



W.P(MD)No.22244 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 21.09.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.22244 of 2022

and

W.M.P(MD)No.16421 of 2022

P.Malayappan

..Petitioner

Vs

1.The Circle Deputy Registrar of Co-operative Societies,
Office of the Deputy Registrar of Co-operative Societies,
11/223, Raja Nagar,
Lakshmipuram,
Palani-624 601,
Dindigul District.

2.The Co-operative Sub-Registrar/Field Officer,
A.303 Thennampatti Primary Agricultural
Co-operative Credit Society Ltd.,
Thennampatti, Vadamadurai Post,
Vedasandur Taluk,
Dindigul District-624 802.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents not to bring the properties of the petitioner referred in the auction sale notice in Form-8 in CEP.No.1/14-15, dated 17.08.2022 and Form-9 notice in CRP No.1/14-15, dated 17.08.2022 pending disposal of the CMA (CS) appeal pending before the Principal District Judge against the order passed in the surcharge proceedings in Tha.va.No.2/2013Sa.pa dated 19.11.2013.



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W.P(MD)No.22244 of 2022

For Petitioner : Mr.V.O.S.Kalaiselvam

For R1 & R2 : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

The Petitioner has prayed for issuance of a Writ of Mandamus, directing the respondents not to bring the properties of the petitioner referred in the auction sale notice in Form-8 in CEP.No.1/14-15, dated 17.08.2022 and Form-9 notice in CRP No.1/14-15, dated 17.08.2022 pending disposal of the CMA (CS) appeal pending before the Principal District Judge against the order passed in the surcharge proceedings in Tha.va.No.2/2013Sa.pa dated 19.11.2013.

2.Heard Mr.V.O.S.Kalaiselvam, learned counsel appearing for the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader, who takes notice for the respondents 1 & 2. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3.The Petitioner's case is that he is working as Secretary at Thennampatti Primary Agricultural Co-operative society. The Form-8 Japthi auction sale notice against the immovable property of the petitioner in CEP No.1/14-15, dated 17.08.2022 and Form-9 notice in CEP No. 1/14-15, dated 17.08.2022 were issued to the petitioner and immediately,



W.P(MD)No.22244 of 2022

thereafter in the Dinakaran Newspaper, dated 08.09.2022 publication for auction sale fixed on 26.09.2022 at 11.00 a.m., is fixed. Immediately thereafter, the wife of the petitioner approached the counsel and ultimately formed that the petitioner filed Civil Miscellaneous Appeal along with delay condone petition against the surcharge order in Tha.va.2/2013 sa.pa dated 19.11.2013 served on 12.10.2015. Immediately, he approached the Principal District Court, Dindigul and received the status report in which it is found that the case number I.A.No.159/2018 was dismissed for default on 01.08.2019 for not remitting the conditional order of the cost. Immediately steps were taken and petition to restore the I.A.No.159/2018 along with the delay condone petition was filed on 16.09.2022. The petitioner due to brain hemorrhage suffered with paralysis and also lost his speech and continuously suffering with soaring eyes, continuous spilling over saliva from his mouth. His total movements are curtailed and bed ridden in the hospital for over 6 months and is continuously under medication. He is totally not aware of the Section 87 of Surcharge Proceedings held against him and no notice was served to him and he was not in a position to understand anything. Thus, the respondent passed an order against the petitioner holding him liable in the surcharge proceedings behind the back of the petitioner without his knowledge. Further, the said order was not served to the petitioner.



W.P(MD)No.22244 of 2022

4. Earlier, the petitioner filed a writ petition before this Court in W.P(MD)No.21605 of 2022 for issuing a writ of certiorari against Form-8 and Form-9 in CEP No.1/14-15, dated 17.08.2022 respectively and the consequent paper publication, dated 08.09.2022 of the respondents and quash the same. When the said writ petition came up for hearing on 14.09.2022, the learned counsel appearing for the petitioner seeks permission of this Court to withdraw the writ petition and the permission was granted and hence, the writ petition was dismissed as withdrawn.

5. The learned Additional Government Pleader appearing for the respondents would submit that the petitioner has filed another writ petition in W.P(MD)No.2299 of 2017 before this Court seeking a Writ of Mandamus to direct the respondent therein not to take coercive steps against the petitioner and his properties pending disposal of the appeal in C.M.A(CS)SR.no.8755/27.10.2015, dated 09.03.2016, on the file of the Special Tribunal for Co-operative Cases (District Court), Dindigul. When the matter came up for hearing on 08.06.2022, none appears for the writ petitioner and the learned Government Advocate in that writ petition points out that when the writ petition was entertained, the petitioner was put on terms. Though he was asked to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs only), he did not comply with the said condition. On account of non-compliance of the interim order, the final relief to be



W.P(MD)No.22244 of 2022

granted under Article 226 cannot be in the nature of interim relief and dismissed the writ petition.

6. Already the petition filed by the petitioner in W.P(MD)No.2299 of 2017 seeking not to take coercive steps against the petitioner and his properties was dismissed on 08.06.2022 on the ground that the petitioner has not complied with the condition already imposed, now he again filed the present writ petition along with interim injunction application with a prayer not to bring the properties of the petitioner referred in the auction sale notice in Form-8 in CEP No.1/14-15, dated 17.08.2022 and Form-9 notice in CEP No.1/14-15 dated 17.08.2022 pending disposal of the CMA(CS) appeal pending before the Principal District Judge, against the order passed in the surcharge proceedings in Tha.va.No.2/2013 Sa.pa dated 19.11.2013.

7. It is seen from the records that the petitioner has already filed C.M.A., along with condone delay petition in I.A.No.159 of 2018 against the surcharge order, dated 19.11.2013 and the same was dismissed for default on 01.08.2019 for not complying the conditional order, wherein the Court imposed cost. Thereafter, in the year 2022, the petitioner filed another I.A.No.....2022 to set aside the ex-parte order dismissing the petition for default in I.A.No.159 of 2018, dated 01.08.2019 with condone



W.P(MD)No.22244 of 2022

delay petition and that petition which is filed after 14.09.2022 when questioned by the Court regarding the dismissal of CMA. Now, he cannot seek for issuance of interim injunction not to take any coercive steps against the petitioner on the ground that there is an un-numbered I.A., is pending and this Court is not inclined to quash the Form- 8 and 9 notice and till date, the respondents have not taken any coercive steps against the petitioner and the petitioner has already exhausted various remedies unsuccessfully, this Court is not inclined to entertain the present writ petition when there is no merits put-forth by the petitioner.

8. The petitioner has not put-forth any valid reason regarding the setting aside of the auction notice. As the petitioner has not made out a case against the respondent society, who had bought his properties for auction to recover the money misappropriated as per the surcharge proceedings.

9. In view of the above facts and circumstances of the case, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet: Yes/No
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21.09.2022



W.P(MD)No.22244 of 2022

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W.P(MD)No.22244 of 2022

V.BHAVANI SUBBAROYAN,J

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