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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

TUESDAY, THE 24<sup>TH</sup> DAY OF SEPTEMBER 2024 / 2ND ASWINA, 1946

WP(C) NO. 23060 OF 2024

PETITIONER:

THE WEST CHALAKUDY SERVICE CO-OPERATIVE BANK LTD.  
NO.R 262, REPRESENTED BY ITS SECRETARY,  
CHALAKUDY P.O, THRISSUR DISTRICT., PIN - 680307.

BY ADVS.  
ARJUN RAGHAVAN  
T.R.HARIKUMAR  
POOJA PANKAJ

RESPONDENTS:

- 1 THE SPECIAL SALE OFFICER  
WEST CHALAKUDY SERVICE CO-OPERATIVE BANK GROUP,  
OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE  
SOCIETIES (GENERAL), CHALAKUDY,  
THRISSUR DISTRICT., PIN - 680307.
- 2 THE ASSISTANT REGISTRAR OF CO-OPERATIVE  
SOCIETIES (GENERAL) CHALAKUDY, OFFICE OF THE  
ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES  
(GENERAL), CHALAKUDY, THRISSUR - 680307.



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3 THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES  
(GENERAL), OFFICE OF JOINT REGISTRAR OF CO-  
OPERATIVE SOCIETIES (GENERAL), THRISSUR,  
SAHAKARANA BHAVAN, AYYANTHOLE P.O,  
THRISSUR DISTRICT., PIN - 680003

ADDL.R4 THE TAHSILDAR  
TALUK OFFICE, CHALAKUDY,  
THRISSUR DISTRICT - 680307.

[ADDITIONAL 4TH RESPONDENT IS IMPLEADED AS PER  
ORDER DATED 17.07.2024 IN I.A.NO.1/2024 IN WPC  
NO.23060/2024.]

BY ADV.SMT. SHEEJA C.S, SR.GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 24.09.2024, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



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**CR**

**N. NAGARESH, J.**

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*Dated this the 24<sup>th</sup> day of September, 2024*

**J U D G M E N T**

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The West Chalakudy Service Co-operative Bank Limited has filed this writ petition seeking to quash Ext.P14 and to direct the 3<sup>rd</sup> respondent-Joint Registrar to issue sale confirmation of the auction conducted pursuant to Exts.P3 and P4 Awards, as discernible from Exts.P5 to P7 documents.



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2. The petitioner is a Co-operative Society functioning under the provisions of the Kerala Co-operative Societies Act, 1969. The petitioner is a Primary Agricultural Credit Society. One Smt.Sheela, a member of the Society, availed a credit facility of ₹8,00,000/-. Her husband, Sri.Rajan, stood as guarantor. The loan was availed in the month of March, 2014, mortgaging five cents of property of Sri.Rajan. The said Rajan also availed a credit facility of ₹15 lakhs, pledging the same property. When the borrowers failed to repay the loan amount, the petitioner preferred Arbitration Cases. The Arbitration Court passed Exts.P3 and P4 Awards in ARC Nos. 2431 and 2440 of 2017.

3. The petitioner thereafter initiated Execution Proceedings. The property was put to sale. The property was purchased by the petitioner-Society in public auction, for an amount of ₹51,23,140/-. The petitioner was then informed that



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there is a pending payment of ₹1,56,576/- from Sri.Rajan towards the Motor Vehicle Department, Government of Kerala on account of which there is a charge over the property. The petitioner states that though Section 36A of the Kerala Co-operative Societies Act provides for prior charge to the petitioner-Society, the Society paid the said amount in order to get the Sale Confirmation issued.

4. In order to get confirmation of sale, the entire files were forwarded to the 3<sup>rd</sup> respondent-Joint Registrar. The 3<sup>rd</sup> respondent thereupon issued Ext.P14 communication dated 25.05.2024, wherein the Joint Registrar has stated that Sale Confirmation would be issued once the petitioner-Society procure No Objection Certificate from the Tahsildar, Chalakudy certifying that there is no pending dues towards the property. The petitioner thereupon submitted Ext.P15 request to the Tahsildar seeking to issue No Objection



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Certificate. The Tahsildar, however, has not issued the No Objection Certificate.

