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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.9746 of 2022

and

W.M.P.No.9457 of 2022

M.Ravi

.. Petitioner

Vs.

1. The Regional District Registrar (Housing)
No.26, Azhagesan Nagar, EB Office (Opp.),
Chengalpattu 603 001.
2. The Sale Officer,
Manavalangar Housing Co-operative Society,
No.34, Karunanidhi Street,
Manavalanagar, Thiruvallur,
Thiruvallur District 602 002.
3. The Secretary,
Manavalanagar Housing Co-operative Society,
No.34, Karunanidhi Street,
Manavalanagar, Thiruvallur,
Thiruvallur District 602 002.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in sale notice dated 04.04.2022 issued in form No: 9, under Rule 126(2)(e)(iii) for the auction sale to be held on 21.04.2022, quash the same, consequently, direct the respondents 1 to 3 to re-calculate the outstanding loan amount in respect of the petitioner loan account bearing No.563 after applying the present waiver scheme dividing the same into 3 to 4 installment to facilitate the petitioner to repay the entire loan amount.

For Petitioner : Mr.G.Rajkumar

For R1 : Mr.U.Baranidharan
(Additional Government Pleader)

For RR2 & 3 : Mr.S.Ravichandran
(Additional Government Pleader)



O R D E R

This Writ Petition is filed by the petitioner, challenging the auction notice dated 04.04.2022, fixing 21.04.2022 (today) as auction of his mortgaged property.

2. According to the petitioner, he borrowed a sum of Rs.2,10,000/- on 09.07.2003 and another sum of Rs.90,000/- on 27.08.2003, in total 3,00,000/- from the 3rd respondent. He executed a Memorandum Of Deposit of Title Deed (M.O.D.T) in favour of the 3rd respondent in respect of the loans availed by him. He repaid the amounts totalling to Rs.58,310/- to the 3rd respondent on various dates. The 3rd respondent initiated arbitration proceedings under Section 90 of the Tamil Nadu Cooperative Societies Act, 1983 against the petitioner and an award was passed on 16.11.2015, directing the petitioner to pay a total sum of Rs.11,84,302/- to the respondents, together with interest at the rate of 16% p.a. from 16.11.2015, till the date of repayment. According to the petitioner, the 3rd respondent issued waiver notice, but calculated the amount wrongly and called upon the petitioner to pay a sum of Rs.19,80,435/- after waiver of Rs.3,44,935/-. While so, the 2nd respondent, on 04.04.2022, issued a sale notice in respect of property in C.E.P.No.3/2017-2018 under Rule 126(2)(e)(iii) of the Cooperative Societies Act, fixing 21.04.2022 (today) as date of auction sale. The 2nd respondent has no authority to issue the sale notice. The petitioner approached the 3rd respondent to accept Rs.3,00,000/- and requested 3 or 4 installments to repay the entire amount after arriving at the negotiated amount. The 3rd respondent rejected the request of the petitioner and directed him to pay a sum of Rs.23,72,092/-, which is improper. The 3rd respondent, without giving any opportunity to the petitioner, have erroneously calculated the amount and directed the petitioner to pay interest and penal interest and hence, prayed for setting aside the auction notice.

3. Mr. U. Baranidharan, learned Additional Government Pleader appearing for the 1st respondent and Mr. S. Ravichandran, learned Additional Government Pleader appearing for the respondents 2 and 3 submitted that the petitioner borrowed money in the year 2003 and agreed to repay the same in installments. The petitioner defaulted the payment. The 3rd respondent initiated arbitration proceedings under Section 90 of the Tamil Nadu Cooperative Societies Act and an award was passed on 16.11.2015. The petitioner did not challenge the said award and also did not accept the settlement offered by the 3rd respondent as per the waiver scheme. Auction of the 3rd respondent to bring the mortgaged property for sale is valid and legal and prayed for dismissal of the Writ Petition.



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4. Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader appearing for the 1st respondent as well as the learned Additional Government Pleader appearing for the respondents 2 and 3 and perused the entire materials available on record.

5. From the above materials, it is seen that the petitioner borrowed a sum of Rs.2,10,000/- on 09.07.2003 and Rs.90,000/- on 27.08.2003, in total 3,00,000/- from the 3rd respondent, but failed to repay the said amount as agreed upon and committed default in payment of the instalments. From the averments in the affidavit, it is seen that the petitioner has paid only meagre amounts in the years 2003, 2007, 2014 and 2015 and has not paid instalments regularly as agreed upon and committed default. The 3rd respondent initiated arbitration proceedings and an award was passed on 16.11.2015. The petitioner did not challenge the said award. The contention of the learned counsel appearing for the petitioner that the 3rd respondent did not properly calculate the amount due as per the waiver scheme is not substantiated by any materials. The 3rd respondent has brought the property for sale after filing of C.E.P.No.3/2017-2018 to execute the arbitration award dated 16.11.2015. In view of the above materials, there is no irregularity in the impugned sale notice. The petitioner is not entitled for the relief sought for and the Writ Petition is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

gsa

To

1. The Regional District Registrar (Housing)
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2. The Secretary,
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3. The Sale Officer,
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+1cc to the Government Pleader, S.R.No.28018

W.P.No.9746 of 2022

SKM[col]
NSK 04/05/2022