



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2020

CORAM

THE HONOURABLE **MR. JUSTICE G.R. SWAMINATHAN**

W.P. (MD)No.17831 of 2017  
and W.M.P. (MD)No.14348 of 2017

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1.G.Muthugurupackiam  
2.M.Bhupathi

... Petitioners

Vs.

1.The Joint Registrar of Co-operative Societies,  
Managing Director,  
RK-10, Virudhunagar District Central  
Co-operative Bank, Virudhunagar.

2.The Deputy Registrar of Co-operative Societies,  
Virudhunagar District, Srivilliputhur-626 125.

3.The Manager,  
RK-10, Virudhunagar District Central  
Co-operative Bank, Virudhunagar.

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the second respondent in Ne.Ma.109/2001-02 Ni.Ka dated 28.06.2017 and quash the same and consequently direct the respondent 1-3 to hand over the physical possession of the property to the petitioner property situated in Ayan Punja Survey No.1086 out 1.98 Acres norther side 1.88 Acres in this southern side 62 2/3 cents out of this 83/4 cents i.e. 3815 Sq.Ft., with 3 Floor building constructed therein, doors windows, superstructures etc., bearing door no.771/15 percent subdivision No.1086/4 in Melarajakularaman Village comes under Sub Registrar Office, Keelarajakularaman and Ayan Punja Survey No.1086 out 1.98 Acres Southern end 10 Cents centre portion site measuring East West 30 Ft., North South 25 Ft., thus totally measuring 750 Sq.Ft., i.e. 2 cents with go-down building constructed therein as per new sub division No.1086/4 in Melarajakularaman Village comes under Sub Registrar Office, Keelarajakularaman taking possession and hand over to the petitioners or in the alternatively direct the respondents to refund the sale price of Rs.64,66,000/- along with sum of Rs.5,16,400/- incurred towards registration of the sale deed with interest 12% per annum to the petitioner.

For Petitioner

: Mr.G.Prabhu Rajadurai,  
for M/s.N.Bala Subramanian



For R1 & R2

: Mr.P.Mahendran,  
Additional Government Pleader.

For R3

: Mr.P.Shanmugaraja Sethupathi

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**ORDER**

Heard the learned counsel on either side.

2.The property in question is comprised in survey No.1086/4, Chathirapatti village in Rajapalayam Taluk. It originally belonged to one Muthumadasamy. He had mortgaged the said property with the third respondent Co-operative Bank. He committed default in the matter of re-payment of the loan. Therefore, the third respondent initiated proceedings under Section 90 of the Tamil Nadu Co-operative Societies Act against the said Muthumadasamy in Ar.O.P.No.101 of 2001-2002.

3.An award came to be passed on 15.10.2001. The award was put to execution in E.P.No.109 of 2001-2002. The property was brought to auction on 26.08.2016. The first petitioner herein had purchased the land in the said auction sale and she also paid the entire sale price of Rs.64,66,000/-. Thereafter, the third respondent issued sale certificate and the same was also duly registered on 10.01.2017 as Doc.No.30 of 2017.

4.The grievance is that the auction purchaser could not take possession of the property. In the meanwhile, the first petitioner sold the property in favour of the second petitioner on 03.04.2017. When the first petitioner moved the Deputy Registrar of Co-operative Societies, Virudhunagar for delivery of possession, the second respondent passed the impugned order, dated 28.06.2017 informing that since the first petitioner had transferred the title in favour of the second petitioner, it is not possible to take further action. This communication is put to challenge in this writ petition.

5.After hearing the learned counsel on either side, I am of the view that the second respondent should take speedy action to hand over possession of the property in question. Of course, the first petitioner had transferred the property in favour of the second petitioner. It is seen that the third respondent had earlier issued a communication to the second respondent stating that the property can be handed over in favour of the first petitioner. It is also seen that the first petitioner sold the property in favour of the second petitioner.

6.The reason set out in the impugned order is clearly unsustainable in law. The order impugned in this writ petition is quashed. The matter is remitted back to the file of the second



respondent. In the said petition, the second petitioner can step in the place of the first petitioner and continue with the proceedings.

7.It is the duty of the second respondent to ensure that the award passed by him in favour of the second petitioner is enforced to the last step. It is not enough if the property alone is brought to sale in the auction sale. The purchaser at the auction sale should enjoy the fruits thereof. Therefore, the second respondent is directed to take steps for vacating the judgment debtor / his family, who are said to be in occupation of the premises in question. The entire process shall be concluded, within a period of twelve weeks from the date of receipt of a copy of this order. The Jurisdictional Police are directed to extend their assistance, if the second respondent requests for the same.

8.The writ petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gns

**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Joint Registrar of Co-operative Societies,  
Managing Director,RK-10, Virudhunagar District Central  
Co-operative Bank, Virudhunagar.

2.The Deputy Registrar of Co-operative Societies,  
Virudhunagar District, Srivilliputhur-626 125.

3.The Manager,  
RK-10, Virudhunagar District Central  
Co-operative Bank, Virudhunagar.

+1 CC to M/s.GP ( SR-16521[F] dated 10/09/2020 )

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI,Advocate ( SR-16581[F] dated 11/09/2020)

W.P. (MD) No.17831 of 2017

09.09.2020