
(2024) 11 KL CK 0105
In the High Court Of Kerala
Case No : Writ Petition (C) No.38097 Of 2023

Mani K Mathew

APPELLANT

Vs

Special Sale Officer

RESPONDENT

Date of Decision : 13-11-2024

Acts Referred:

Citation : (2024) 11 KL CK 0105

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : Joseph T.John, Jen Jaison, Thomaskutty Sebastian, Mable C Kurien

Final Decision : Dismissed

Judgement

N.Nagaresh, J

1. The petitioners, who have availed a loan from Chengalam Service Co-operative Bank, have filed this writ petition seeking to quash Exts.P1 and P5 and to direct the respondents not to proceed ahead with Exts.P1 and P5 in any manner.
2. The petitioners state that they are the judgment debtors in an Award passed by the 2nd respondent in ARC No.751/2017. Execution Application No.245/2018 was filed pursuant to the Award and the 1st respondent-Special Sale Officer had issued Ext.P1 auction notice dated 06.02.2023.
3. The petitioner states that Ext.P1 notice is illegal as auction is proposed without fixing the upset price under Rule 85 of the Kerala Co-operative Societies Rules, 1969 and Order 21 Rule 64 of the Code of Civil Procedure. The 2nd respondent proposed to recover ₹ 11,73,661/- from the 40 Cents of property mortgaged.
4. The petitioners state that the loan amount is ₹ 4,99,000/- and the interest calculated is ₹ 6,55,951/- which is more than the principal amount.
5. The petitioners submitted Ext.P2 representation before the 1st respondent

pointing out that the property is having □ 2,50,000/- per Are market value. Only 12 Cents of property need to be auctioned to settle the loan account.

6. The 2nd respondent, however, published Ext.P3 auction notice. The petitioners therefore filed W.P.(C) No.9297/2023. By Ext.P4 judgment, this Court, after hearing both sides, closed the writ petition making it clear that all contentions are left open for adjudication at a later stage.

7. Subsequently, the 1st respondent issued Ext.P5 auction notice dated 13.10.2023. The liability was shown as □ 12,39,420/-. Ext.P5 does not contain proper description of the property. There is no proper advertisement. Ext.P5 sale notice is in violation of Rules 81(f) and 85 of the Kerala Co-operative Societies Rules. Exts.P1 and P5 are therefore liable to be set aside, it is urged.

8. The 2nd respondent-Secretary to the Co-operative Bank opposed the writ petition filing counter affidavit. The petitioners deliberately refused to maintain the loan account. As the 2nd respondent had no other go, arbitration case was filed against the petitioners in the year 2017. The 1st respondent has fixed the upset price for the property put for public auction. The total amount due to the Bank as per the Award is □ 12,39,420/-. The writ petition is without any merit and it is liable to be dismissed.

9. I have heard the learned counsel for the petitioners, the learned Senior Government Pleader representing the 1st respondent and the learned counsel appearing for the 2nd respondent.

10. The petitioners have suffered an Award in ARC No.751/2017, by which the petitioners are liable to pay □ 12,39,420/- to the Bank. In order to realise the Award amount, the respondents published Exts.P1 and P5 auction notices. The contention of the petitioners is that no upset price has been fixed as required under Rule 85 of the Kerala Co-operative Societies Rules. The further submission is that the land is of an extent of 40 Cents.

11. The 1st respondent-Special Sale Officer had fixed the upset price of the property put for publication as per Ext.P2 auction notice. The fair value of the property is □ 44,000/- per Are. Since the 2nd petitioner's property has no road access, the 1st respondent has fixed the fair value of the property as the market value. The upset price of the property is fixed as □ 44,000/- per Are which is the current market value of the property. Thus, the total market value of the petitioners' property is assessed as □ 7,12,360/-. The total amount due to the Bank is □ 12,39,420/-. Therefore, there is no substance in the allegations made by the petitioners regarding the regularity of the auction.

12. When this writ petition came up for admission on 20.11.2023, this Court passed an interim order staying all further proceedings pursuant to Ext.P5 for a period of one month, on condition that the petitioners remit an amount of □ 1,50,000/- lakhs within a period of two weeks. The petitioners did not pay the amount as directed by this Court.

In the afore facts and circumstances of the case, I find that the writ petition is without any merit. The writ petition is therefore dismissed.