
(2015) 04 MAD CK 0386

In the Madras High Court

Case No : Writ Appeal (MD) No. 281 of 2015 and M.P.(MD) No. 1 of 2015

P. Suresh

APPELLANT

Vs

The Registrar, Co-operative Societies and Others

RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Citation : (2015) 04 MAD CK 0386

Hon'ble Judges : S. Manikumar, J;G. Chockalingam, J

Bench : Division Bench

Advocate : T. Antony Arul Raj, for the Appellant; M. Alagathevan, Spl. G.P, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J—Challenging the order, dated 22.07.2014, passed in W.P. (MD) No. 11913 of 2010, dismissing the writ petition, the appellant, who is the petitioner in the writ petition, has come forward with this writ appeal.

2. Material on record shows that the fourth respondent herein had obtained a loan of Rs. 4,00,000/-, on 22.08.1996, from the Central Cooperative Bank, Tirunelveli. He did not repay the loan amount and therefore an award came to be passed and in execution of the same, the secured assets were brought for sale, in public auction, on 29.12.1998. The appellant participated in the said auction and he was the highest bidder for a sum of Rs. 15,05,000/- and it was accepted by the Sale Officer. The said amount was deposited by the appellant. However, when the sale was sent to the Deputy Registrar for confirmation in favour of the appellant, it was rejected by the Deputy Registrar, vide on the ground that sale was not conducted as per the procedure laid down in the Tamil Nadu Co-operative Societies Act and the Rules framed thereunder. Informing the same, the Sale Officer cum Junior Inspector, Office of the Deputy Registrar of Co-operative Societies, the third respondent, issued the impugned order, dated 02.09.2010, enclosing a cheque for Rs. 15,07,886/- (Rs. 15,05,000/- + Rs. 2886/- interest).

3. Aggrieved by the same, the appellant filed the writ petition, inter alia contending that the third respondent is not the competent authority to set aside the sale and as per Rule 129 of the Tamilnadu Co-operative Societies Rules, the Registrar is bound to confirm the sale on the expiration of 30 days from the date of sale, if no application to set aside the sale is made under Rule 127 or sub-rule 1 of Rule 128 of the Rules.

4. After contest, the learned Single Judge dismissed the writ petition, holding thus:

"6. The learned counsel for the petitioner is not in a position to say that the third respondent was authorised either directly under the Act or Rules by any authority to conduct the auction. The learned counsel for the petitioner is also not able to dispute the legal position that it is only the Deputy Registrar of Co-operative Societies, who has got the power to auction the property. It is stated in the counter that the Co-operative Sub Registrar had abused his official position and has conducted the auction as though he was enjoying power under the Rules to auction the sale. It was because of this reason, the Deputy Registrar had declined to confirm the auction. Thus I do not find any infirmity in the impugned proceedings issued by the third respondent. But the learned counsel for the petitioner would refer to Rule 126 and say that if the sale is not confirmed by means of a positive order, within 30 days, it will be deemed that the sale has been confirmed. According to him, if no objection is filed by any interested party within 30 days from the date of auction, the Sale Officer is bound to confirm the auction. Of course, this is the Rule position. But that is not applicable to the instant case, because, the officer who conducted the auction had no jurisdiction and power to conduct the auction at all. Therefore, this contention of the learned counsel for the petitioner is rejected.

7. In view of the foregoing reasons that the auction was held without jurisdiction and without power on the part of the third respondent, the auction cannot be confirmed and thus, non-confirmation of the auction cannot be found fault with. In such view of the matter, this writ petition deserves only to be dismissed.

8. In the result, the writ petition fails and accordingly it is dismissed..... "

5. Assailing the correctness of the impugned order made in the writ petition, Mr. T. Antony Arul Raj, learned counsel for the appellant, contended that the Writ Court, ought to have seen that Sale Officer cum Junior Inspector, Perumalpuram, Tirunelveli, 3rd respondent herein, has no jurisdiction to cancel the auction, held on 29.12.2008, and that the communication sent to the appellant does not refer to any proceedings of the Deputy Registrar of Co-operative Societies, Tirunelveli, Tirunelveli District, the 2nd respondent, setting aside the sale, on any grounds. According to him, the communication sent to the appellant, refers only to an observation of the Deputy Registrar, Tirunelveli District, about non compliance of certain procedure and that the same ought not to have been construed, as an order, setting aside the auction, dated 29.12.2008, by the Deputy Registrar of Co-

operative Societies.

6. It is also the further submission of the learned counsel for the appellant, unless the sale is set aside, by the competent authority, it is not open to the 3rd respondent, to send any communication, regarding non confirmation of sale, made held two years ago. Learned counsel for the appellant further submitted that Writ Court, has failed to consider that the order impugned in this writ petition, cannot be allowed to be improvised, by filing any counter affidavit.

Heard the learned counsel for the appellant and perused the materials available on record.

7. Perusal of the order, made by the Writ Court, shows that when a specific question was posed to the learned counsel for the petitioner, as to whether, Sale Officer cum Junior Inspector, Perumalpuram, Tirunelveli, 3rd respondent herein, was authorised directly, under the Tamil Nadu Cooperative Societies Act and the rules framed thereunder, or by any authority, to conduct an auction, he had not answered.

8. Before the Writ Court, learned counsel for the appellant has also not disputed the legal position, that it is the Deputy Registrar of Co-operative Societies alone, has got the power to auction any property. Thus, it is clear that the Sub Registrar of Co-operative Societies, who had no jurisdiction to auction the property, has issued the auction notice.

9. As rightly observed by the Writ Court, action of the Co-operative Sub Registrar in bringing the property, for sale, without jurisdiction, is a nullity, and therefore, the appellant cannot take advantage of such auction, held on 29.12.2008. Rule 126 of the Tamil Nadu Co-operative Societies Rules, can be made applicable, only if the auction is conducted by the competent authority, as per the procedure contemplated, under the Tamil Nadu Co-operative Societies Act and the rules framed thereunder.

10. In any event, an act done without jurisdiction, cannot be allowed to be perpetuated, by the court. Merely because the sale was conducted and that the sale amount was deposited, the action of the Co-operative Sub Registrar, who issued the auction notice, and consequently auctioned the subject property, cannot be approved, as it would tantamount to approving an illegal act without jurisdiction and hence, the writ petitioner cannot claim benefit. Therefore, the Writ Court, while declining to grant relief prayed for, having regard to the fact that the appellant had deposited the sale amount, granted liberty to get back the same with interest upto 02.09.2010.

11. For the reasons stated supra, we do not find that the appellant has made out a case, to interfere with the impugned order made by the Writ Court. Accordingly, Writ Appeal is dismissed. No costs. Consequently, M.P. (MD) No. 1 of 2015 is closed.