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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.18128 & 20341 of 2020

and

W.M.P.No.22519 and 25141 of 2020

S.Mallika

Petitioner in both WPs

vs.

1. The Registrar of Cooperative Societies,
O/o.The Registrar of Cooperative Societies,
No.170 EVR Road, Dr.Radhakrishnan Nagar,
Rasak Garden, SBA Officer's Colony,
Arumbakkam, Chennai 600 106.
2. The Joint Registrar of Cooperative Societies,
O/o. The Joint Registrar of Cooperative Societies,
Salem Region, Room No.410,
4th Floor, Collectorate Buildings,
Salem 636 005, Salem District.
3. The Deputy Registrar of Cooperative Societies,
O/o.The Deputy Registrar of Cooperative Societies,
Omalur Circle, Cutchery Street,
Omalur, Omalur 636 455, Omalur Taluk,
Salem District.
4. The Sale Officer,
O/o. The Deputy Registrar of Cooperative Societies,
Omalur Circle, S 777,
Nangavalli PACCS Ltd.,
Nangavalli, Nangavalli (Post) 636 454.
Mettur Taluk, Salem District.



5. The Administrator,
S 777, Nangavalli PACCS Ltd.,
Nangavalli, Nangavalli (Post) 636 454.
Mettur Taluk, Salem District.

Respondents in both WPs

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Writ Petition No.18128/2020 filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records pertaining to the sale notices in Form-8 and Form-9 under Rule 126(2)(e) of Tamil Nadu Co-operative Societies Act 1988 dated 12.11.2020, quash the same issued by the 3rd respondent pursuant to the 3rd respondent order passed in E.P.No.1/2016-2017 dated 7.11.2016 and consequentially issue direction directing the 3rd respondent to obey the direction of this Court passed in W.P.No.13477 of 2020 dated 28.9.2020 by considering the petitioner's representation dated 15.10.2020.

Writ Petition No.20341/2020 filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records pertaining to the sale notices in Form-8 and Form-9 under Rule 126(2)(e) of Tamil Nadu Co-operative Societies Act 1988 dated 11.12.2020 issued by the 3rd respondent pursuant to the 3rd respondent order passed in E.P.No.1/2016-2017 dated 7.11.2016 and quash the same.

For Petitioner : Mr.R.Marudhachalamurthy

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

COMMON ORDER

These two writ petitions are filed by one Mallika, wife of C. Selvarasu, the then Secretary of 777 Nangavalli Primary Agricultural Cooperative Credit Society Limited, Mettur Taluk as against the sale notices issued by the third respondent under rule 126(2)(e) of the Tamil Nadu Co-operative Societies Rules

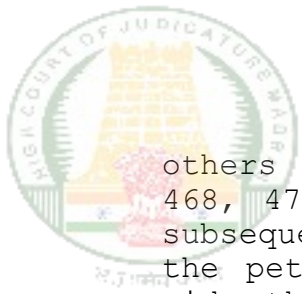
2. Vide the impugned sale notices, the third respondent brought the petitioner's property for public auction. The case of the petitioner is that she is the wife of one C.Selvarasu and she is living separately on difference of opinion with her husband and the properties mentioned in the sale notices are her self-acquired properties and not purchased from the sources of her husband Selvarasu and despite the same, the third respondent has brought the properties of the petitioner for sale for the liabilities of her husband.

3. The learned counsel appearing for the petitioner



submitted that enquiry under section 81 of the Act was conducted as against the petitioner's husband C.Selvarasu and six others for the alleged irregularities in the Nangavalli Primary Agricultural Cooperative Credit Society and a decree has been passed as against those employees of the Society, however, the schedule mentioned properties in the sale notices are the petitioner's self-acquire properties and they are in no way connected with her husband, but the same were brought for sale. He would further submit that the third respondent had not given any opportunity of hearing and also failed to communicate the orders to the petitioner and the petitioner has also filed a writ petition as against the order of attachment passed by the respondents in W.P.No.13477 of 2020 and the same was disposed of by this court on 28.9.2020 directing the third respondent to consider the petitioner's application for lifting the order of attachment within a period of four weeks from the date of that order. The petitioner claims that the said order of this court was communicated to the respondents on 15.10.2020 and the same was received on 19.10.2020, but without considering the orders of this court, the impugned sale notices in form 8 and 9 were issued on 12.11.2020 and 11.12.2020. The further grievance of the petitioner is that the third respondent, while considering her application initiated under Rule 135, no opportunity of personal hearing was provided and Rule 112 prescribes certain mode of for issuing summons, but the conditional order of attachment was passed without any notice to the petitioner. The learned counsel for the petitioner would further submit that the order dated 27.10.2020 was communicated to the petitioner only on 24.11.2020.