5. The petitioner states that Ext.P14 communication of the Joint Registrar requiring the petitioner to produce a No Objection Certificate from the Tahsildar for the purpose of confirming the sale, is highly illegal and unwarranted. Section 36A of the Kerala Co-operative Societies Act provides for prior charge of a mortgaged property with the Society. Neither the Co-operative Societies Act nor the Kerala Co-operative Societies Rules empowers the Registrar / Joint Registrar to demand a No Objection Certificate from the Tahsildar, for the purpose of confirming sale of a property sold under the provisions of the Kerala Co-operative Societies Act and the Rules.

6. Counsel for the petitioner argued that under Rule 83(3) of the Kerala Co-operative Societies Rules, if no



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application to set aside a sale is made within 30 days from the date of sale, the Registrar shall confirm the sale. The Rule does not provide any other circumstance in which Registrar can refuse to confirm a sale.

7. The counsel for the petitioner further pointed out that in ***Nahala v. Adish and others*** [ILR 2019 (1) KER 264], this Court has held that Section 36A of the Kerala Co-operative Societies Act, 1969 creates special charge on movable or immovable property of the borrower, in favour of the Society, on the borrower executing Gehan, which has all the characteristic features of a mortgage under the provisions of the Transfer of Property Act. When Section 36A provides for a special charge, it is obvious that a charge created by a decree cannot prevail over Gehan / mortgage.

8. The 3<sup>rd</sup> respondent resisted the writ petition filing a statement. The 3<sup>rd</sup> respondent stated that the petitioner



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granted a Mortgage Loan to Sheela for ₹8 lakhs on 29.03.2014 and another Mortgage Loan of ₹15 lakhs to Rajan on 09.05.2014. The petitioner filed ARC Nos.2431/2017 and 2440/2017 on 24.07.2017. The ARCs were awarded in favour of the petitioner on 25.09.2017. The petitioner thereafter initiated execution proceedings. In the auction held on 21.12.2022, the Bank Secretary on behalf of the petitioner purchased the property.

9. As per letter dated 09.03.2020, the Tahsildar, Chalakudy informed that the Government has the first charge on the property for a due amount of ₹1,57,723/-. The Bank informed the 3<sup>rd</sup> respondent that the Bank had paid the entire amount due to the Government. A letter was sent to the Bank requiring to produce No Objection Certificate / No Objection Certificate from the Tahsildar, Chalakudy. The Tahsildar





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communicated to the Secretary, not to confirm the sale unless the amount is paid.

10. The 3<sup>rd</sup> respondent further stated that as per the report of the Village Officer, West Chalakudy, there are attachments over the property in OS No.450/2015 of the Sub Court, Chavakkad and in OS No.64/2016 of the Munsiff's Court, Chavakkad. There are also attachments over the property in CC No.278/2015 of JFCM, Koothattukulam and in ST No.2142/2016 of JFCM, Chalakudy. As the petitioner failed to produce NOC from the Tahsildar, Chalakudy, the 3<sup>rd</sup> respondent cannot confirm the sale.

11. I have heard the learned counsel for the petitioner and the learned Government Pleader representing the respondents 2 to 4.



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12. Section 36A of the Kerala Co-operative Societies Act provides for charge on movable or immovable property of borrower by creating Gehan. Section 36A provides that notwithstanding anything contained in any other provisions of the Act, charge on movable or immovable property of a borrower in favour of the Kerala State Co-operative Bank or a Primary Agricultural Credit Society or a Primary Housing Society or an Urban Co-operative Bank or any Primary Co-operative Society dealing with credit activities may be created in respect of which the provisions of 9 to 15 (both inclusive and 19 to 28 (both inclusive) of the Kerala State Co-operative Agricultural and Rural Development Banks Act, 1984 shall apply with the modification of substituting the words, Kerala State Co-operative Bank, Primary Agricultural Credit, Society or Primary Housing, Society or an Urban Co-operative Bank or any Primary Co-operative Society dealing credit activities,



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“Society” and “said Bank or Society” respectively, for the words “Agricultural and Rural Development Bank”, “primary Bank”, “Bank” and “said Banks” occurring in the said Sections. Thus, Section 36A creates special charge on Movable or immovable property of the borrower in favour of the Society on the borrower executing a Gehan which has all the characteristic features of a mortgage under the provisions of the Transfer of Property Act. When Section 36A provides for a special charge, it is obvious that a charge created by a decree cannot prevail over Gehan / mortgage / hypothecation.

