



W.P. No. 29060 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2023

CORAM

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

W.P. No. 29060 of 2023

and

W.M.P. Nos. 28645 and 28646 of 2023

1. C.Senthilkumar
2. C.Adhilakshmi
3. C.Thirugnanam
4. C.Nagaraj
5. G.Jaishankar

... Petitioners

-VS-

1. The Deputy Registrar of Co-operative Societies
Thiruvannamalai Circle, Vengikal
Backside of Collectorate
Thiruvannamalai – 606 604
Thiruvannamalai District.
2. The Sale Officer
O/o. Deputy Registrar of Co-operative Societies
Thiruvannamalai Circle
Vengikal, Backside of Collectorate
Thiruvannamalai – 606 604
Thiruvannamalai District.



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3. The Administrator
H.H.17, Periyakilambadi Primary
Agricultural Co-operative Credit Society
Periyakilambadi Village and Post-606 802
Thiruvannamalai Taluk and District.

4. Chandrabose
Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 2050, praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned auction notice issued by the First Respondent in Form – 8, dated 23.08.2023 under Rule 126(2)(e) of Tamil Nadu Co-operative Societies Rules and quash the same.

For Petitioners : Mr. C.Prakasam

For Respondents : Mr. J.Ravindran, AAG (For RR1 & 2)
Assisted by Mr. S.Arumugam, GA

Ms. C.Sangamithirai (R3)

ORDER

Heard Mr. C.Prakasam, Learned Counsel for the Petitioners, Mr. J.Ravindran, Learned Additional Advocate General assisted by Mr. S.Arumugam, Learned Government Advocate appearing for the First and Second Respondents and Ms. C.Sangamithirai, Learned Counsel appearing for the Third Respondent and perused the materials placed on record, apart from



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the pleadings of the parties.

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2. The First Respondent by Proceedings in Tha.Thi.No.04/2004-2005 dated 03.02.2006 had determined the liability of the Fourth Respondent in surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, in respect of the Co-operative Society of the Third Respondent. In pursuance thereof, the Second Respondent has issued notice under Rule 126 of the Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter referred to as 'the Rules' for short) informing that his property would be brought for auction sale for realizing the said dues. The First to Fourth Petitioners are the sons of the Fourth Respondent and the Fifth Petitioner is his brother and they have challenged the said auction notice in this Writ Petition.

3. The primordial contention of the Learned Counsel for the Petitioners is that the property brought for auction sale is ancestral property of the Petitioners and their shares in that property cannot be attached for recovery of the dues said to be owed by the Fourth Respondent.

4. At this juncture, reference must be made to Rule 135 of the Rules, which provides that where any claim or objection is made to the attachment of any



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property attached under those Rules on the ground that such property is not liable to any attachment it shall be incumbent upon the Sale Officer to investigate the claim or objection and dispose of it on merits.

5. It is represented by the Learned Counsel for the Petitioners that the Petitioners have on 06.10.2023, after the filing of the Writ Petition, made such application under Rule 135 of the Rules raising their objections for the attachment of the property in the impugned proceedings and it is not necessary for this Court to intervene at this pre-mature stage of the impugned proceedings.

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) it shall be incumbent upon the Second Respondent to immediately examine the application made on 06.10.2023 by the Petitioners under Rule 135 of the Rules raising their objections for the attachment of the property in the impugned proceedings including ascertaining as to whether the Petitioners would be entitled for the relief claimed;
- (ii) if it is found that any other details or supporting documents are necessary, the deficiencies in that regard shall be informed in writing to the Petitioners or any other person as may be deemed necessary requiring



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the same to be furnished within a time frame of not less than 15 days for

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- (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 Petitioners and all other persons concerned to explain their position in that regard;
- (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;
- (v) the impugned auction sale of the property shall be deferred till the aforesaid exercise is completed; and
- (vi) if any adverse decision is taken, the Petitioners 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.

20.10.2023

Maya

Index: Yes/No

NCS : Yes/No

Note: Issue order copy by 30.10.2023.



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To

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P.D. AUDIKESAVALU, J.

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