



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2022

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C O R A M

THE HON'BLE MS.JUSTICE V.M.VELUMANI

W.P.NO.19960 OF 2020
AND W.M.P.NOS.24640 & 24643 OF 2020

M.Boopathy

... Petitioner

Vs

1. The Deputy Registrar of Co-operative Societies,
Office of the Deputy Registrar of Co-operative,
Salem District,
Salem.
2. The Secretary,
S-9787, K.Kondappanaickenpatti,
Primary Agricultural Co-operative Credit Society,
Kondappanaickenpatti,
Kannankurichi Post,
Salem - 636 008.
3. The President,
S-9787, K.Kondappanaickenpatti,
Primary Agricultural Co-operative Credit Society,
Kondappanaickenpatti,
Kannankurichi Post,
Salem - 636 008.
4. Siriyadurai,
S/o.Raman,
Ex.Secretary, S-9787, K.Kondappanaickenpatti,
Primary Agricultural Co-operative Credit Society,
Residing at
Maduraiveeran Koil Back Side,
Gandhi Nagar,
Periyakollapatti,
Kannankurichi Post,
Salem - 636 008.

... Respondents



Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records relating to the impugned proceedings in Claim No.7/2019 & 2020 and consequential order of the 1st respondent in C.E.P.No.14 of 2019 & 2020 dated 18.08.2020 and quash the same.

For Petitioner	: Mr.L.G.Sahadevan
For R1	: Mr.U.Baranidharan
	Additional Government Pleader
For R2 & R3	: Mr.L.P.Shanmugasundaram

ORDER

The petitioner is challenging the impugned notice issued to him as to why the immovable property belonging to the petitioner mentioned therein should not be attached.

2.According to the petitioner, while he was working as jewel appraiser in the 3rd respondent Society, the 4th respondent was working as the Secretary. The 4th respondent pledged his own jewels in the name of 19 different persons and received loan and no amount was paid to the said 19 persons / the alleged borrowers. According to the petitioner, it is the 4th respondent, who manipulated the accounts of the Society and the petitioner has nothing to do with the alleged loss caused to the Society. While so, the petitioner received impugned notice. Except this notice no other document was furnished to the petitioner. By the order dated 15.10.2020 in W.P.No.14761 of 2020, this Court directed the 1st respondent to furnish the copies sought for by the petitioner in his representation dated 11.09.2020 to enable the petitioner to defend himself in the proceedings in ARC.No.7 of 2019-2020 and CEP.No.14 of 2019-2020 on the file of the 1st respondent. As per the order of this Court, the petitioner was furnished with the document as mentioned by him in the affidavit. According to the petitioner, a perusal of the claim petition filed by the 3rd respondent raising Arbitration proceedings shows that the 3rd respondent has not made out any ingredients mentioned under Section 90 of the Tamil Nadu Co-operative Societies Act (hereinafter referred as 'the Act'). Further, the contention of the petitioner is that only the 4th respondent, the then Secretary was responsible for 19 jewel loans and for manipulation of the account. No action was taken against the 4th respondent. The Arbitration Proceedings in ARC.No.7 of 2019 - 2020 initiated against the petitioner is without merits and not maintainable. In view of the same, the impugned order is illegal and prayed for allowing the Writ



Petition.

3.The 1st respondent filed counter affidavit. Mr.U.Baranidharan, learned Additional Government Pleader appearing for the 1st respondent submitted that in order to find out the irregularities committed in the Society, an enquiry under Section 81 of the Act was ordered. The Enquiry Officer recorded statement from the concerned persons including the petitioner. Based on such statement, Enquiry Officer has stated that the petitioner and others have committed irregularities and caused loss to the Society and re-commended initiation of surcharge proceedings under Section 87 of the Act. Based on the report of the Enquiry Officer, surcharge proceedings were initiated against five persons including petitioner and the 4th respondent. The petitioner gave a written submission and requested the 1st respondent to treat the written submission as his statement in the surcharge proceedings. The 1st respondent considering all the materials placed before him, passed an order with regard to the loss caused to the Society and held that the petitioner and others are liable to pay a sum of Rs.29,75,095/- The petitioner is trying to alienate his immovable property in order to prevent the 3rd respondent from realising the amount from the petitioner. Therefore, proceedings under Section 90 of the Act was initiated and the same is pending. Pending such proceedings, the impugned notice under Section 167 of the Act is issued to secure the interest of the 3rd respondent. The impugned notice under Section 167 of the Act is legal and prayed for dismissal of the Writ Petition.

4.Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the 1st respondent as well as the learned counsel appearing for the respondents 2 & 3 and perused the materials on record.

5.The petitioner is making various allegations as to how the Arbitration proceedings initiated against him is not maintainable. The contention of the learned counsel appearing for the petitioner is that the 4th respondent has committed irregularities and caused loss to the Society and the petition filed by the 3rd respondent to initiate Arbitration proceedings does not allege any irregularities committed by the petitioner for the loss caused to the Society. The issue whether the petitioner has committed any irregularities and caused loss to the Society or not can be decided only after appreciating the evidence let in before the Arbitrator. In view of the same, it is open to the petitioner to raise all the objections now raised in the Writ Petition, before the Arbitrator and contest the Arbitration proceedings. The learned Additional Government Pleader referring to the counter affidavit submitted that in the surcharge proceedings initiated against the 4th respondent also,



an order has been passed against the 4th respondent. The impugned notice is the show cause notice with regard to the attachment before judgment to secure the interest of the 3rd respondent. If the petitioner has no intention of alienating the said property, it is open to the petitioner to file an affidavit before the Arbitrator to that effect. If any affidavit is filed, the learned Arbitrator is directed to consider the same and pass appropriate orders. The learned counsel appearing for the petitioner further submitted that he will deposit some amount before the Arbitrator. If any such amount is deposited, the Arbitrator shall consider the request of the petitioner for raising attachment.

6. With the above observations, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

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Salem - 636 008.

+1cc to Mr.L.G.Sahadevan, Advocate, S.R.No.26466
+1cc to Special Government Pleader, S.R.No.26965

W.P.No.19960 of 2020

SKM(CO)
PM/10/05/2022