioner herein alleged that the property is worth more than Rs.60 lakhs wherein by collusion it was sold for Rs.21 lakhs to the fourth respondent. Therefore he made a representation before the second respondent for setting aside the sale as per the Rule 128 of Cooperative Societies Rules since respondents 2 and 3 did not follow the procedure under Rule 126 of the Cooperative Societies Rules. It is alleged by the petitioner that the representation dated 22.04.2010 has not been considered till date and hence the present writ petition to issue mandamus directing the second respondent to consider his representation and pass order.

4. The writ petition is bound to be dismissed for the following reasons. The prayer to consider the representation dated 22.04.2010 is now sought to be revived through the writ petition filed in the year 2019. Subsequent to this the petitioner has participated in the suit as well as CMA and also the writ petition filed by him in W.P.No.11041 of 2010 which was pending for nearly seven years and disposed only on 02.08.2017. Having failed to pay the loan amount and delayed the recovery process substantially without iota of intention to repay the money, now referring the representation long back has tried to revive his claim citing that the auction proceedings was not done in accordance with Rule 126 of the Cooperative Societies

Rules, 1989.

5. The petitioner also in the previous occasion represented before this Court that he is ready to pay the money and his property may be reconveyed. This Court initially thought to consider the request if the third respondent is ready and willing to arrive at compromise since at present he is the person who owns the property by purchase through auction after paying the entire sale consideration as early as 2010. Though the petitioner has expressed by words to settle the matter, but his intention appears to be not genuine and he is not ready to adequately compensate the third respondent. Hence, the third respondent is not ready to compromise.

6. As far as the merit of the case is concerned, as pointed out earlier, the petitioner has defaulted the loan availed in the year 1991. The recovery proceedings has culminated in auction after nine years and the petitioner was given opportunity to stay the auction on payment of part of the debt amount, namely 2.5 lakhs. But the petitioner has not availed the opportunity. The indulgence shown by the Court to favour the petitioner has not been properly utilised by the petitioner herein. After nine years of exploiting all the sympathy of this Court without true intention to retrieve the property, again the petitioner has filed this petition with a stale claim just to delay the recovery of possession.

7. Hence, the writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Registrar of Cooperative Societies, (Housing),
No.48, Ritherton Salai, Veppery,
Chennai - 600 017

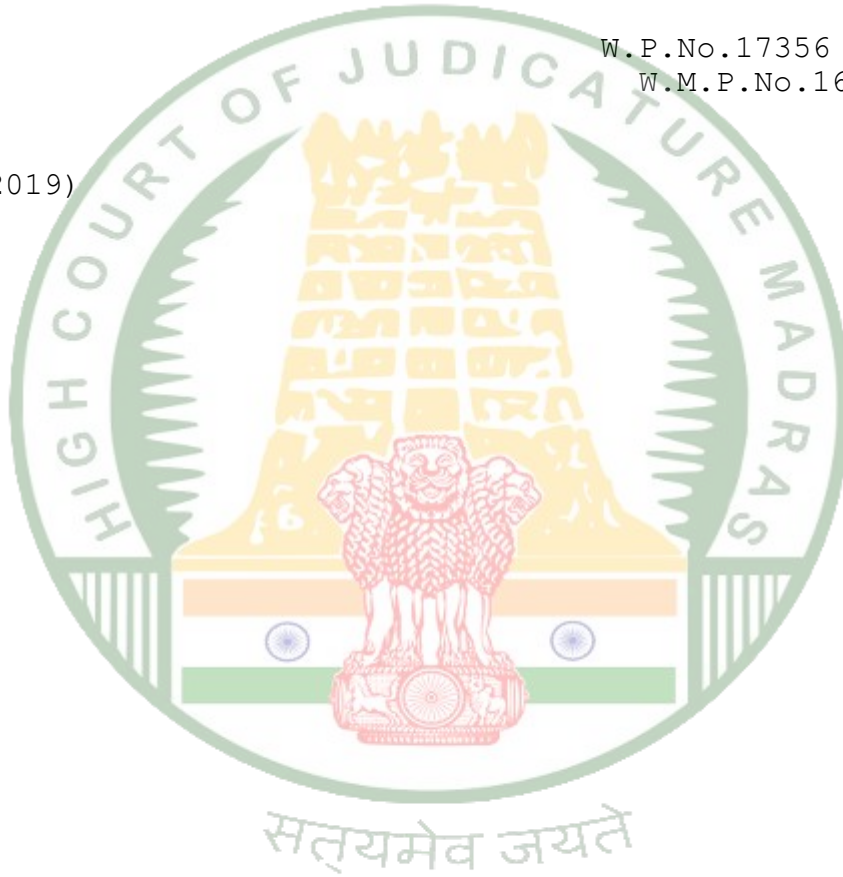
2.The Deputy Registrar(Housing),
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3.The Official Liquidator/Sale Officer,
V.O.C.Industrial Cooperative Housing Society,
C/o.The Deputy Registrar(Housing),
Chinthamani Super Market Complex,
North Coimbatore, Coimbatore

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No. 79624
+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No. 79497
+1cc to Mr.C.Prakasam, Advocate, S.R.No. 80247
+1cc to the Special Government Pleader, S.R.No. 79670

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SKV(CO)
GN(18/10/2019)



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