



W.P.No.34475 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.12.2022**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

**W.P.No.34475 of 2022
and W.M.P.No.33922 of 2022**

M.Maruthamuthu

.. Petitioner

Vs.

1.C.L.S.P.L.No.2 Keelakalpoondi
Primary Agricultural Co-operative
Bank Ltd., rep. By its President,
Keelakalpoondi Village and Post,
Thittakudi Taluk, Cuddalore District.

2.The District Registrar of Co-operative
Societies, Virudhachalam,
Cuddalore District.
Respondents

..

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the first respondent in issuance of the Form 8 and Form 9 Notice of Sale of Immovable Property under Rule 126(2)(e) of the Tamil Nadu Co-operative Societies Rules 1988 dated 30.11.2022 and quash the same.



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For Petitioner : Ms.S.Shanmitha
For Respondents : Mr.Stalin Abhimanyu,
Addl. Govt. Pleader
for Ms.R.L.Karthika,
Govt. Advocate for R1
Mr.R.Neethi Perumal,
Govt. Advocate for R2

ORDER

Ms.S.Shanmitha, learned counsel for writ petitioner, who is before this Court, submits that a 'notice of sale of immovable property dated 30.11.2022' (hereinafter referred to as 'impugned auction notice' for the sake of convenience and clarity) under Rule 126 (2) (e) of the 'Tamil Nadu Co-operative Societies Rules, 1988' (hereinafter referred to as 'said Rules' for the sake of convenience and clarity) being subordinate legislation *qua* 'The Tamil Nadu Co-operative Societies Act, 1983' (hereinafter referred to as 'said Act' for the sake of convenience and clarity) has been called in question.

2. Mr.R.Neethi Perumal, learned Government Advocate, who was present in Court accepted notice on behalf of second respondent and Mr.Stalin Abhimanyu, learned Additional Government Pleader, who is before this Court representing Ms.R.L.Karthika, learned Government Advocate accepts notice on



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behalf of the first respondent.

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3. Owing to the limited perimeter within which the captioned matter perambulates, the main writ petition was taken up with the consent of both sides.

4. Short facts will suffice. Immovable property that is subject matter of the impugned auction notice is land admeasuring 1.16 acres (0.47.0 ares) or thereabouts comprised in Survey No.121/4A in Keelakalpoondi Village in Thittakudi Taluk in Vridhachalam District (hereinafter referred to as 'said property' for the sake of convenience and clarity).

5. The sheet anchor submission of learned counsel for writ petitioner is, said property is jointly owned by the writ petitioner and five other siblings. One of the five siblings is one M.Sellapillai, who was Secretary of the C.L.S.P.L.No.2 Keelakalpoondi Primary Agricultural Co-operative Bank Limited (hereinafter referred to as 'said Bank' for the sake of convenience and clarity). M.Sellapillai faced surcharge proceedings under Section 87 of said Act and the impugned auction notice is a product of the same and the attachment dated 19.11.1999.



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6. The sheet anchor submission of learned counsel for writ petitioner is that the writ petitioner has sent objections *qua* impugned auction notice under Rule 135 of said Rules and the auction scheduled to be held on 04.01.2023 cannot proceed without disposal of the objections. To be noted, a careful perusal of Rule 135 of said Rules makes it clear that if the orders *qua* objections are adverse to the writ petitioner, the writ petitioner should file a suit. In the normal circumstances, such a submission would hold water but owing to the peculiar facts and circumstances of the case on hand the same does not find favour with this Court and the reasons are as follows:

(a) The writ petitioner is fully aware of the proceedings initiated by M.Sellapillai including challenge to Section 87 surcharge proceedings and challenge to the rejection of his objections to the notice.

(b) The writ petitioner's brother M.Sellapillai, who is the epicentre of this entire *lis* assailed rejection of his objections vide W.P. No.27912



of 2021 without resorting to the remedy of suit as ingrained in Rule 135 and another Honourable Predecessor Judge vide a detailed order dated 03.01.2022, dismissed the writ petition. This Court is informed without any disputation or disagreement that this 03.01.2022 order made by another Honourable Predecessor Judge in W.P. No.27912 of 2021 has become final. It has attained quietus and there is no further proceedings. Paragraph 18 is the operative portion and the same reads as follows:

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.

(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



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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.

(c) A careful perusal of sub-para (ii) of paragraph 18 brings to light that the writ petitioner's brother undertook to pay entire surcharge amount within two weeks and made it clear that it is open to the respondents to proceed in accordance with law. To be noted,



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this order has been enclosed by the writ petitioner in the typed set of papers and learned State counsel drew the attention of this Court to this order.

(d) This Court is informed (without any disputation or contestation) that writ petitioner's brother has not made good the surcharge amount as undertaken in the earlier order.

(e) Under the normal circumstances, the argument that property rights between siblings are independent of each other would have weighed with this Court but in the case on hand, it is submitted that the writ petitioner was fully aware of the proceedings initiated by his brother and as interim orders were operating, the writ petitioner had not come to this Court. This by itself drops the curtains on the writ petitioner's campaign against the impugned auction notice as it is a wait and



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watch eleventh hour bid.

(f) It is also submitted that writ petitioner assailed the orders in the surcharge proceedings by way of a civil revision petition under Article 227 of the Constitution of India being C.R.P. (NPD) No.821 of 2018 and the same came to be disposed of by another Honourable Single Judge by detailed order dated 23.06.2021 and the same has been carried to the Honourable Supreme Court by way of special leave petition. This order made by another Honourable Single Judge being order dated 23.06.2021 and the special leave petition case status have also been filed by the writ petitioner in the typed set of papers.

(g) The above makes it clear that the writ petitioner and his siblings are acting in cahoots to derail the auction.

7. Therefore, this Court, owing to the unique facts



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and circumstances of the instant case, finds no merit in the writ petition. This Court comes to the conclusion that the writ petition is only an attempt to derail the auction at the eleventh hour nay 59th minute of the eleventh hour.

8. This Court is not inclined to entertain the captioned writ petition for the dispositive reasoning alluded to and delineated supra.

9. It is open to the second respondent to make orders on the objections of the writ petitioner said to have been given by the writ petitioner as there is no acknowledgement that has been placed before this Court to the effect that the objections have been in fact placed before the second respondent.

10. Sequitur is, captioned writ petition fails and the same is dismissed. Consequently, captioned writ miscellaneous petition is dismissed. There shall be no order as to costs.

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Index:Yes/No
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To

- 1.The President,
C.L.S.P.L.No.2 Keelakalpoondi
Primary Agricultural Co-operative
Bank Ltd., Keelakalpoondi Village and Post,
Thittakudi Taluk, Cuddalore District.
- 2.The District Registrar of Co-operative
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M.SUNDAR.J.,

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