



W.P. No. 24649 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 24649 of 2023

and

W.M.P. No. 24094 of 2023

A.Krishnan Padayatchi

... Petitioner

-VS-

1. The Deputy Registrar of Co-operative Societies
Attur Circle, Salem District.

2. S.6648, Attur Mulluvadi Primary Agricultural
Co-operative Credit Society
Rep. By its President
Mulluvadi, Attur
Salem District.

3. The Co-operative Sub-Registrar /Sale Officer
S.6648, Attur Mulluvadi Primary Agricultural
Co-operative Credit Society
Mulluvadi, Attur
Salem District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records of the two demand notices 07.02.2023 in E.P. No. 01/2008-2009 and S.C. No. 5719/2000 dated 25.07.2001 and E.P. No. 01/200-2010, S.C. No. 5918/2002 dated 03.06.2004 on the file of the Third Respondent so far as the Petitioner is concerned quash the same.



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For Petitioner : Mr. M.S.Palaniswamy

For Respondents : Mr. J.Ravindran, AAG
Assisted by
Mr. U.Baranidaran, AGP (R1)

Mr. R.Neethi Perumal (RR2 & 3)

ORDER

Heard Mr. M.S.Palaniswamy, Learned Counsel for the petitioner, Mr. J.Ravindran, Learned Additional Advocate General assisted by Mr. U.Baranidaran, Learned Additional Government Pleader appearing for the First Respondent and Mr. R.Neethi Perumal, Learned Counsel for the Second Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent by Proceedings in Na. Ka. 5719/2006/Sa. Pa dated 25.07.2001 and Na. Ka. 5918/2002 Sa. Pa dated 03.06.2004 had determined the liability of the son of the Petitioner, viz., K.Mani and certain others in surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, (hereinafter referred to as 'the TNCS Act' for short) in respect of the Co-operative Society of the Second Respondent.



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3. It is informed that after the death of the said K.Mani on 23.03.2016, the

Third Respondent by Demand Notices dated 07.02.2023 has called upon the Petitioner to pay the sum of Rs. 15,10,449/- and Rs. 18,49,119.90 with interest and costs in respect of the aforesaid liability owed by the said K.Mani to the Second Respondent, failing which it has been threatened that his personal property mentioned the schedule thereto would be brought for auction sale, which are challenged in this Writ Petition.

4. The primordial contention of the Learned Counsel for the Petitioner is that neither the Petitioner could be personally held liable for the liabilities owed by the said K.Mani nor his self-acquired property could be attached for recovery of such dues. In this context, reference has to be made to Rule 135 of the Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter referred to as 'the TNCS Rules' for short), which provides that where any claim or objection is made to the attachment of any property attached under those Rules on the ground that such property is not liable to such attachment, it shall be incumbent upon the Sale Officer to investigate the claim or objection and dispose of it on merits. That apart, it is evident that the impugned proceedings are merely demand notices for which the Petitioner could submit his objections by of reply under Rule 135 of the Rules.



5. The consistent legal position has been reiterated by the Hon'ble Supreme

Court of India in ***Union of India -vs- Kunisetty Satyanarayana*** [(2006) 12

SCC 28] that a charge memo or show cause notice cannot be challenged before the completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion. It would be useful here to extract the relevant passages from the said decision which read as follows:-

*“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide **Executive Engineer, Bihar State Housing Board -vs- Ramdesh Kumar Singh** [JT 1995 (8) SC 331], **Special Director -vs- Mohd. Ghulam Ghouse** (AIR 2004 SC 1467), **Ulagappa -vs- Divisional Commissioner, Mysore** [2001(10) SCC 639], **State of U.P. -vs- Brahm Datt Sharma** (AIR 1987 SC 943) etc.*

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite



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possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in this Writ Petition in the objections under Rule 135 of the Rules to be submitted to the Third



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Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for the Court to intervene at this pre-mature stage of the matter.

6. In such circumstances, this Court without expressing any view on the merits of the controversy involved in the matter, passes the following order:-

- (i) the Petitioner may make an application under Rule 135 of the Rules raising his objections for the attachment of the property made in the impugned notice, to the Third Respondent;
- (ii) if it is found that any other details or supporting documents is necessary, the Third Respondent shall inform in writing the deficiencies in that regard to the Petitioner or any other person concerned requiring the same to be furnished within a time frame of not less than 15 days for the same;
- (iii) in the event of not being satisfied with the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner and all other persons concerned to explain their position in that regard; and
- (iv) a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment.



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(v) if the Petitioner makes any such application by 17.11.2023, the impugned

WEB COPY auction sale of the property shall be deferred till the aforesaid exercise is

completed; and

(vi) if any adverse decision is taken, the Petitioner may pursue legal remedies

before the proper forum in the manner recognized by law.

In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

18.10.2023

Maya

NCS : Yes/No

Index: Yes/No

Note: Issue order copy by 02.11.2023.

To

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Attur Circle, Salem District.
2. S.6648, Attur Mulluvadi Primary Agricultural
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Rep. By its President
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P.D. AUDIKESAVALU, J.

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