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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.19910 of 2020

and

W.M.P.No.24577 of 2020

Tmt.A.Vasanthi

Petitioner

vs.

1. The Joint Registrar of Cooperative Society,  
Salem Region, Collectorate, 4th Floor,  
Salem.
2. The Deputy Registrar of Cooperative Society,  
Omalur Circle, Omalur,  
Salem District.
3. The Administrator,  
S 777, Nangavalli Primary Agricultural Cooperative Credit Society Ltd.,  
Nangavalli, Mettur Taluk,  
Salem District.
4. The Sale Officer/Co-operative Sub Registrar/  
Senior Inspector of Cooperative Societies,  
S 777, Nangavalli Primary Agricultural Cooperative Credit Society Ltd.,  
Nangavalli, 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 second respondent relating to the Sale Proclamation Notice in E.P.No.1/2016-2017 dated 12.11.2020 and quash the same.

For Petitioner : Mr.G.Punniyakoti



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

COMMON ORDER

The petitioner claims that she was initially appointed as Sales Woman under the control of the third respondent Society on 6.8.1998 and thereafter promoted as Attender with effect from 1.4.2016.

2. This writ petition is filed as against the Sale Proclamation Notice dated 12.11.2020.

3. The learned counsel appearing for the petitioner submits that the petitioner is only an Attender without any administrative knowledge 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 Registrar of Co-operative Societies and the same was returned contending that against the order of Surcharge under Section 87(1) of the Tamil Nadu Cooperative Societies Act, 1983, the petitioner has to prefer appeal before the Tribunal for Cooperative Cases and in the meanwhile, the second respondent had issued the sale proclamation in E.P.No.1/2016-2017 dated 12.11.2020 towards recovery of Rs.44,33,531/-, which is the subject matter of Surcharge Proceedings.

4. In response to the writ petition, the learned Additional Advocate General appearing for the respondents had submitted that the impugned 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 a wrong forum instead of approaching the Tribunal, and therefore, the writ petition is not maintainable.

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 entrusted with clerical work in the third Respondent Society is also responsible for the alleged misappropriation in the Society.

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6. The surcharge proceedings was also initiated as against petitioner and others 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.44,33,531/-.

7. As against that order, the petitioner has filed an Appeal but, before the Registrar of Cooperative Societies instead of Tribunal for for Cooperative Cases.

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

9. The petitioner claims that she is only an Attender, however, it is alleged by the respondents that she was a Clerk in the 777 Nangavalli Primary Agricultural Cooperative Credit Society Limited entrusted with clerical work. 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.44,33,531/- and as a consequence, surcharge order was passed against the petitioner on 9.7.2018. This order was challenged by the petitioner initially before a wrong forum which came to be rejected and in the meanwhile, the auction notice appears to have been issued which is the subject matter of the writ petition. The petitioner has also already filed an Appeal as against the Surcharge Award dated 9.7.2018 before the Registrar of Cooperative Societies which came to be returned stating that the petitioner had to prefer Appeal before the proper forum. However, in the meanwhile, the auction notice came to be issued.

10. The petitioner has also enclosed a copy of the Appeal Petition filed by her before the Registrar of Cooperative Societies and the return note made by the Additional Registrar of Cooperative Societies which reveals that the petitioner had presented such Appeal only on 29.10.2020 and it came to be returned on 16.11.2020.



11. This writ petition is filed as against the sale notice dated 12.11.2020. The learned Additional Advocate General would submit that as against the Surcharge Proceedings, the petitioner has to pursue her remedy before the proper forum and 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.

12. 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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W.P.Nos.19910 of 2020

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