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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.1.2021

Delivered on : 1.7.2021

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.Nos.12580 of 2020
and

W.M.P.No.15512 of 2020

P.Shanmugam

Petitioner

vs.

1. The Deputy Registrar of Cooperative Societies,
Omalur Circle, Omalur,
Salem District.
2. The Sale Officer,
O/o. The Deputy Registrar of Cooperative Societies,
Omalur Circle, Omalur,
Salem District.
3. The President,
S 777, Nangavalli Primary Agricultural Cooperative Credit Society Ltd.,
Nangavalli & Post
Salem - 636 454.
4. The Sub Registrar of Registration,
Jalakandapuram 636 501.
Salem District.

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records pertaining to the orders of conditional attachment passed by the first respondent in E.P.No.1/2016-2017(2) dated 7.11.2016 and the consequential auction notice issued by the second respondent in Form VII notice dated 28.8.2020 and quash the same.

For Petitioner : Mr.S.Kamadevan



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For R1 to R3 : Mr.S.R.Rajagopal,
Additional Advocate General assisted by
Mr.L.P.Shanmugasundaram,
Special Government Pleader

For R4 : Mr.T.M.Pappiah, Special Government Pleader

COMMON ORDER

The petitioner is one of the elected Board of Directors of the third respondent Society having been elected in the year 2013 and also functioned as President of the said Society from 9.5.2013 to 21.8.2017.

2. This writ petition is filed as against the order of conditional attachment dated 7.11.2016 and the consequential auction notice dated 28.8.2020.

3. The learned counsel appearing for the petitioner submits that the petitioner is an elected Member of the Society and the Secretary of the Society one C.Selvaraj was the Chief Executive and responsible for the entire management and day to day affairs of the Society and the alleged misappropriation is on account of any lapses on the part of the Secretary and other employees of the Society, however, the respondents have fixed the liability as against this petitioner also on the irregularities committed in the Society and passed the Surcharge order on 9.7.2018 under Section 87 of the Tamil Nadu Cooperative Societies Act against which, the petitioner has filed an Appeal before the Principal District Court Salem in C.M.A.No.28 of 2019 and the same is still pending but, in contrary to the same, the respondents seem to have passed an order of attachment under Section 167 of the Act on 7.11.2016 and the consequential sale notice has been passed on 28.8.2020.

4. In response to the writ petition, the learned Additional Advocate General appearing for the respondents had submitted that this writ petition cannot be maintained as against the order of conditional attachment dated 7.11.2016 and the petitioner is having a remedy before the Appellate Tribunal under Section 152 of the Tamil Nadu Cooperative Societies Act, 1983 and the cause of action for the sale notice dated 28.8.2020 is different and this petitioner cannot maintain a single writ petition for the cause of action arising out of the conditional attachment order dated 7.11.2016 and the auction notice dated 28.8.2020. He would further submit that the auction notice dated 28.8.2020 is consequent to the Award in the surcharge proceedings dated 9.7.2018 and as against the Surcharge Order, the petitioner has preferred an Appeal before the Principal



District Court, Salem in C.M.A.No.28 of 2019 and the petitioner, who failed to obtain any interim order from the Principal District Court, preferred this writ petition and there is an alternative remedy available to the petitioner.

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5. The learned Additional Advocate General would further submit that based on the report of the inspection team, an enquiry under Section 81 of the Act was conducted by proceedings dated 1.11.2016 and a report was filed in the year 2017 that there is a large scale of irregularity committed in the affairs of the Society and a loss to the tune of Rs.4,91,84,961.85 was caused to the Society. Based on the report of the Enquiry Officer under Section 81 of the Act of 1983, a Criminal Case was also registered before the Commercial Crime Investigatin Wing (CIW) in Crime No.2 of 2017 as against this petitioner and others on 26.7.2017. The petitioner, President of the Board is also equally responsible for the alleged misappropriation in the Society.

