

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.09.2019

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Writ Petition No.28132 of 2019
and
W.M.P.Nos.27777 and 27778 of 2019

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

.. Petitioners

/versus/

1.The Deputy Registrar of Co-operative Societies,
(Housing),
Vellore Region,
Vellore - 6.

2.C.1225, Arakonam Co-op Urban Bank Limited,
Rep. by its Managing Director/Deputy Registrar,
No.37, Kamarajar Salai,
Arakonam,
Vellore District.

3.Sales Officer/Co-operative Field Officer,
Arakonam,
O/o, Deputy Registrar of Co-operative Societies,
Ranipet,
Vellore District.

4.The Sub Registrar,
Arakonam,
Vellore District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents 1 to 3 from transferring the title of the petitioner's property situated in Survey No.324/1 in Palanipettai, Gandhi Road, Arakonam Town, Vellore District in any manner from the name of the petitioners to the name of the second respondent or in any other's name by registering any document at the office of the 4th respondent without due process of law.

For Petitioner :Mr.R.Neelakandan

For Respondents :Ms T.Girija, GA for R1, R3 & R4

Mr.L.P.Shanmugasundaram
Spl.GP for R2

O R D E R

By consent the writ petition is taken up for final disposal at the admission stage itself.

2. Heard Mr.R.Neelakandan, learned counsel appearing for the petitioner and Ms.T.Girija, learned Government Advocate, who takes notice for respondents 1,3 and 4 and Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader, who takes notice for the 2nd respondent.

3. The prayer in the writ petition is to issue a Writ of Mandamus forbearing respondents 1 to 3 from transferring the title of the petitioner's property situated in Survey No.324/1 in Palanipettai, Gandhi Road, Arakonam Town, Vellore District in any manner from the name of the petitioners to the name of the 2nd respondent or in any other's name by registering any document at the office of the 4th respondent, without due process of law.

4. The case of the petitioner is as below:

"The petitioner borrowed a sum of Rs.10,00,000/- (Rupees ten lakhs only) as mortgage loan from the 2nd respondent bank in the year 1998.

The petitioner deposited their title deeds with the 2nd respondent as to their property comprised in S.No.324/1 in Palanipettai, Gandhi Road, Arakonam Town, Vellore District, having extent of 3348 sq.ft.

The petitioners have made certain payments towards refund of the above said loan with interest. In total they have repaid more than Rs.11,09,045/-.

The 2nd respondent initiated recovery proceedings by filing a suit under Section 90 of Tamil Nadu Co-operative Societies Act, 1983 in which a decree was passed in 2004 for Rs.14,01,888/-. Subsequently, the 2nd respondent issued a demand notice dated

24.03.2015 demanding Rs.45,25,370/- in total out of which Rs.14,01,888/- was towards decree amount, Rs.31,18,445/- was towards interest and Rs.5,037 was other costs.

Even after many orders of this Hon'ble Court to reconsider the issue, the respondents without properly considering the same demanded the petitioners to pay Rs.43,78,781/- (Principal +Interest+Penal Interest) and to settle the same on or before 30.07.2018 and to close the loan amount to avoid further legal action.

Challenging the above order of denial of the petitioners' request, they filed a Writ Petition in W.P.No.19250/2018 in which this Hon'ble Court passed final order on 27.07.2018 and the operative portion of the order is as follows:

"8.In view of the above, this Court has no hesitation to quash the impugned notice dated 09.07.2018 and accordingly, the same is quashed.

9.The respondents are at liberty to work out the balance amount payable by the petitioners and then issue a fresh notice calling upon the petitioners to pay the same. The respondents are also directed to take into account the Circulars or Government Orders for granting waiver of interest, if it is applicable to the petitioners.

10.in the result, the writ petition is allowed."

The 2nd respondent without properly considering their request passed an erroneous order by his letter dated 02.11.2018 and thereby rejected their request and the same was challenged in W.p.No.31023/2018 before this Hon'ble Court in which final order has been passed on 07.02.2019.

