



W.P. No. 30766 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2023

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

W.P. No. 30766 of 2023

and

W.M.P. Nos. 30420, 30422, 30423 and 30427 of 2023

1. K.Shantha

2. K.Nandakumar

... Petitioners

-VS-

1. The Deputy Registrar of Cooperative Societies,
Office of the Deputy Registrar of Cooperative Societies,
Krishnagiri.
2. The Cooperative Sub-Registrar/Enquiry Officer,
S-1063 Puliampatti Primary Agricultural Credit Society,
Saamandapatti Village,
Vaadamangalam Post,
Pochampalli Taluk,
Krishnagiri District – 635 123.
3. The Sales Officer,
S-1063 Puliampatti Primary Agricultural Credit Society,
Saamandapatti Village,
Vaadamangalam Post,
Pochampalli Taluk,
Krishnagiri District – 635 123.
4. Management of S-1063 Puliampatti Primary Agricultural Credit Society,
Saamandapatti Village,
Vaadamangalam Post,
Pochampalli Taluk,
Krishnagiri District – 635 123.



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5. The Sub-Registrar Barur,
2/224, Barur Main Road,
Pochampalli Taluk,
Krishnagiri,
Barur – 635 201.

Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the concerned records relating to the Form No. 6 Demand Notice dated 08.05.2023 issued by the First Respondent and Form No. 7 and Form No. 6 Demand Notice issued by the First Respondent dated 08.05.2023 and Attachment Notice (Japthi Notice) issued by the Third Respondent in Form No. 7 dated 22.09.2023 in respect of the entire extent of land measuring 0.21.50 hectare Nanja Land and land measuring 2.37.50 hectare Punja Land comprised in Patta No. 179 (total extent 6 acres), Damodara Halli Revenue Village, Pochampalli Taluk, Krishnagiri District, as illegal, arbitrary and contrary to law and consequently direct the First and Third Rspondents to lift the Attachment Notice in respect of the share of the Petitioners in the schedule to the Demand Notice and instructions/directions to the Fifth Respondent to lift the encumbrance in respect of the Petitioners' share in the property described in the schedule to the Demand Notice dated 08.05.2023 of the First Respondent and schedule to the Attachment Notice dated 22.09.2023 of the Third Respondent.

For Petitioners : Mr. Balan Haridas

For Respondents : Mr. S.Arumugam,
Government Advocate (for R1 & R5)

Mr. E.Vijay Anand (for R2 to R4)



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ORDER

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Heard Mr. Balan Haridas, Learned Counsel for the Petitioners, Mr. S.Arumugam, Learned Government Advocate, who takes notice for the First and Fifth Respondents and Mr. E.Vijay Anand, Learned Counsel, who takes notice for the Second to Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. It is borne out from the materials placed on record that the First Respondent by surcharge proceedings in no. 3/2020/Sa.Pa.1 dated 26.08.2023 had determined the liability of one K.Amaresan, who was the Assistant Secretary of the Co-operative Society of the Second Respondent, under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. In pursuance thereof, the First Respondent has issued demand notice under dated 08.05.2023 calling upon the said K.Amaresan to pay the sum of Rs. 1,02,57,286/- together with interest and costs in respect of the aforesaid liability owed by him to the Second Respondent, failing which it has been threatened that his property mentioned in the schedule thereto would be brought for auction sale. The First Petitioner is the mother of the said K.Amaresan and the Second Petitioner and one K.Kumaresan are his brothers. According to the Petitioners, the said property



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which the First Respondent intends to bring for auction sale belonged to N.Kuppusamy, who is the husband of the First Petitioner and the father of the Second Petitioner and the said K.Amaresan and K.Kumaresan and on the death of the said N.Kuppusamy, that property had devolved on his four legal heirs and that the shares of the Petitioners and the said K.Kumaresan cannot be attached for recovery of the dues said to be owed by the said K.Amaresan. The Petitioners had made a representation dated 24.06.2023 to the First Respondent in that regard, but it did not evoke any response. As the Third Respondent has issued a notice under Rule 126 of the Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter referred to as 'the Rules' for short) informing that the property would be brought for auction sale for realizing the said dues from the said K.Amaresan, it has necessitated the filing of this Writ Petition.

3. 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 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. This would obviously mean that the representation dated 24.06.2023 made by the Petitioners to the First Respondent would have to be treated as an application



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under Rule 135 of the Rules and the intended auction could take place only after that application is decided by the concerned authority.

4. In such circumstances, this Court without expressing any view on the correctness or entitlement of the claim made by the Petitioners, passes the following order:-

- (i) it shall be incumbent the Third Respondent to treat the said representation dated 24.06.2023 made by the Petitioners as an application under Rule 135 of the Rules, and immediately examine the same 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 is necessary, the deficiencies in that regard shall be informed in writing to the Petitioners 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 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



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raised on merits and in accordance with law and the decision taken

communicated by 31.12.2023 under written acknowledgment;

- (v) the intended 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

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 03.11.2023.

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To

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2. The Cooperative Sub-Registrar/Enquiry Officer,
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P.D. AUDIKESAVALU, J.

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