



W.P.No.26325 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.26325 of 2022

and

WMP.No.25403 of 2022

Duraisamy

...Petitioner

Vs.

1. The Deputy Registrar of Co-operative Societies,
Tirukoilur, Kallakurichi District.
2. The President,
I.I.620, Nainarpalayam Primary Agricultural Co-Operative Society,
Nainarpalayam, Chinnasalem Taluk,
Kallakurichi District.
3. A.Thangavel

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, call for the records relating to the entire proceedings of the impugned Sale notice Form 8 & 9 under the Provision of Rule 126 of TNCS Rules, 1988 made in Ne.Ve.Ma.No.34/2013-14 dated 17.08.2022 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.S.Sairaman

For Respondents : Mr.R.U.DineshRajkamal, AGP, for R1.
: Mr.Kishore, GA, for R2



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W.P.No.26325 of 2022

ORDER

The petitioner has filed this Writ petition seeing issuance of a Writ of Certiorari to call for the records of the 1st respondent in respect of the entire proceedings of the impugned Sale notice Form 8 & 9 under the Provision of Rule 126 of TNCS Rules, 1988 made in Ne.Ve.Ma.No.34/ 2013-14 dated 17.08.2022 and quash the same.

2. The case of the petitioner is that his brother namely, Thangavel / the 3rd respondent herein worked as Salesman in I.I.620, Nainarpalayam Primary Agricultural Co-Operative Society and he was orally instructed to officiate as Cashier (Incharge) and subsequently, he was suspended on 23.07.2013 for allegation of not remitting amount collected from the debtors and creating false KCC account. Therefore, 1st respondent initiated surcharge proceedings against the 3rd respondent, the Secretary namely, Ravichandran and the Cashier namely, Govindan under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 in Surcharge proceeding bearing No.Na.Ka.1026/2012-Sa.Pa. Subsequently, the 1st respondent after



W.P.No.26325 of 2022

conducting enquiry, passed an award fixing a sum of Rs.22,56,119/-.

Aggrieved by the said surcharge order dated 12.04.2014 passed by the 1st respondent, the 3rd respondent preferred appeal in Co-Operative C.M.A.No.9/2015 before the Principal District Judge Co-operative Tribunal) and the same was ordered on 12.09.2019 modifying the award to the tune of Rs.5,61,714/-. While such being the case, for non payment of the said amount, the 1st respondent initiated attachment proceedings against the 3rd respondent and issued sale notice bearing Ne.Ve.Ma.No.34/ 2013-14 dated 17.08.2022, in which, the undivided family properties of the petitioner comprised in S.Nos.115/2, 115/4, 107/1, 107/2A, 109, 139/2B, 110/11, 110/10, 110/16, 110/17, 110/18, 110/20, 110/21, 110/22, 110/8 & 110/9, situated at Nainarpalayam village which were purchased by the petitioner's mother, namely Nallathangal, were attached. However, it is pertinent to note that, the patta in respect of the said properties stands in the name of the petitioner's mother and after her demise, the petitioner along with his siblings mutually agreed and executed an unregistered settlement deed between themselves on 01.01.2009, pursuant to which, the petitioner and his family members are in possession of their respective share. While so, the 1st respondent has attached the entire family properties, as if the 3rd respondent



W.P.No.26325 of 2022

alone is the sole owner of the above said properties. Hence, challenging the said Sale notice dated 17.08.2022, the present Writ petition is filed.

3. Learned counsel for the petitioner submitted that, for non payment of surcharge amount by the 3rd respondent, who is none other than the petitioner's brother, the 1st respondent issued the present sale notice, in which they have intended to attach the above said family properties of the petitioner and put the same on sale without the knowledge of the petitioner and his family members, which is not sustainable. He further submitted that, in the meanwhile, the wife of the 3rd respondent filed Writ petition in W.P.No.26046 of 2022 and this Court, vide order dated 27.09.2022 granted interim stay in respect of the confirmation of the sale alone, however, the 3rd respondent's wife deposited the entire amount of Rs.19,07,470/-. Hence, he prayed for allowing this Writ petition, by setting aside the impugned sale notice dated 17.08.2022.

4. Though very many grounds have been raised, learned Additional Government Pleader appearing for the 1st respondent submitted that already the action initiated against the petitioner's undivided family



W.P.No.26325 of 2022

property has been dropped. Hence, nothing survives for further adjudication and accordingly, he prayed for closing this Writ petition.

5. Learned Government Advocate appearing for the 2nd respondent did not dispute the fact that the entire sum of Rs.19,07,470,- was deposited by the wife of the 3rd respondent has on 28.09.2022 and he fairly submitted that the impugned sale notice is liable to be set aside.

6. Heard learned counsel on either side and peruse the materials available on record.

7. In view of the above submissions, though the petitioner has come up with this Writ petition seeking quashment of the impugned Sale notice Form 8 & 9 dated 17.08.2022 issued by the 1st respondent, attaching the undivided family property of the petitioner, however, as the wife of the 3rd respondent paid the entire surcharge amount, this Court has no hesitation to interfere with the notice impugned in this Writ petition.

8. Accordingly, the impugned sale notice is set aside and this Writ petition is allowed. No costs. Consequently, connected miscellaneous



W.P.No.26325 of 2022

petition is closed.

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28.09.2022
(1/2)

skt

Speaking Order : Yes/ No

Index : Yes/ No

M.DHANDAPANI, J.

skt

To

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W.P.No.26325 of 2022

28.09.2022