



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.19788 of 2021

1.R.Thulasi
2.Maheshwari
3.R.Parasuraman
4.N.Sumitha

.... Petitioners

-Vs-

1.The Secretary
The Thiyyagaraya Nagar Co-operative
Bank Limited, No.X.75, No.3, Duraisamy
Road, T.Nagar, Chennai - 600 017.

2.M/s.Guru Santhi Auctioner
New No.93, Old No.46,
Kothawal Chavadi, Saidapet
Chennai - 60015.

... Respondents

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records made in impugned Building Pre Auction Notice dated 17.07.2021 passed by the second respondent herein and quash the same as illegal and unreasonable and direct the first respondent to redeem the mortgage by returning the original sale deed to the petitioner's property bearing Survey No.Old No.281/1A, 1B situated at Plot No.333, No.15, 6th Main Road, Gopalapuram, Thandarai Village, Pattabiram, Chennai 600 072.

For Petitioner : Mr.R.Sankarasubbu

For Respondents: Mr.A.Selvendran
Government Advocate - for R1

O R D E R

This writ petition has been filed challenging the impugned Pre-Auction Notice issued by the second respondent dated 17.07.2021.



2. The case of the petitioners is that, petitioner's father had borrowed money from the first respondent bank in the year 2003. Thereafter it is claimed that he was paying the installments regularly and unfortunately he died on 23.03.2014. It is stated that the petitioners thereafter became the owners of the property. According to the petitioners, they were willing to settle the entire amount that was due and payable, but the first respondent was demanding for an exorbitant rate of interest and thereby a demand for payment of nearly a sum of Rs.6,00,000/- was made by the first respondent. According to the learned counsel for the petitioner, the demand made by the first respondent is more than thrice the principal amount and it is totally unsustainable. Without considering the request made by the petitioner, the first respondent has appointed the second respondent to bring the property for auction and accordingly the pre-auction notice was issued on 17.07.2021. Aggrieved by the same, the present writ petition has been filed before this Court.

3. Heard Mr.R.Sankarasubbu, learned counsel for the petitioner and Mr.A.Selvendran, learned Government Advocate for the first respondent.

4. In the considered view of this Court, the present writ petition filed as against the first respondent is not maintainable by virtue of the judgment of the larger bench in "K. Marappan -vs- The Deputy Registrar of Co-operative Societies, Namakkal and another" reported in 2006 (4) C.T.C.689. The larger Bench has categorically held that such a writ petition is not maintainable against a Cooperative Society. The exceptions that have been carved out in the said judgment also does not apply to the facts of the present case.

5. In view of the above, the petitioners will have to necessarily work out their remedy either under Section 90 of the Cooperative Societies Act, if they are members of the Society, or they have to approach the competent Civil Court and file a suit for redemption of mortgage and consequently seek for the suspension of the pre-auction notice issued to the second respondent. Except giving this liberty, no further orders can be passed in this writ petition. This writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar



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Chennai - 60015.

Copy To

The Section Officer,
ER Section, High Court, Madras.

+1cc to Mr.R.Sankarasubbu, Advocate SR.No.47482

+1cc to Government Pleader SR.No.47897

W.P.No.19788 of 2021

RSI (CO)
GMY (20/09/2021)