

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.2808 of 2018
and
W.M.P.No.3462 of 2018

A.V.Lakshmanan

... Petitioner

Vs.

1.The District Registrar of Co-operative
Housing Societies, Salem.

2.The Sub-Registrar/
Office in charge of Sale of Properties,
Co-operative Housing Societies,
Salem - 4.

3.The Secretary,
S.1329-Salem Co-operative Housing Societies Ltd,
Salem.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records relating to the impugned auction-sale notice issued by the 2nd respondent in his notice dated 30.01.2018 in C.E.P.No.773/10-11 in Claim A.R.C.No.8086/04-05 and quash the same.

For Petitioner : Mr.D.Baskar

For Respondents : Mr.L.P.Shanmuga Sundaram
Special Government Pleader
for R1 to R3

O R D E R

The writ petitioner has challenged the impugned Auction Notice dated 30.01.2018 to auction the property mortgaged by the petitioner's mother web back in January 1999 for securing a loan of Rs.2,00,000/-.

2.It appears that the petitioner's mother had paid the some amount during her life time. However, she passed away on 28.07.2005. As there was some default committed by the petitioner's mother, an Arbitration proceedings was initiated and an award came to be passed on 22.05.2012 without impleading the petitioner or other legal heirs of petitioner's mother as she had died. Since the award has been passed against a dead

and a non living person, the award dated 22.05.2012 is liable to be set aside with liberty to pass a fresh award against the petitioner and other legal heirs of the petitioner's mother. Pending such award, the status of the mortgaged shall not be altered. The respondent is directed to serve a amended copy of the petition impleading the petitioner and the other legal heirs of the deceased borrower within a period of three months from the date of this receipt of this order.

3.The 1st respondent shall pass such award within a period of six months from the date of receipt of a copy of this order after giving adequate opportunity to the petitioner and legal heirs of deceased borrower under Section 90(2) of the Tamil Nadu Co-operative Societies Act, 1983 read with Rule 107 of the Tamil Nadu Co-operative Societies Rules, 1988. The impugned auction-sale notice is quashed with liberty to re-auction sale subject to the final outcome of the proceedings under the provisions of the Tamil Nadu Co-operative Societies Act, 1983.

4.The writ petition stands disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jas

To

1.The District Registrar of Co-operative
Housing Societies,
Salem.

2.The Sub-Registrar/
Office in charge of Sale of Properties,
Co-operative Housing Societies, Salem - 4.

3.The Secretary,
S.1329-Salem Co-operative Housing Societies Ltd,
Salem.

+1cc to the Special Government Pleader(Co-op), S.R.No.14410

W.P.No.2808 of 2018
and
W.M.P.No.3462 of 2018

PMK (CO)
KM(21/04/2021)