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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.18492 of 2020

and

W.M.P.No.22935 of 2020

Tmt.K.Maheswari

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 Administrator,
S 777, Nangavalli Primary Agricultural
Cooperative Credit Society Ltd.,
Nangavalli & Post
Salem - 636 454.
4. The Sub Registrar of Registration,
Mettur,
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 dated 7.11.2016 and the consequential auction notice in Form 8 & 9 dated 12.11.2020 and quash the same.



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For Petitioner : Mr.S.Kamadevan

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 was initially appointed as Sales Woman of a PDS (Ration) Shop under the control of the third respondent Society in the year 1994 and thereafter posted as Attender in the year 1999 and then promoted as Clerk in the the year 2016.

2. This writ petition is filed as against the order of conditional attachment dated 7.11.2016 and the consequential auction notice dated 12.11.2020.

3. The learned counsel appearing for the petitioner submits that the petitioner is only a Clerk 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.42 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 12.11.2020.

4. In response to the writ petition, the leaned 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 12.11.2020 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 12.11.2020. He would further submit that the auction notice dated 12.11.2020 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.42 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.

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. The petitioner, being Clerk in the third Respondent Society is also responsible for the alleged misappropriation in the Society.

6. The surcharge proceedings was also initiated as against petitioner and others by the first respondent by issuing notice dated 13.7.2017 and 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 as against the petitioner to the tune of Rs.27,27,740/-.

7. As against that order, the petitioner has filed an Appeal before the Principal District Court in C.M.A.No.42 of 2019. The petitioner, who could not obtain any 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 issued dated 12.11.2020.

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

9. The petitioner is a Clerk in 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 and out of which, the petitioner is said to have caused loss to the tune of Rs.27,27,740/-. 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.42 of 2019 and the same is still pending. One of the grounds raised is that



pending the said C.M.A.No.42 of 2019, the respondents have issued a consequential sale notice dated 12.11.2020.

10. The petitioner has also enclosed the proceedings of the Principal District Court, Salem C.M.A.No.42 of 2019. It 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 30.11.2020 and filed the writ petition on 27.11.2020.

11. This writ petition is filed as against the conditional attachment order dated 7.11.2016 and the sale notice dated 12.11.2020. 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. 42 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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O/o. The Deputy Registrar of
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S 777, Nangavalli Primary Agricultural
Cooperative Credit Society Ltd.,
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Salem - 636 454.
4. The Sub Registrar of Registration,
Mettur,
Salem District.

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.30987

W.P.Nos.18492 of 2020

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