



WEB COPY

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.19475 of 2020

and

W.M.P.No.24079 of 2020

T.Devaki

Petitioner

vs.

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

2. The Administrator,
S 777, Nangavalli Primary Agricultural Cooperative Credit Society,
Nangavalli Mettur Taluk,
Salem District.

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the entire records relating to the impugned orders passed by the first respondent in his proceedings Ni.Ma.No.1/2016-2017 dated 12.11.2020 issued in Form 8 & 9 and quash the same.

For Petitioner : Mr.C.Prakasam

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

COMMON ORDER

The petitioner is the wife of one Thangavel, who was claimed to have been working as Clerk in the second respondent Society.

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



3. The learned counsel appearing for the petitioner submits that the husband of the petitioner is only a Clerk 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 the husband of 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 husband of the petitioner had filed an Appeal before the Principal District Court Salem and in the meanwhile, the respondents seem to have passed an order of attachment under Section 167 of the Act on 28.8.2020 and the consequential sale notice has been passed on 12.11.2020.

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 auction notice dated 12.11.2020 and as against the order of conditional attachment dated 9.7.2018, the petitioner is having a remedy before the Appellate Tribunal under Section 152 of the Tamil Nadu Cooperative Societies Act, 1983. 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 claims that an Appeal had been preferred by her husband, however, it has been returned and she could not state as to whether such Appeal has been numbered or not and therefore, the petitioner, who could not get 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. He would further submit that though the petitioner claims that her husband was only a clerk, her husband was working as Manager/Accountant in the second respondent Society and 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 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 fixing the liability of the husband of th petitioner to the tune of Rs.1,50,58,084.85.

7. As against that order, the husband of the petitioner is said to have filed an Appeal before the Principal District Court, but, the petitioner could not furnish any details with regard to such Appeal including the number assigned, if any. The petitioner, who could not obtain any interim order before the Principal District Court, Salem has filed the present writ petition as against 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's husband is said to have been employed as Manager/Accountant 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 the husband of this petitioner and other employees of the Society that the husband of 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 husband of the petitioner is said to have already filed an Appeal as against the Surcharge Award dated 9.7.2018 before the Principal District Court, Salem, however, it appears that it has not been pursued further.

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

11. 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

WEB COPY

1. The Deputy Registrar of Cooperative Societies,
Omalur Circle, Omalur,
Salem District.
2. The Administrator,
S 777, Nangavalli Primary Agricultural
Cooperative Credit Society,
Nangavalli Mettur Taluk,
Salem District.

W.P.Nos.19475 of 2020

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