4. Mr.S.R.Rajagopal, learned Additional Advocate General assisted by Mr.L.P.Shanmugasundaram, learned Special Government Pleader would submit that the petitioner's husband Selvarasu was the Secretary of the S777 Nangavalli primary Agricultural Cooperative Credit Society, Mettur Taluk and he along with other employees of the Society misappropriated funds to the tune of Rs.4,91,84,961.85. The Field Officer, who conducted an inspection of the records of the Society in the year 2016, noted down certain irregularities in the Society and correction of records and sent a Report to the Deputy Registrar of Cooperative Societies, Omalur Circle for an enquiry. Accordingly, a Committee was constituted by the Deputy Registrar of Cooperative Societies on 26.10.2016 consisting of three Sub-Registrars and two other officers to look into the affairs of the Society. The Committee, which conducted the enquiry under section 81 of the Tamil Nadu Cooperative Societies Act, filed its Report on 9.9.2017 on the extent of irregularities under misappropriation committed in the Society. Accordingly a Criminal Case has been registered as against the erring officials including the petitioner's husband in crime No.2 of 2017 on the file of the Inspector of Police, CCIW, Salem as against that petitioner and



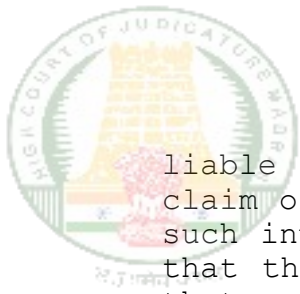
others for the offence punishable under Sections 408, 409, 465, 468, 471, 477A and 120B IPC on 26.7.2017. Based on the Report, subsequent proceedings were also initiated and the properties of the petitioner's husband and other employees were attached and vide the order impugned, the sale notices were issued and for some of the attached properties, surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act was also passed on 9.7.2018 and an order of conditional attachment has been passed by the Deputy Registrar of Cooperative Societies in E.P.No.1/2016-2017 dated 7.11.2016 attaching various properties.

5. The learned Additional Advocate General would further submit that the property in Survey No.106/2CA to an extent of 9277.5 sqft was purchased by the then Secretary Selvarasu in the name of his wife Mallika, the petitioner herein in the year 2014 and all the properties were purchased during the tenure of her husband Selvarasu and the petitioner, being a home-maker, is not having any separate sources of income and she is neither employed nor doing any business unless she had reason or having any sources to purchase those properties. The sale notice in Form 8 and 9 was issued on 12.11.2020 and since certain properties of the petitioner was omitted to be mentioned in the previous notice, the subsequent sale notice dated 11.12.2020 was issued and these sale notices are the subject matter of these writ petitions.

6. With regard to the earlier petition filed by this petitioner in W.P.No.13477 of 2020, the learned Additional Advocate General would submit that this court, by order dated 7.9.2016 directed the third respondent to dispose of the application of the petitioner within a period of four weeks from the date of receipt of that order and the petitioner was permitted to make a fresh representation alongwith a copy of the relevant documents and accordingly the petitioner also submitted an application which was duly considered by the third respondent and the same was duly considered by the third respondent and an order has been passed on 27.10.2020 and the same was duly communicated to the petitioner.

7. The learned Additional Advocate General would further submit that neither the petitioner nor her husband C.Selvarasu has raised any objection so far and all the properties which are the subject matter of the sale notices were purchased during the tenure of Selvarasu, the then Secretary of the Society who is facing the charges of misappropriation and those properties were purchased in the name of the petitioner and therefore, they were subjected for public auction. He would further submit that the petitioner has not filed any objection before the Sale Officer under Rule 135 of the Tamil Nadu Co-operative Societies Rules.

8. The learned Additional Advocate General would further submit that as per Rule 135, if any claim is preferred or any objection is made to the attachment of any property attached under Tamil Nadu Cooperative Societies Rules that it is not



liable for attachment, the Sale Officer shall investigate the claim or objection and dispose of it on its merits, provided, no such investigation shall be made when the Sale Officer considers that the claim or objection is frivolous. He would also submit that as per the proviso to Rule 135(i) it is with the discretion of the Sale Officer to reject the objection if it is found to be frivolous, no opportunity of personal hearing is contemplated under Rule 135 of the Tamil Nadu Cooperative Rules.

