(2011) 11 MAD CK 0170

In the Madras High Court

Case No : Writ Petition No. 21071 of 2011 M.P. No. 1 of 2011

Lakshmi APPELLANT

Vs

The District Registrar, Krishnagiri and Others RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Citation : (2011) 11 MAD CK 0170

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : Lakshmi, party in person, for the Appellant; R. Bala Ramesh, for Respondents 1 and 2 Government Advocate and M.S. Palanichamy for Respondents 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice N. Paul Vasanthakumar

1. This writ petition is filed by the petitioner seeking a writ of declaration declaring that the public auction held on 18.08.2011 at the Office of the third respondent Society through its Special Officer pertaining to the petitioner''s land comprised in Survey Nos.12/2A, 12/2B, 12/6C, 12/7, in all measuring 5 acres, situated at Veeriampatti Village, Uthangarai Sub District, Krishnagiri District as null and void and in-operative.

2. The Agricultural Producers Co-Operative Marketing Society Limited, Uthangarai, initiated proceedings against the petitioner under Rule 73(2) of the Tamil Nadu Co-Operative Societies Rules, 1988 on the ground that the petitioner purchased cotton from the Society in the auction conducted in the year 1984 on credit basis and she failed to repay the dues to the Society. An arbitration award was passed in ARC No. 5471/84-85 for recovery of Rs.96,924.75 with 15% interest per annum till payment. Petitioner filed an appeal and challenged the award in C.M.A.(CS) No. 3 of 2002 before the Co-Operative Tribunal (Principal District Judge), Dharmapuri and challenged only the execution proceedings,

which was initiated in REP No. 73/90-91 and no appeal against the award dated 6.1.1986 was filed. To execute the award and to realise the amount of Rs.6,22,327/-the impugned auction notice was issued by the Society on 13.7.2011. The auction was conducted on 18.8.2011 and the 5th respondent offered the highest bid for a sum of Rs.27,25,000/-and also deposited 15% of the bid amount with the Sale Officer. However, no confirmation order is issued in favour of the 5th respondent till date.

3. The grounds raised in the writ petition are two fold, that is, relating to the non-liability of the petitioner and the illegality in the action. In view of the Division Bench Judgment of this Court in W.A.Nos.2680 and 2681 of 2010 dated 17.02.2011, order in Review Application No. 54 of 2011 dated 17.08.2011 as well as the order in W.P. No. 12860 of 2011 dated 12.08.2011 between the petitioner and the respondent Society, I am not inclined to traverse on the merits regarding the liability of the petitioner. The fact remains that the award passed against the petitioner was not challenged and the said award is in operation as on today.

4. The only remaining question that has to be decided in this writ petition is as to whether the auction of the petitioner''s property with an extent of 5 acres of land conducted on 18.08.2011 is valid and proper.

5. It is the contention of the petitioner that no wide publicity was made before conducting the auction and no proclamation of sale has been furnished to the petitioner; that the upset price has not been stated in the auction notice; and that, the property capable of fetching about Rs.3 Crores is proposed to be sold for the negligible amount of Rs.27,25,000/-. In short, the contention of the petitioner is, the mandatory conditions to conduct public auction has not been followed by the third respondent.

6. In answer to the said contentions, respondents 3 and 4 have filed a counter affidavit stating that the auction was conducted following the procedures prescribed under Rule 126(2)(b)(i) of the Tamil Nadu Co-operative Societies Rules, 1988, by beat of drum for three days in the village and public sale notices were published and distributed in the village. The attachment and demand/sale notice were affixed in the Office of the District Registrar, Krishnagiri, Sub Registrar, Uthangarai and Taluk Office at Uthangarai on 15.07.2011. The beat of drum and affixture was done in the presence of Village Assistant and he has certified the same on 15.07.2011.

