

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.23364 of 2010

Arul Selvi

... Petitioner

Vs.

1. The Deputy Registrar
Co-operative Societies
Cheyyar Circle,
Thiruvannamalai District.

2. The Special Officer,
Vandavasi Primary Agricultural
Co-operative Bank Ltd.,
Vandavasi, Thiruvannamalai District.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent pursuant to the auction notice in ARC No.890/02-03 in Ne.Ma.No.132/02-03 dated 09.09.2010 and quash the same and forbear the respondents from proceedings against the petitioner's property comprised in Survey No.11/7A2 situated at Chennapuram Village, Vandavasi Taluk.

For Petitioner : Mr.N.Anand Venkatesh

For Respondents : Mr.L.P.Shanmugasundaram for R1 & R2
Spl.Govt.Pleader

ORDER

The petitioner is the owner of the residential property comprising in Chennapuram Village in Survey No.11/7A measuring to an extent of 1200 sq.ft.,

2. The petitioner's husband was employed as an Office Assistant in the second respondents Bank. He was subjected to enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act 1983 along with others. On the basis of the enquiry, it was found that the petitioner's husband and others were responsible for the loss caused to the Bank. Thereafter the second respondent herein initiated proceedings against the petitioner's husband under Section 87 of the Tamil Nadu Co-operative Societies Act and an order was passed on 04.02.2004.

3. On the basis of surcharge proceedings, the first respondent

issued notice of auction proceedings to the petitioner's husband to bring the present property of the petitioner for sale on 25.10.2010, in order to recover the amount due under the surcharge. According to the petitioner, the subject property is the self acquired property, which was purchased by her as early as in the year 1993, much before her husband was proceeded with under the surcharge proceedings in the year 2004.

4. According to the petitioner, she was employed in the State Government from the year 1983 and the subject property was purchased out of her earnings and by loan obtained by her. While that being the case, the petitioner was at a loss to understand on what basis the property belonging to the petitioner was brought to sale for recovery of the amount due from her husband.

5. After the notice was served on the respondents, the learned Special Government Pleader has entered appearance and filed a counter affidavit. In the counter affidavit, at paragraph No.22 it is stated as follows:-

I humbly submit that the petitioner has failed to prove the source of income through which the property has been purchased. It is presumed that the petitioner's husband Mr.V.Sundravadivelu might have purchased the said property in the name of the petitioner. Hence the content of the petitioner is liable to be set aside.

6. The only contention raised for issuing the impugned auction notice by the first respondent was on the basis of presumption that the petitioner's husband might have purchased the property in the name of the petitioner.

7. This Court does not see any basis for such presumption on the face of the record.

8. On the other hand, the learned counsel Mr.Anand Venkatesh, appearing for the petitioner would submit that the petitioner, having been employed in the State Government from the year 1983, had purchased the property in the year 1993, much before her husband was charged with the act of misconduct in the year 2000 and in any event the petitioner having purchased the property from her own income, such property cannot be subjected to auction for any act of negligence committed by her husband while discharging his duty as an employee of the second respondent. Moreover, the learned counsel for the petitioner stated that there are no rules or regulations to bring such property for sale.

9. The learned Special Government Pleader appearing for the respondents is unable to point out on what basis such auction notice was issued to bring the petitioner's property for sale. Apart from the averments made in the counter affidavit, it is stated that the action was taken under the presumption as disclosed in the counter affidavit. Such arguments made on behalf of the first respondent do not merit any serious consideration by this Court as the same completely lack merit and substance.

10. In the above circumstances, this Court is unable to sustain the impugned notice. Accordingly the impugned notice in ARC No.890/02-03 in Ne.Ma.No.132/02-03 dated 09.09.2010 is set aside and the writ petition is allowed. No costs.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

dpq

To

1. The Deputy Registrar
Co-operative Societies
Cheyyar Circle,
Thiruvannamalai District.

2. The Special Officer,
Vandavasi Primary Agricultural
Co-operative Bank Ltd.,
Vandavasi, Thiruvannamalai District.

+1 cc to the Government Pleader, High Court, Chennai SR.NO. 20098

+1 cc to Mr.N.Anand Venkatesh, Advocate SR.NO. 19566

+1 cc to Mr.L.P.Shanmugasundaram, Advocate SR.NO. 20413

W.P.No.23364 of 2010

SS (CO)
JK 18/04/18

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