



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition Nos.23742 & 23744 of 2019
and

W.M.P.Nos.23621 to 23623 & 23625 of 2019

N.Vethamoorthy .. Petitioner in W.P.No.23742/2019

K.Natarajan .. Petitioner in W.P.No.23744/2019

/versus/

1.The Joint Registrar of
Co-operative Societies,
Mannargudi,
Thiruvarur District.

2.The Co-operative Sub-Registrar,
Field Officer/Sale Officer,
Neetamanagalam,
Mannargudi Taluk,
Thiruvarur District.

3.N.Kalyanasundaram,
(The Secretary/removed from service)
ZC-94,Sithamallie Primary Agricultural Co-operative
Society Ltd.,
Main Road, Sathiyamoorthi Nagar,
Sithamallie Post,
Mannargudi Taluk,
Thiruvarur District.

.. Respondents in both WPs

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari call for the records in connection with the auction notice dated 23.07.2019 issued by the 2nd respondent herein and quash the same as illegal and improper.

For petitioner in both WPs : Mr.S.Kingston Jerold

For Respondents in both WPs: Mr.D.Venkatachalam
Special Government Pleader



COMMON ORDER

The petitioner is the brother of the 3rd respondent who is the former Secretary of the Society and for the default, the property is brought for sale.

2. The contention of the petitioner is that, the property is their ancestral property and 1/11th share of the property is belonging to the 3rd respondent and therefore it cannot be brought to auction.

3. As far as the said contention is concerned, the learned Standing counsel for the respondents would submit that the property stands in the name of the 3rd respondent and it was settled in favour of his son and in favour of the 3rd respondent. The ancestral property is alone to auction even otherwise, the petitioner has any objection, there is a statutory remedy available to him, which he has not exhausted but he approached this Court under Article 226 of the Constitution.

4. The learned Standing counsel would also circulate the judgment of the Division Bench, wherein, under the similar circumstances, the Division Bench of this Court has held that the petitioner/3rd party has any objection regarding the sale notice, he has to file a petition under Rule 135(2) of the Tamil Nadu Co-operative Societies Rules, 1985 by making a claim or objection. Without resorting to the statutory remedy, under Article 226 of the Constitution of India cannot be resorted.

5. Considering the legal procedure as well as the facts which are stated in the affidavit, this Court finds that there is no merit in this writ petition to entertain on two grounds:

(i) The writ petition is not maintainable in view of alternate remedy available under Rule 135(2) of the Rules.

(ii) It is made clear by the respondent counsel that only property stands in the name of the defaulter and his share in the joint property alone is brought to auction.

6. In such circumstances, the petitioner have any objection, it is for him to work out his remedy under Rule 135. Hence, this Writ Petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.
rpl

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar



To

1.The Joint Registrar of
Co-operative Societies,
Mannargudi,
Thiruvarur District.

2.The Co-operative Sub-Registrar,
Field Officer/Sale Officer,
Neetamanagalam,
Mannargudi Taluk,
Thiruvarur District.

+2cc to Mr.S.Kingston Jerold, Advocate, SR.No.69125

+2cc to Mr.D.Venkatachalam, Advocate, SR.No.69835, 69389

+1cc to the Govt.Pleader, Vide Sr.No.69742 &69743

W.P.No.23742 & 23744 of 2019
and

W.M.P.Nos.23621 to 23623 & 23625 of 2019

Kak(27/09/2019)