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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.19421 of 2020

and

W.M.P.No.24008 of 2020

S.Sekar

Petitioner

vs.

1. The Deputy Registrar of Cooperative Society,
Omalur Taluk, Omalur,
Salem District.
2. The Administrator,
S 777, Nangavalli Primary Agricultural Cooperative Credit Society Ltd.,
Nangavalli Post, Mettur Taluk,
Salem District.
3. The Sale Officer
S 777, Nangavalli Primary Agricultural Cooperative Credit Society Ltd.,
Nangavalli Post, Mettur Taluk,
Salem District.

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records of the first respondent relating to notice in E.P.No.1/2016-2017 dated 12.11.2020 (Sale Proclamation), quash the same and to issue consequential directions to the Respondents to amount the outcome of C.M.A.No.23 of 2018 pending on the file of the Tribunal for Cooperative Cases/Principal District Judge, Salem and in the meanwhile not to take action against the petitioner.

For Petitioner : Mr.G.Punniyakoti

For Respondents: Mr.S.R.Rajagopal,



Additional Advocate General assisted by
Mr.L.P.Shanmugasundaram,
Special Government Pleader

COMMON ORDER

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The petitioner is a Salesman in the third respondent Society.

2. This writ petition is filed as against the auction notice dated 12.11.2020.

3. The learned counsel appearing for the petitioner submits that the petitioner is only a Salesman in 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 13.7.2017 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.23 of 2018 and the same was initially dismissed for default, but, after restoration, it is still pending, but, in contrary to the same, the respondents issued a notice of attachment of the petitioner's immovable property and Sale Proclamation notice dated 12.11.2020.

4. In response to the writ petition, the leaned Additional Advocate General appearing for the respondents had submitted that the auction notice dated 12.11.2020 is consequent to the Award in the surcharge proceedings dated 13.7.2017 and as against the Surcharge Order, the petitioner has preferred an Appeal before the Principal District Court, Salem in C.M.A.No.23 of 2018 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 and the petitioner, being a Salesman, his liability in the surcharge proceedings was fixed at Rs.3,50,59,976/-. The petitioner, who could not obtain interim any order before the Principal District Court, Salem has filed the present writ petition as against the auction notice dated 12.11.2020.

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



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7. The petitioner is a Salesman 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. The petitioner has also already filed an Appeal as against the Surcharge Award dated 13.7.2017 before the Principal District Court, Salem in C.M.A. No.23 of 2018 and the same is still pending from the year 2018.

8. This writ petition is filed as against the auction notice dated 12.11.2020. The learned Additional Advocate General would submit that as against the order, the petitioner had preferred C.M.A.No.23 of 2018 and since no interim relief was granted therein, the respondents have proceeded to issue notice of attachment directing the petitioner to remit the surcharge amount of Rs.3,50,59,976/- with interest within 15.9.2020 and challenging the same, the petitioner, had filed W.P.No.12917 of 2020 where also, the petitioner could not get any interim relief and subsequently, the impugned auction notice dated 12.11.2020 has been issued. He would further submit that 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 also.

9. 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.

10. 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

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