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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.27912 OF 2021

AND

W.M.P.NOS.29463 AND 29464 OF 2021

M.Sellapillai

... Petitioner

-Vs-

1. The Secretary/President,
C.L.S.P.L.No.2, Keelakalpoondi,
Primary Agricultural Co-operative Bank Limited,
Keelakalpoondi Village & Post,
Thittakudi Taluk,
Cuddalore District.

2. The Deputy Registrar,
Co-operative Societies,
Vridhachalam District,
Vridhachalam.

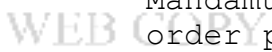
... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records in connection with the impugned order passed by the second respondent in FORM-9 dated 26.11.2021 and the rejection order passed by the second respondent in Na.Ka.No.995/2005 Sapa dated 13.09.2021 and quash the same and further direct the respondents to consider the subsequent payment made by the petitioner and thereafter to proceed the auction.

For Petitioner : Mr.S.Sivakumar
For M/s.K.Mayurapriyan

For Respondents : Mrs.S.Anitha
Special Government Pleader



ORDER

The prayer sought for herein is for a Writ of Certiorari and Mandamus calling for the records in connection with the impugned order passed by the second respondent in FORM-9 dated 26.11.2021 and the rejection order passed by the second respondent in Na.Ka.No.995/2005 Sapa dated 13.09.2021 and quash the same and further direct the respondents to consider the subsequent payment made by the petitioner and thereafter to proceed the auction.

2. The petitioner was working as a Secretary of the first respondent Society, against him, there was a surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 which in fact was issued pursuant to the report submitted under Section 81 of the Act.

3. The said proceedings issued under Section 87 of the Act dated 20.02.2013 to recover a sum of Rs.23,92,730/- from the petitioner though was under challenge before the Co-operative Tribunal in C.M.A(CS).No.33 of 2013 before Cuddalore Co-operative Tribunal, where on 14.12.2017, the CMA was allowed by the said Tribunal, as against which, the Society preferred an Appeal in CRP (NPD) No.821 of 2018 before this Court, where an order has been passed on 23.06.2021 by this Court, under which, the order passed by the Tribunal dated 14.12.2017 in the said CMA was set aside. Thereby, the surcharge proceedings dated 20.02.2013 was restored and confirmed.

4. Pursuant to the said judicial proceedings which were concluded as stated supra, the respondents proceeded to recover the said money from the petitioner.

5. While that being so, the petitioner filed an Objection Petition under Rule 135 of the Tamil Nadu Co-operative Societies Rules, 1988 (in short 'the Rules'), as the respondents proceed to attach the property belongs to the petitioner. The said objection having been considered by the respondents was rejected through the impugned order dated 13.09.2021, as against which, the present Writ Petition has been filed.

6. Heard Mr.S.Sivakumar, learned counsel appearing for the petitioner who would submit that, the property in question which is going to be attached is a joint family property. Therefore, it cannot be attached and moreover, insofar as the demand of a sum of Rs.23,92,730/- as a surcharge amount is concerned, it is the case of the petitioner that, the petitioner has paid a sum of Rs.16 Lakhs under particular head and subsequently also, in respect of more than ten persons, whose money in fact was



misappropriated by the petitioner, the petitioner had paid those money to the individuals. Therefore, if at all, the respondents issue notice to those individuals and enquire them, they may reveal that the said amount have been settled to them. In that case, the petitioner has no liability to pay any amount as demanded through the Section 87 proceedings. Hence, the present rejection order where though such objections and reasons has been given which was not considered in proper perspective and has been rejected by the respondents, hence the impugned order shall not stand in the legal scrutiny. Therefore, it should be interfered with, he contended.

7. However, Mrs.S.Anitha, learned Special Government Pleader appearing for the respondents on instructions would submit that, as against the surcharge proceedings which concluded on 20.02.2013, whereby a sum of Rs.23,92,730/- has to be recovered from the petitioner, though the petitioner initially succeeded before the Tribunal in C.M.A(CS)No.33 of 2013 dated 14.12.2017, the said judgment was reversed in the Revision Petition filed by the Society before this court by order dated 23.06.2021, thereby the surcharge proceedings has been confirmed.

