

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 16-02-2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5569 OF 2016

M.Nagaraj

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Petitioner

-vs-

- 1.The Joint Registrar of Co-operative Societies,
Krishnagiri,
Krishnagiri District.
- 2.The Deputy Registrar of Co-operative Societies,
Hosur,
Krishnagiri District.
- 3.Sale Officer/Co-operative Sub-Registrar/
Field Officer,
Office of the Deputy Registrar of Co-operative Societies,
Hosur,
Krishnagiri District.
- 4.The Secretary,
S.1535 Binnamangalam Primary Agricultural
Co-operative Bank, rep.by its Secretary,
Binnamangalam Post,
Denkanikottai Taluk,
Krishnagiri - 635 001.

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Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for the records relating to the impugned Sale Auction Notice, dated 13.01.2016, issued by the third respondent based on the Surcharge Order, dated 28.05.2008, issued by the second respondent, which is published in Salem edition of Tamil daily "Dinakaran", dated 19.01.2016, for auction of the lands owned by the petitioner in two Survey Numbers 411/2B and 645/1A of Binnamangalam Village, measuring an extent of 1.26 acres and 0.44 acres respectively on 20.02.2016, and quash the same.

For petitioner : Mr.K.Elango

For respondents 1 to 3 : Mr.D.Venkatachalam,
Addl.Govt.Pleader (Co-op.)

For respondent 4 : Mr.M.S.Palanisamy

O R D E R

Heard Mr.K.Elango, learned counsel for the petitioner; Mr.D.Venkatachalam, learned Additional Government Pleader, for respondents 1 to 3; and Mr.M.S.Palanisamy, for respondent 4.

2. Petitioner has challenged the Auction Notification, issued by the third respondent, proposing to bring for auction the petitioner's property, for recovery of the amount payable by the petitioner, pursuant to an order passed by the second respondent, under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, in short, "the Act", dated 28.05.2008.

3. Admittedly, as against the order under Section 87 of the Act, the petitioner has an effective and efficacious remedy of filing an appeal before the Co-operative Tribunal. However, the petitioner has not filed the appeal till-date.

4. Learned counsel for the petitioner submitted that the petitioner was not the person, who was authorised to sign cheques at the relevant point of time, and even assuming the petitioner is held liable, the liability will not be more than Rs.1,50,000/-.

5. Per contra, learned counsel for fourth respondent submitted that several persons are involved in the transaction, and, as on date, the total amount recoverable is more than Rs.40.00 lakhs, and that since the Act provides for an appeal remedy to the petitioner and the appeal being before a Tribunal, the Tribunal has got powers to consider the said appeal, which is filed beyond the period of limitation, subject to the appellant showing sufficient cause for not having preferred the appeal within the period of limitation.

6. Pursuant to the above stand, learned counsel for the petitioner submitted that the petitioner will file an appeal before the Tribunal within a short while and until then, the property may not be sold in public auction.

7. Taking into consideration the submissions made on either side and also the fact that the surcharge order under Section 87 of the Act was passed by the second respondent on 28.05.2008, this Court is of the view to grant to liberty to the petitioner to move the Tribunal, it shall be subject to certain conditions. Accordingly, while refusing to interfere with the impugned order at this stage of the matter, liberty is granted to the petitioner to file the appeal before the Co-operative Tribunal within a period of four weeks from the date of receipt of a copy of this order. In the interregnum, the petitioner's property shall not be sold in public auction,

subject to the condition, that the petitioner pays a sum of Rs.2.00 lakhs (Rupees Two Lakhs only) to fourth respondent and produce the proof of payment before third respondent. Time for making such payment shall be three weeks from today. If the petitioner fails to comply with the above conditions, the third respondent is entitled to proceed with the auction. In the event the petitioner pays the amount of Rs.2.00 lakhs as directed above, the Sale Officer shall postpone the sale and await further orders from the Tribunal in the appeal to be filed by the petitioner.

8. Writ Petition is disposed of accordingly. No costs. Consequently, the connected W.M.P.Nos.4902 and 4903 of 2016 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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Krishnagiri - 635 001.

+1 cc to Government Pleader, sr.9963

+1 cc to Mr.K.Elango, Advocate, sr.9678

W.P.No.5569 OF 2016

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