



W.P(MD)No.2698 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2698 of 2023

and

W.M.P.(MD)Nos.2452 & 2453 of 2023

K.Manoj Bala

... Petitioner

Vs.

1.The Deputy Registrar,
Co-operative Societies,
Thiruparankundram Road,
Palanganatham Round,
Madurai-3.

2.The President,
MM3117, Education Department Employees Co-operative
and Credit Society,
Madurai-2.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining the impugned order of the first respondent in C.E.P.No.1272-73/2006-07(1) SC No.08/2005-06, dated 09.01.2023 and quash the same.

For Petitioner : Mr.S.Ramsundarvijayraj

For Respondents : Mr.NRA.RAmachandran
Additional Government Pleader



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ORDER

Heard the learned counsel on either side.

2. The petitioner's father late Kanaga Sabapathy was employed as Secretary in the second respondent society. He suffered an order of surcharge. Questioning the same, he filed C.M.A (CS)No.41 of 2006 before the Co-operative Tribunal at Madurai. It was dismissed vide order dated 30.06.2008. Aggrieved by the same, the petitioner's father filed C.R.P. (NPD) (MD)No.1209 of 2000. During the pendency of C.R.P, he passed away and her mother as well as sister came on record. Vide order dated 24.06.2019, C.R.P was dismissed. However, it was directed that the authority shall proceed against the properties of the revision petitioner only to the extent of money that is required to be realized from the revision petitioner. Proper valuation was ordered to be done. The authority was permitted to proceed with the same after fixing the value of the properties that are sufficient to discharge the liability. The petitioner's mother filed W.P.No.6088 of 2021 questioning the attachment made in respect of the petition mentioned properties which are three in number. While her writ petition was dismissed, the writ appeal filed by her in W.A.No. 1001 of 2021 was allowed on 02.06.2021. Paragraph No.6 of the order passed



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by the Hon'ble Division Bench reads as follows:-

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6. In fact, the learned Single Bench while dismissing C.R.P.(NPD) (MD)No.1209 of 2009, dated 24.06.2019 has pointed out this aspect in Paragraph No.7 of the order. Therefore, we are of the view that the respondent should consider the petition filed by the appellant, dated 18.02.2021, for raising the attachment and enquiry be conducted after opportunity to the appellant or her authorised representative and a speaking order shall be passed. In order to facilitate the respondent to comply with the order of this Court, the appellant is directed to forward one more copy of the petition along with the copy of this Judgment and upon receipt of the same, the respondent shall consider the petition in terms of the above direction and pass orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this Judgment.

3. Pursuant to the said direction, the first respondent herein passed the order dated 25.08.2021. The first respondent had made it clear that the petition mentioned properties were purchased out of ill-gotten money. The said order has been put to challenge in W.P.No.21587 of 2021. The petitioner has not obtained any interim order in the said writ petition. Mere pendency of the writ petition cannot operate as stay. The first respondent therefore has proceeded to bring the properties for auction sale. The auction sale notification is put to challenge in this writ petition.



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4. The petitioner admittedly did not purchase the petition mentioned properties. She has only inherited them from her mother. It is stated by the learned Additional Government Pleader that the properties were settled in favour of the petitioner's mother by her grand mother. So long as the petitioner has not succeeded in getting the order dated 25.08.2021 stayed or set aside, the first respondent is very much entitled to proceed in the matter. The impugned proceedings are only consequential in nature.

5. I am therefore not in a position to interfere. Of-course, the first respondent cannot bring all the three properties to sale. He must undertake a proper valuation exercise. The market value of the properties must be ascertained. All the three items cannot be brought to sale at one go. They must be brought to sale one after another. If the liability is already discharged by a sale of one or two items, the remaining item need not be brought to sale.

6. Directing the first respondent to adopt the aforesaid approach, the Writ Petition is disposed of. No costs.

09.02.2023

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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