Pursuant to the above said order, the petitioner again approached the 2nd

respondent Bank. But, without providing any opportunity to the petitioner, the 2nd respondent through the 3rd respondent issued the impugned auction notice dated 06.06.2019 with Ref.No.C.E.P.No.21/ 2005-06/2; ARC No.3192/2003-2004 fixing the auction of our property on 10.07.2019."

5. The petitioner is a chronic defaulter in payment of money. Time and again, he approached this Court on one pretext or another and failed to pay the money borrowed.

6. Now, the present writ petition is filed to prevent the respondents from proceeding with the manner known to law by transferring the property in the name of the 2nd respondent. Since the petitioner has prevented the steps taken by the Society to recover the money by putting the property into the Public Auction, the Court cannot be privy to such sought of chronic defaulter and deprive the society from recovering the money from the petitioner herein, who has borrowed a sum of Rs.10,00,000/- in the year 1999 and inspite of indulgence shown by this court, he is not inclined to pay and discharge the loan.

7.Hence, this writ petition is disposed of with cost of Rs.10,000/- payable to Red Cross Society, Chennai for abusing the process of this Court.

Sd/-

Assistant Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

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To:

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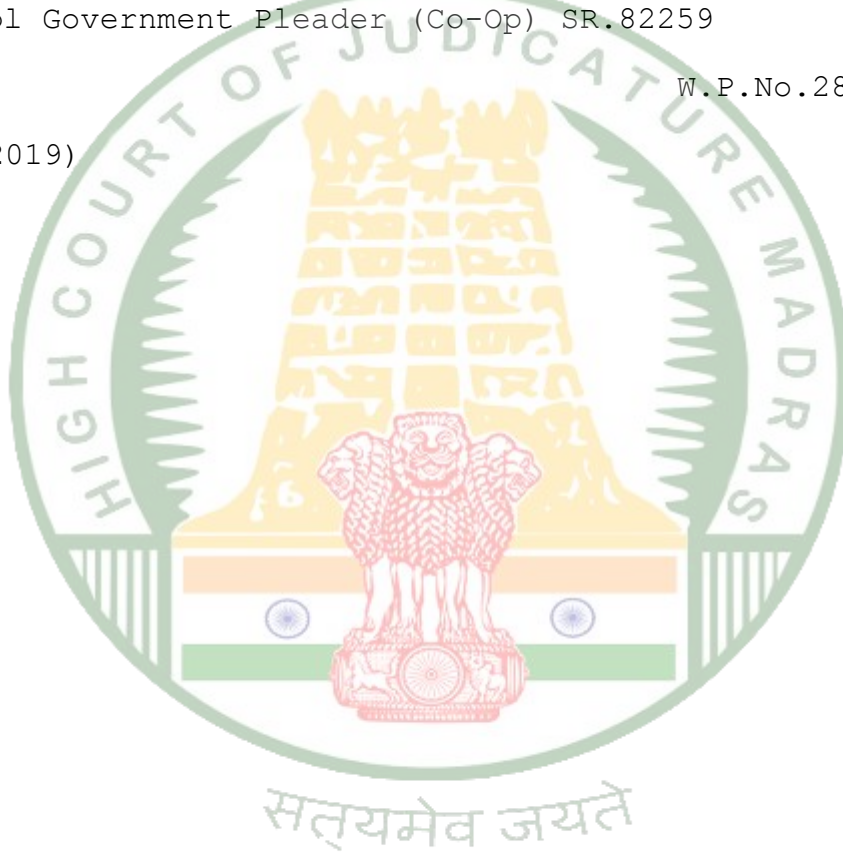
5.The Red Cross Society, Chennai.

+lcc to L.P.Shanmugasundaram, Advocate SR.82121

+lcc to Spl Government Pleader (Co-Op) SR.82259

W.P.No.28132 of 2019

LN(CO)
CB(05/11/2019)



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