13. Chapter XI of the Kerala Co-operative Societies Rules provides for execution of decisions, awards and order. Rule 81 provides for procedure in attachment and sale of immovable property. Sub-rule (f) of Rule 81 reads as follows:

When any immovable property is sold under these Rules, the sale shall be subject to the prior encumbrances on the property, if any. The decree-holder shall when the



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amount for the realisation of which the sale is held exceed Rs.100 furnish to the sale officer within such time as may be fixed by him or the Registrar an encumbrance certificate from the Registration Department for a period of not less than twelve years prior to the date of attachment of the property sought to be sold or in cases falling under the proviso to clause (3) of Rule 80 prior to the date of application for execution. The time for production of encumbrance certificate may be extended at the discretion of sale officer or Registrar. The sale shall be by public auction to the highest bidder, provided that it shall be open to the sale officer to decline to accept the highest bid where the price offered appears to be unduly low or for other reasons and provided also that the Registrar or sale officer may in his discretion, adjourn the sale to a longer period than 7 days, a fresh proclamation under clause (e) shall be made, unless the defaulter expresses his consent in writing to waive it. The sale shall be held after expiry of not less than 30 days calculated from the date on which notice of the proclamation was affixed in the office of the Registrar, Taluk Office and the society office whichever is later. The time and place of sale shall be fixed by the Registrar and place of sale shall be the village where the property to be sold is situated or such adjoining prominent place of public resort as may be fixed by the Registrar.

Provided that in case where an encumbrance certificate is not obtainable owing to the destruction of the connected records, an affidavit from the village officer in regard to the encumbrances known to him supported by a certificate from the Registration Department that the encumbrance certificate cannot be granted owing to the destruction of the connected records, shall be accepted in the place of an encumbrance certificate.



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14. It is clear from Rule 81(f) that when any immovable property is sold under the Kerala Co-operative Societies Rules, the sale shall be subject to the prior encumbrance on the property, if any. When a sale is effected under the Kerala Co-operative Societies Act / Rules, sub-rule (f) of Rule 81 requires the decree holder to furnish to the Sale Officer an Encumbrance Certificate from the Registration Department for a period of less than 12 years. The Rules do not prohibit or prevent sale of encumbered immovable properties mortgaged to a Society.

15. Rule 83 of the Kerala Co-operative Societies Rules provides for application to set aside sale on the ground of irregularity or fraud. The Rule states that at any time, within 30 days from the date of sale of immovable property, the decree holder or any person entitled to share in a rateable



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distribution of the assets or whose interests are affected by the sale, may apply to the Registrar, to set aside the sale, on the ground of a material irregularity or mistake or fraud in publishing or conducting sale, provided that no sale shall be set aside on the ground aforesaid, unless the Registrar is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud. Rule 83(3) provides that on the expiration of 30 days from the date of sale, if no application to have the sale set aside is made or if such application has been made and rejected, the Registrar shall make an order confirming the sale. The proviso to sub-rule (3) states that if the Registrar has reason to think that the sale ought to be set aside, notwithstanding that no such application which has been made or on grounds other than those alleged in any application which has been made and



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rejected, he may, after recording his reason in writing, set aside the sale.

16. Rule 83 thus enables the Registrar to set aside a sale on the ground of a material irregularity or mistake or fraud in publishing or conducting the sale. Furthermore, if the Registrar has reason to think that the sale ought to be set aside on ground, other than those made in any application, he may after recording his reason in writing, set aside the sale. In the case of the petitioner-Society, the sale has not been set aside by the Registrar.

17. Sub-rule (5) of Rule 83 mandates that after the confirmation of sale, the Registrar shall grant Certificate of Sale bearing his signature to the purchaser in Form No.39. Such certificate shall state the properties sold and the name of the purchaser and it shall be conclusive evidence of the fact of the purchase in all Court and Tribunals, where it may be



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necessary to prove it and no proof of the seal or signature of the Registrar shall be necessary unless the authority before whom it is produced shall have reason to doubt its genuineness. The sub-rule also mandates that such certificate shall be registered under the Registration Act for the time being in force, at the cost of the parties to whom they are issued.

18. Analysis of Rules 81 to 83 would bring out the following legal propositions. When any immovable property is sold under the Kerala Co-operative Societies Rules, the sale shall be subject to the prior encumbrances on the property, if any. Within 30 days from the date of sale of immovable property, the decree holder or any person entitled to share in a rateable distribution of the assets or whose interests are affected by the sale, may apply to the Registrar to set aside the sale on the ground of material irregularity or mistake or





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fraud in publishing or conducting the sale. A decree holder or any other interested person can challenge the sale only on the ground of material irregularity or mistake or fraud in publishing or conducting the sale. However, the Registrar has power to set aside a sale on grounds other than those alleged in any application. After the confirmation of sale, the Registrar shall grant a Certificate of Sale bearing his seal signature to the purchaser in Form No.39.

