

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.28698 to 28700 of 2015

and

M.P.Nos.1, 1, 1, 2, 2, 2, 3, 3, 4, 4 & 4 of 2015
(in all WPs)

A.Boopal .. Petitioner in WP.28698/2015
S.Elumalai .. Petitioner in WP.28699/2015
M.Ramadoss .. Petitioner in WP.28700/2015

V.

1.The Deputy Registrar of Coop. Societies,
Tindivanam Circle, Tindivanam,
Villupuram District.

2.The President,
CL. SPL.154, Brammadesam Primary Agricultural
Co-op. Credit Society, Brammadesam & Post,
Tindivanam Taluk, Villupuram District.

.. Respondents in all WPs

Prayer : Petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the entire records relating to the impugned Auction Notice dated 07.09.2015 issued by the 1st respondent and published the same in Dinathanthi Newspaper, dated 08.09.2015 and quash the same.

In all WPs.

For Petitioners .. Mr.C.Prakasam
For Respondents .. Mr.L.P.Shanmuga Sundaram
Special Government Pleader

COMMON ORDER

Heard the learned counsel for the petitioners and the learned Special Government Pleader for the respondents.

2.In all the writ petitions, the prayer sought for is to quash the Auction Notice dated 07.09.2015, in and by which, the properties standing in the names of the petitioners are sought

to be brought for auction. In fact, the auction itself is pursuant to an order passed in W.P.No.25767 of 2009. The said writ petitions were filed challenging the surcharge proceedings which were confirmed by the Co-operative Tribunal. All the writ petitions were dismissed by a Common Order dated 24.07.2014. It is stated that writ appeals have been filed, some of which are numbered. However, as on date, there is no prohibitory order restraining the respondent Society for proceed in accordance with law. In fact, an identical issue arose for consideration before this Court in W.P.Nos.30755 to 30757 of 2015. In the said writ petitions, identical contention was raised by the petitioners therein and in fact, it is the same learned counsel who had appeared in the said batch of cases also. For better appreciation, the entire order is quoted herein below.

"Heard the learned counsel for the petitioners and Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader appearing for the respondents.

2. These writ petitions have been filed challenging the impugned notices issued by the 2nd respondent in Tha.Va.No. 617,615 and 614/2004-2005 Ni.Vae.Ma.No. 355, 353 and 352/2004-2005 respectively dated 27.08.2015 in Form Nos.8 and 9.

3. The petitioners are the members of the 4th respondent Society. In that Society, an Ex-Secretary one Sagadevan and higher officials who are incharge of sanctioning the loan, colluded with each other and misappropriated a sum of Rs.3.69 crores in the 4th respondent Society Funds during the period 1998 to 2004. It is the contention of the petitioners that the said officials forged the petitioner's signatures as if they applied for crop loan, however, the petitioners never applied for any such crop loan before the 4th respondent Society. It is the further contention of the petitioners that the said officials prepared bogus loan applications and sanctioned the loan in the name of the petitioners without their knowledge, consent and signatures and misappropriated the the same. When the enquiry officer was appointed under Section 81 of the Tamil Nadu Co-operative Societies Act, the petitioners

have clearly stated before the Enquiry Officer about the forgery committed by the said officials. However, the names of the petitioners have been included in the surcharge proceedings initiated under Section 87 of the Act and the liability was fixed to the tune of Rs.72,339/- Rs.1.35 lakhs and Rs.90,000/- respectively. Hence, the petitioners moved the District Court, Villupuram by filing CMA, which were dismissed by the said Court. Thereafter, the petitioners approached this Court along with other similarly placed persons against the orders passed under Section 87 by filing W.P.No.25767 of 2009, which was dismissed by order dated 24.07.2014, against which, according to the learned counsel for the petitioner, writ appeal has been filed which is in SR stage. In the meanwhile, auctioning the properties of the petitioners were advertised and accordingly proceeded with by the impugned notices. Aggrieved over the same, the petitioners are before this Court.

4. The 4th respondent has filed a counter affidavit denying all the allegations made by the petitioners. Based on the counter affidavit, the learned Special Government Pleader submitted that the writ petitions are not maintainable in view of the categorical finding given by this Court in W.P.No.25767 of 2009 and hence they are liable to be dismissed. He would further submit that there is no impediment for the auction to go on as scheduled.

5. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. Since the subject matter of these writ petitions has already been decided by this Court, which ended in dismissal of the writ petition filed in W.P.No.25767 of 2009, this Court cannot interfere at this stage. It is always open to the petitioners to approach the Hon'ble Division Bench for appropriate orders, since it is stated that

a writ appeal has been filed before this Court. As rightly stated by the learned Special Government Pleader, the auction as scheduled can go on. However, confirmation of the same shall be made only after a period of 30 days. It is needless to mention that in the meanwhile it is open to the petitioners to seek appropriate remedy before the Hon'ble Division Bench.

The writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed."

3. In the light of the above, the direction issued by this Court, while disposing of the writ petitions sufficiently safeguards the interest of the petitioners. In fact, this Court is inclined to grant 60 days time for confirmation during which period, it is always open to the petitioners to seek appropriate remedy before the Hon'ble Division Bench.

4. Thus, following the orders passed in the above referred writ petitions, these Writ Petitions are disposed of, by a direction that the auction scheduled to be conducted shall proceed. However, the confirmation shall not be made for a period of 60 days from the date of auction and within such time, it is always open to the petitioners to work out their remedies in the manner known to law.

5. M.P.Nos. 3, 3 & 3 of 2015 in W.P.Nos. 28698 to 28700 of 2015 are closed. However, it is open to the petitioners to work out their remedies in an independent proceedings. No costs. Consequently, all connected miscellaneous petitions are closed.

sd/-

Assistant Registrar (Cs-V)

/TRUE COPY/

Sub-Assistant Registrar

Sgl

To

1. The Deputy Registrar of Coop. Societies,
Tindivanam Circle, Tindivanam,
Villupuram District.

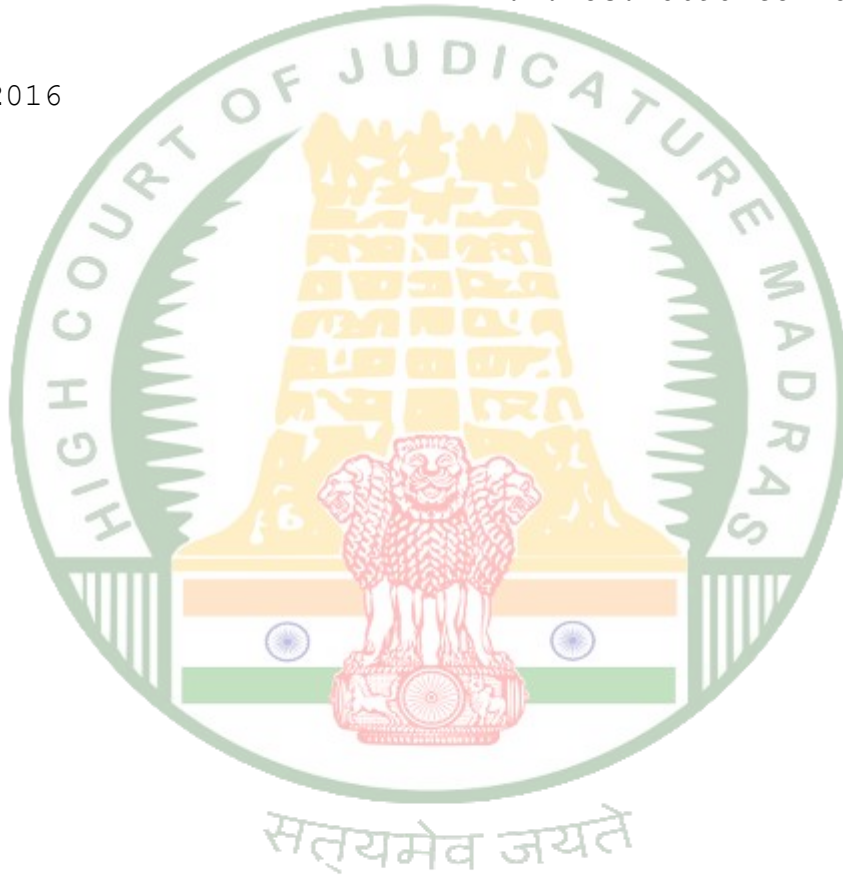
WEB COPY

2.The President,
CL. SPL.154, Brammadesam Primary Agricultural
Co-op. Credit Society, Brammadesam & Post,
Tindivanam Taluk, Villupuram District.

+3 CC to MR.C.Prakasam Advocate. SR.NO. 1467
+1 CC to MR.L.P.Shanmuga Sundaram Advocate. SR.NO. 1932
+1 CC to Govt.Pleader. SR.NO. 1781

W.P.Nos.28698 to 28700 of 2015

CO-JSV
JD 20/01/2016



WEB COPY