6. The surcharge proceedings was also initiated as against petitioner and others by the first respondent and a show cause notice was issued to the petitioner on 13.7.2017 calling for explanation as to why surcharge orders may not be passed as against the petitioner and others and the same was served on the petitioner on 19.8.2017. It is further submitted that a reminder seeking explanation was also issued by the first respondent on 8.9.2017 and the petitioner, by letter dated dated 29.7.2017, sought for 27 documents to offer his explanatino to the proceedings initiated under Section 81 of the Act and the petitioner was permitted to peruse and take notes of the documents on 1.12.2017 and the petitioner obtained those documents on 22.12.2017 and thereafter, the petitioner, vide his letter dated 12.1.2018 and 19.2.2018, sought for extension of time to submit his defence statements and by letter dated 2.3.2018, he also made a request to engage a lawyer for the proceedings under section 87 of the Act 1983. The petitioner was permitted and the petitioner has appeared through his Advocate for the hearings on 17.4.2018, 24.5.2018 and 1.6.2018. The petitioner appeared for hearing on 17.4.2018 and gave deposition before the first respondent and submitted a written statement on 24.5.2018 and finally, based on the oral and documentary evidence available, the first respondent passed a detailed speaking Award under Section 87 of the Act on 9.7.2018 in RC.No.1473/2017.

7. As against that order, the petitioner has filed an Appeal before the Principal District Court in C.M.A.No.28 of 2019 and also filed an Application for stay of the award in I.A.No.2 of 2019, but the same was rejected by the Principal District Court. The petitioner, who could not obtain interim order before the



Principal District Court, Salem has filed the present writ petition as against the conditional attachment order passed in the year 2016 and the sale notice dated 28.8.2020.

8. This court paid its anxious consideration to the rival submissions and perused the materials available on record.

9. The petitioner is an elected President of the Board of Directors of the 777 Nangavalli Primary Agricultural Cooperative Credit Society Limited. Based on the report of the investigation officer, an enquiry was conducted on the affairs of the Society in the year 2016 and a report appears to have been filed in the year 2017 fixing certain liabilities to this petitioner and other employees of the Society that the petitioner, with the connivance of the other employees of the Society, committed several irregularities during the period from 9.5.2013 to 8.5.2018 and caused a loss of Rs.4,91,84,961.85 along with other employees of the Society. This conditional order dated 7.11.2016 is the subject matter of the writ petition and the same is challenged by this petitioner after four years under section 152 of the Tamil Nadu Societies Act. The petitioner has also already filed an Appeal as against the Surcharge Award dated 9.7.2018 before the Principal District Court, Salem in C.M.A. No.28 of 2019 and the same is still pending. One of the grounds raised is that pending the said C.M.A.No.28 of 2019, the respondents have issued a consequential sale notice dated 28.8.2020.

10. The petitioner has also enclosed the proceedings of the Principal District Court, Salem C.M.A.No.28 of 2019 wherein it is recorded that the petitioner has also taken out an interim Application for stay of the Award in I.A.No.1 of 2019 and the same was disposed in the year 2019 itself and the C.M.A. is pending from the year 2019 at the stage of arguments. The petitioner has taken out the details of the hearing in the court of Principal District Judge, Salem upto 4.9.2020 and filed the writ petition on 3.9.2020.

11. This writ petition is filed as against the conditional attachment order dated 7.11.2016 and the sale notice dated 28.8.2020. As already pointed out by the learned Additional Advocate General, as against the order of attachment dated 7.11.2016, the writ petitioner is having an Appeal remedy before the Tribunal under Section 152 of the Tamil Nadu Cooperative Societies Act and this petitioner, who has already filed an appeal in C.M.A.No. 28 of 2018 as against the Surcharge Award, is at liberty to file Appeal as against this order of conditional attachment dated 7.11.2016.

12. As against the impugned sale notice, this petitioner is



having a remedy before the Sale Officer under Section 135 of the Tamil Nadu Cooperative Societies Rules, 1988. If any objection is made to the attachment of any property, the Sale Officer shall investigate the claim or objections and dispose of the same on its merits.

13. Accordingly, this writ petition is disposed of with a liberty to the petitioner to challenge the impugned orders in the manner known to law. No costs. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Deputy Registrar of Cooperative Societies,
Omalur Circle, Omalur,
Salem District.
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Salem District.

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.30986

W.P.Nos.12580 of 2020

CP(CO)
SB(03/08/2021)