8. When the surcharge proceedings has been confirmed and it reached the finality, the petitioner has to necessarily pay the said demand of Rs.23,92,730/- with interest also and since the same has not been paid, the respondents have no option except to proceed against the property belongs to the petitioner, that is how, the attachment proceedings was issued, as against which, when objection was given by the petitioner, that was, having been considered, the respondents rejected the same through the impugned order dated 13.09.2021.

9. The learned Special Government Pleader would further contend that, no amount, out of Rs.23,92,730/- being the surcharge recovery, has been paid by the petitioner and in this regard, since all opportunities have already been given, enough time had been given, from 2013 onwards, the amount recoverable from the petitioner could not be recovered by the respondents. Therefore, at last, they proceeded to attach the property belongs to the petitioner to bring it to the public auction to sell the property and realize the amount, which is the money belongs to the respondent Society. Therefore, the learned Special Government Pleader would seek indulgence of this Court to reject the Writ Petition as devoid of merits.

10. I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.



11. As has been rightly pointed out by the learned Special Government Pleader, the surcharge proceedings has reached its finality by the orders of this Court made in CRP(NPD) No.821 of 2018 dated 23.06.2021.

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12. Under the surcharge proceedings, the demand was Rs.23,92,730/-, that was the position sometime in 2013 and thereafter, if it is for eight years, the said amount has not been paid, there must be a reasonable interest calculated, but that amount has not been made known so far.

13. Be that as it may, even the said demand of Rs.23,92,730/- according to the respondents, has not been paid and in this regard, even though the learned counsel appearing for the petitioner vehemently contended that, majority of the said amount has been paid, there is absolutely no proof before this Court to establish the said facts as claimed by the petitioner's counsel.

14. Therefore, this Court has no hesitation to hold that, the petitioner is liable to pay the said demand of Rs.23,92,730/- and the said amount if it is not paid, it is open to the respondents to proceed against the petitioner by attaching the property and bring the property for sale to realize the amount, that is the procedure contemplated under the Act and therefore, in that process, this Court cannot show its indulgence.

15. Moreover, the present objection raised by the petitioner under Rule 135 of the Rules is not supported by any documents to establish that the petitioner, as claimed by him, has paid the amount demanded by the respondents.

16. When that being so, the rejection made through the impugned order of the objection of the petitioner is justifiable, of course it has been made after having considered the objection raised in this regard by the petitioner.

17. Since there has been no plausible reason or ground available to the petitioner to have a successful challenge or objection against the proceedings to attach the property, the present order rejecting the said objection cannot be found fault with and therefore, the same is to be sustained.

18. In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following orders:

(i) that the impugned order is to be sustained, accordingly, the Writ Petition fails, hence it is liable to be rejected, therefore, it is dismissed.



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(ii) However, taking into account of the plea raised by the learned counsel appearing for the petitioner that, the property going to be attached by the respondents belongs to the joint family of the petitioner, therefore, in order to save the property and to show the bonafide of the petitioner, the petitioner's counsel seeks indulgence of this Court to give two weeks time to pay the entire surcharge amount of Rs.23,92,730/- and if the said amount is not paid within the said period of two weeks, it is open to the respondents to proceed in accordance with law by bringing the property for public auction to realize the amount.

(iii) It is made clear that, insofar as the future interest from 2013 till the realization of the amount is concerned, it is for the Society to have a negotiation with the petitioner to waive the interest or to reduce the rate of interest, so as to enable the petitioner to come out from the clutches and to retrieve the property from being brought for public auction as it is claimed by the petitioner that, it is a dwelling house of the joint family.

19. With these observations and directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rap/vji

To

1. The Secretary/President,
C.L.S.P.L.No.2, Keelakalpoondi,
Primary Agricultural Co-operative Bank Limited,
Keelakalpoondi Village & Post,
Thittakudi Taluk,
Cuddalore District.



2. The Deputy Registrar,
Co-operative Societies,
Vridhachalam District,
Vridhachalam.

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+1cc to M/s.K.Mayurapriyan, Advocate, S.R.No.270
+1cc to the Government Pleader, S.R.No.335

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BS (CO)
PBS/01/03/2022