7. It is also stated in the counter affidavit that the guideline value fixed by the Government was obtained by the Society on 07.04.2011 and 17.08.2011 and the guideline value ascertained was only Rs.53,000/-per acre. The property attached and brought to sale was measured as 4.42 acres. In the auction conducted, the fifth respondent offered Rs.27,25,000/-and the allegation that the property will fetch more than Rs.3 crores is a figment of imagination. The said auction is not confirmed in favour of the 5th respondent, though he is the highest bidder.

8. Heard the petitioner, who appeared in person and the learned counsel for respondents 3 and 4, who are the contesting respondents.

9. In the auction notice dated 13.7.2011, which is found at page No. 21 of the typed set of papers, the upset price for conducting the auction is not stated. The only amount mentioned in the auction notice is the amount payable/recoverable from the petitioner as Rs.6,22,327/-. The survey numbers and other land details are also mentioned therein.

10. Rule 126 of the Tamil Nadu Co-Operative Societies Rules, 1988 deals with the procedure in attachment and sale of immovable property. Under Rule 126(2)(h), a discretion is vested with the Sale Officer to sell whole or any portion of the immovable property of the judgment-debtor in discharge of money due. The said portion of the rule reads as follows:

126(2)(h)The sale officer may sell the whole or any portion of the immovable property of a judgment-debtor in discharge of money due, provided also that, so far as may be practicable, no larger section or portion of the immovable property shall be sold than sufficient to discharge the amount due with interest and expenses of attachment, if any, and sale.

11. Here in this case, even according to the respondents 3 and 4 the amount payable is Rs.6,22,327/-. The property ordered to be auctioned according to the petitioner is about five acres and according to the respondent the same is 4.42 acres. Thus, it is evident that a large extent of property is subjected to auction for realisation of Rs.6,22,327/-. Even though the said provision gives a discretion to the Sale Officer to sell whole or any portion of the immovable property of the judgment-debtor, having regard to the facts and circumstances of this case, I am of the view that the said aspect should have been considered by the Sale Officer before ordering auction sale of the entire property of the petitioner. Thus, there is a statutory violation, which is apparent on the face of the records.

12. Further, the property of the petitioner for which now auction is conducted is with a large extent of land measuring 4.42 acres, according to the respondents 3 and 4. When a large extent of property is to be sold for realisation of any money by way of public auction, principles of fair play requires that the auction notice shall be widely published inviting interested persons to participate in the auction. The said issue was considered by the Division Bench of this Court, wherein I was also a party, in the decision made in W.A. No. 1311 of 2003 dated 6.2.2007 (S. Sekar @ Om Sakthi Sekar v. M. Krishnamurthy & Others). In the said judgment the Division Bench relied on the decisions of the Supreme Court reported in Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, ; Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, and S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, and held that for conducting auction of a large extent of property it is desirable to give wide publicity in order to secure more offers/tenders. In the said Judgment the

Division Bench affirmed the order of the learned single Judge in not approving the auction conducted in violation of the above said procedure.

13. In the recent decision of the Honourable Supreme Court reported in Kerala Financial Corporation Vs. Vincent Paul and Another, also the above said proposition is reiterated. In paragraph 20 of the decision the Supreme Court held that before conducting sale of immovable property the authority shall obtain valuation of the property from an approved valuer, fix the reserve price of the property and may sell the whole or any part of the property by inviting tenders from the public or by holding public auction, etc. It is also held therein that the highest bidder in the public auction cannot have any right to get the property or any privilege, unless the authority confirms the auction sale, being fully satisfied that the property has fetched the appropriate price.

14. Applying the above said principles, I am of the view that the auction conducted on 18.8.2011 by the third respondent in respect of the auction sale of the petitioner''s land/property, cannot be treated as a valid auction. Only on this limited ground, the impugned auction sale is set aside and the writ petition is allowed granting liberty to the respondents 3 and 4 to proceed further in accordance with law, if there is no other legal impediment. No costs. Consequently, M.P. No. 1 of 2011 is closed.

