



W.P(MD)No.18088 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**W.P(MD)No.18088 of 2015
and
M.P.(MD)Nos.1 & 2 of 2015**

N.Ravi

... Petitioner

Vs.

**1.The Joint Registrar,
Co-operative Society cum Sale Officer,
Co-operative Society Office,
Aranthangi,
Pudukkottai District.**

**2.The President,
170, Venthanpatti Primary Co-operative Society,
Venthanpatti,
Melasivapuri Post,
Ponnamaravathy Taluk,
Pudukkottai District.**

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned auction sale notification dated 04.09.2015 in E.P.No.5/13-14 published in the Dinathandhi News Paper dated 05.09.2015 and quash the same as illegal and consequently, directing the respondents to consider the petitioner's representation dated 23.09.2015.



W.P(MD)No.18088 of 2015

For Petitioner : Mr.G.Mathavan
For Respondents : Mrs.K.Christy Theboral
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. One Selvam was employed as Office Assistant in the second respondent society. He is said to have committed criminal misappropriation of the funds of the society along with others and caused loss to the tune of Rs.1,08,24,814/-. In this regard, surcharge proceedings were initiated and an order dated 24.07.2015 was passed under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. The order does not appear to have been put to challenge. To enforce the same, the society filed Execution Petition No.5 of 2013 before the Deputy Registrar of Co-operative Society, Aranthangi. Attachment of the petition mentioned property was made under Section 167 of the Act. By the impugned notification, it was also brought to sale. Questioning the same, this writ petition came to be filed.



W.P(MD)No.18088 of 2015

WEB COPY

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents and submitted that the writ petition deserves to be dismissed.

5. I carefully considered the rival contentions and went through the materials on record.

6. The learned counsel for the petitioner has placed unimpeachable materials to show that the property comprised in Survey No.1298/6, Varppattu Village belonged to one Nallalagan. Following his demise, it devolved on his four sons namely Chinnaiya, Chellakannu, Nallan & Sempan. The writ petitioner is one of the sons of Chellakannu. Selvam against whom surcharge order was



W.P(MD)No.18088 of 2015

passed is the elder brother of the writ petitioner. Therefore, the authorities could have brought only Selvam's share to auction sale.

But the impugned sale notification does not indicate that the property in question is a joint family property. While the authorities have the power to proceed against Selvam's share in the joint family property, they could not have brought the entire joint family property to sale. That is clearly illegal.

7. In this view of the matter, the impugned sale notification is set aside. The respondents are at liberty to bring the undivided share of Selvam in the petition mentioned property to sale. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

01.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To
1. The Joint Registrar,
Co-operative Society cum Sale Officer,
Co-operative Society Office,
Aranthangi,
Pudukkottai District.

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W.P(MD)No.18088 of 2015

2.The President,
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W.P(MD)No.18088 of 2015

G.R.SWAMINATHAN, J.

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W.P(MD)No.18088 of 2015

01.08.2023