19. In the case on hand, the Gehan in favour of the petitioner-Bank was executed on 29.04.2014. The attachments over the property were subsequent to the execution of the Gehan and in the year 2015 and 2016. No one has applied to set aside the sale held on 21.12.2022. The Registrar / Joint Registrar has not set aside the sale under proviso to Rule 83(3). The sale stands confirmed. Under the circumstances, after the confirmation of sale, the Registrar is



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duty bound to grant a Certificate of Sale bearing his seal and signature. The Registrar cannot desist from issuing Certificate of Sale requiring the petitioner-Society to obtain No Objection Certificate from the Tahsildar.

In the facts of the case, the writ petition is allowed. Ext.P14 is set aside. The 3<sup>rd</sup> respondent is directed to issue sale confirmation in respect of the sale conducted pursuant to Exts.P3 and P4 Awards within a period of one month, without insisting for production of NOC from the Tahsildar. The petitioner, however, will be bound to clear liability, if any, towards the Government.

Sd/-  
**N. NAGARESH, JUDGE**

aks/27.09.2024



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APPENDIX OF WP(C) 23060/2024

PETITIONER'S EXHIBITS

- Exhibit-P1            A TRUE COPY OF LOAN APPLICATION OF  
SMT.SHEELA        ALONG        WITH        RELEVANT  
DOCUMENTS DATED 29-03-2014
- Exhibit-P2            A TRUE COPY OF LOAN APPLICATION OF  
MR.RAJAN ALONG WITH RELEVANT DOCUMENTS  
DATED 29-04-2014
- Exhibit-P3            A TRUE COPY AWARD DATED 25-09-2017 IN  
ARC NO.2431 OF 2017
- Exhibit-P4            A TRUE COPY AWARD DATED 25-09-2017 IN  
ARC NO.2440 OF 2017
- Exhibit-P5            A TRUE COPY OF 'AUCTION DIARY'  
DATED 21-12-2022 OF THE 1ST RESPONDENT
- Exhibit-P6            A TRUE COPY OF 'ATTENDANCE  
REGISTER' FOR THE AUCTION HELD ON  
21-12-2022
- Exhibit-P7            A TRUE COPY OF THE MAHASAR PREPARED BY  
THE 1ST RESPONDENT DATED 21-12-2022
- Exhibit-P8            A TRUE COPY OF ENCUMBRANCE CERTIFICATE  
OF THE PROPERTY DATED 14-08-2023
- Exhibit-P9            A TRUE COPY OF THE COMMUNICATION DATED  
19-09-2023 ISSUED BY THE TAHSILDAR,  
CHALAKUDY TO THE PETITIONER



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- Exhibit-P10            A TRUE COPY OF THE CHEQUE DATED 20-09-2023, EVIDENCING THE PAYMENT OF THE AMOUNT BY THE PETITIONER SOCIETY TO JOINT RTO, CHALAKUDY
- Exhibit-P11            A TRUE COPY OF THE RECEIPT NO.KL08062102929/2023 NOS.KL08062102930/2023 DATED 20-09-2023 EVIDENCING REMITTANCES MADE BY THE PETITIONER SOCIETY TOWARDS COLLECTION CHARGES
- Exhibit-P12            A TRUE COPY OF THE RECEIPT NO.KL08062102930/2023 DATED 20-09-2023 EVIDENCING REMITTANCE MADE BY THE PETITIONER SOCIETY TOWARDS COLLECTION CHARGES
- Exhibit-P13            A TRUE COPY OF THE REQUEST DATED 22-05-2024 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT
- Exhibit-P14            A TRUE COPY OF THE COMMUNICATION DATED 25-05-2024 ISSUED BY THE 3RD RESPONDENT
- Exhibit-P15            A TRUE COPY OF THE REQUEST DATED NIL SUBMITTED BY THE PETITIONER SOCIETY BEFORE THE TAHSILDAR
- Exhibit-P16            A TRUE COPY OF LOAN LEDGER SHEET OF SMT.SHEELA IS
- Exhibit-P17            A TRUE COPY OF LOAN LEDGER SHEET OF MR.RAJAN 1