



WEB COPY

W.P.No.9558 of 2020



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated: 10.03.2023

CORAM

**THE HONOURABLE DR. JUSTICE ANITA SUMANTH**

**W.P.No.9558 of 2020**

The Dharmapuri Co-operative Town Bank Ltd.

Represented by

S.Parthasarathy, M/58 years

S/o.K.Sadhasivam

Managing Directorate

63-A, Duraisamy Naidu Street

Dharmapuri District

... Petitioner

Vs.

1.The Principle Commissioner of Income Tax

Office of the Commissioner of Income Tax

No.3, Gandhi Road

Salem District

2.Thangavel

3.Selvam

.... Respondents

**Prayer:** Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the 1st respondent to issue No objection certificate to the petitioner based on the petitioner's representation dated 12.03.2020.

For Petitioner : Mr.V.Sakkarapani

For Respondents : Mrs.S.Premalatha (for R1)  
Junior Standing Counsel  
Mr.K.Balasubramaniam (for R2 & R3)



## **ORDER**

The petitioner is the Dharmapuri Cooperative Town Bank, and seeks a mandamus directing the first respondent i.e. the Principal Commissioner of Income Tax to issue no objection certificate for auctioning the properties attached by the bank based on its representation dated 12.03.2020.

2.The case of the bank is that the two private respondents, who had been appointed for computerisation of the bank and for annual maintenance thereof had made fraudulent withdrawals by manipulating the data that they had access to in course of their assignments. Upon detecting the fraud, action was taken against the individuals and six members of the bank were placed under suspension. An FIR was lodged on 21.07.2003 and after investigation the General Manager one Shanmugam, who is stated to have embezzled substantial sum of money using the said Thangavel and the Cooperative Department was arrested for levy of surcharge.

3.An order was passed by the Deputy Registrar of Cooperative Societies and the bank attached the properties of the individuals on 08.05.2008 in Dharmapuri District. The private respondents are also represented. They had challenged the attachments by way of writ petition in WP.Nos.9190 & 9191 of 2012 that had been dismissed as withdrawn on 27.04.2019 as the private respondents agreed to settle the defraud amount from the income of auctioning their properties.



4.The difficulty in the present case arises on account of the attachment of their properties both by the petitioner as well as by the Income Tax Department. On an earlier occasion, the instructions received by the Senior Standing Counsel from the first respondent has been circulated.

5.Inter alia, the income tax officer says that a proposal had been given by one private respondent by letter dated 08.12.2022 requesting that since the properties are proposed to be auctioned by the cooperative bank, he would give a bank guarantee to the extent of the tax dues payable by himself and R3 i.e. P.Selvam, his brother. The officer states in the penultimate paragraph as follows:

*'The proposal of the assessee has been considered and he has been requested to furnish two Bank guarantees equivalent to the amount of tax dues pending in his case and his brother's case (for an amount of Rs.88,86,917/- and Rs.45,36,170/-). The reply/response from the assessee is awaited and his request for lifting of attachment will be considered after receipt of bank guarantees.'*

6.It is the submission of the learned Standing Counsel who appears today that there has been no furnishing of bank guarantee and it is for this reason that the matters remains status quo as on date.

7.In light of the narration as aforesaid, mandamus is issued to R1 to call upon the petitioner as well as the private respondents, ascertain their



stands and dispose their representations dated 12.03.2020 and 08.12.2022, within a period of six (6) weeks from today, in accordance with law. This writ petition is disposed. No costs.

**10.03.2023**

vs

Index:Yes/No

Speaking order

Neutral Citation : Yes

To

The Principal Commissioner of Income Tax,  
Office of the Commissioner of Income Tax,  
No.3, Gandhi Road,  
Salem District



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**Dr.ANITA SUMANTH,J.**

VS

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