9. So far as the ground raised by the learned counsel for the petitioner with regard to mode of issuing of summons is concerned, the learned Additional Advocate General would further submit that the petitioner has approached this court and obtained an order and also presented an Application of objection before the Sale Officer on 15.10.2020 and the Sale Officer has also considered and passed an order on the said Application and this court has also permitted the petitioner to submit a fresh Application along with relevant documents, if any, in support of her contention.

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

11. The petitioner is the wife of one C.Selvarasu, the then Secretary of S777 Nangavalli Primary Agricultural Cooperative Credit Society, Mettur Taluk, Salem District. The Committee, which has been constituted under Section 81 of the Tamil Nadu Cooperative Societies Act, had conducted an enquiry on the affairs of the said Society and found a large scale of irregularities to the tune of Rs.4,91,84,961.85 during the period from 1.4.2014 to 30.11.2016. Orders were passed in Surcharge Proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act in the year 2018 and a conditional attachment order was passed by the third respondent on 7.11.2016 including the petitioner's property. Though an order of conditional attachment has been passed in the year 2016, the petitioner has not raised any objection for the sale from the year 2016. The impugned sale notices were issued in furtherance to the attachment order dated 7.11.2016. The respondents claimed that all these properties of the petitioners were purchased by her husband C.Selvarasu in the name of his wife during the period from 2014 to 2016. It is also pointed out that the petitioner is a home-maker and she is neither employed nor doing any business and therefore, she is not having any source of income for purchase of the properties.

12. The petitioner has raised a plea that the third respondent had not given any opportunity of hearing and also had not communicated the order of attachment to the petitioner. The petitioner had also filed W.P.No.13477 of 2020 as against the notice issued by the Sale Officer in Form No.7 under Section 90 of the Tamil Nadu Cooperative Societies Act on 28.8.2020 and as against the order of the Deputy Registrar of Cooperative Societies, Omalur Circle in E.P.No.1/2016-2017 under Section 167



of the Tamil Nadu Cooperative Societies Rules on the ground that the petitioner has made an Application before the third respondent seeking for raising the attachment and without considering the said Application, the Sale Officer has issued the Sale Notices.

13. This court, considering the said submissions of the petitioner that she has already filed an Application before the third respondent, has directed the third respondent to consider the Application filed by the petitioner seeking to lift the order of attachment passed on 7.11.2016 and pass an appropriate order within a period of four weeks from the date of receipt of a copy of that order. The petitioner was also permitted to make a fresh representation to the third respondent along with a copy of the Applications and any other relevant records relied by her. Accordingly, the petitioner submitted an Application on 15.10.2020, which was considered by the third respondent in Na.Ka.No.2496 of 2020 dated 27.10.2020 that the petitioner has not substantiated any source of income for the purchase of the said properties. The petitioner has not challenged the said order of the third respondent in the manner known to law.

14. The order of attachment was passed in the year 2016 and the aggrieved person can prefer an objection to the attachment of the property under Rule 135 of the Tamil Nadu Cooperative Societies Rules before the Sale Officer. Though the petitioner has not raised any objection for the attachment in the year 2016, filed a writ petition before this court in W.P.No.13477 of 2020 and raised an objection dated 15.10.2020 and the same was also considered by the third respondent that the petitioner has not substantiated her case for the source of income and rejected the said Application on 27.10.2020.

15. Where a claim or an objection is preferred and if the same is rejected by the Sale Officer, the aggrieved person may institute a suit within a period of six months from the date of that order to establish his/her right, however subject to the result of such suit the order made by the Sale Officer shall be conclusive as per Clause (iii) of Rule 135 of the Tamil Nadu Cooperative Societies Rules 1988. Accordingly, these writ petitions are dismissed with the liberty to the petitioner to challenge the order of the respondent in Na.Ka.No.2496 of 2020 dated 27.10.2020 in the manner known to law. No costs. The connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar



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No.170 EVR Road, Dr.Radhakrishnan Nagar,
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Mettur Taluk, Salem District.

+2cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.30635 & 30636

W.P.Nos.18128 & 20341/2020

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