



W.P(MD)No.4315 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4315 of 2015
and
M.P.(MD)Nos.2 & 3 of 2015
and
M.P.(MD)No.9829 of 2017

Suresh Singh

... Petitioner

Vs.

- 1.The Deputy Registrar of Co-operative Societies,
Thuckalay Circle, Thuckalay,
Kanyakumari District.
- 2.The Joint Registrar of Co-operative Societies,
Nagercoil,
Kanyakumari District.
- 3.The Special Officer,
Kanyakumari District Central Co-operative Bank,
Nagercoil,
Kanyakumari District.

... 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 to the impugned auction notification issued by the 1st respondent u/s. 126 of Tamil Nadu Co-operative societies rules 1988, dated 12.2.2015 in a.sa.ni.no. 2/2006-07, quash the same.



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For Petitioner : Mr.F.Deepak

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader for R1 & R2

: Mr.D.Shanmugara Sethupathi for R3

ORDER

Heard both sides.

2. The petitioner's mother was employed as manager in the third respondent bank. She allegedly committed misappropriation. She suffered an order of surcharge. To enforce the same, the property belonging to the petitioner's mother was brought to sale. It was questioned by the petitioner's brother by filing W.P.(MD)No.13957 of 2014. It was disposed of on 25.08.2014 in the following terms:-

“2.The petitioner's mother was appointed as Manager in-charge of Kolachel Branch of Kanyakumari District Central Co-operative Bank. A charge memo was issued to her alleging certain delinquencies. Subsequently, enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, in which there was an order directing to recover a sum of Rs.38,14,806/-. As against the said order, the petitioner's mother preferred an appeal in C.M.A.(CS)No.11 of 2008 before the District Court, Kanyakumari, and after adjudication, the same was dismissed on 01.03.2013. It is stated that the petitioner's mother is hospitalised and she is suffering from acute lung problem and other medical complications. While so, the impugned notification came to be issued directing for auction of the property in



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question by fixing the sale as on 27.08.2014 by 11.00 a.m. It is stated that the property which is now to be for sale, was purchased by the petitioner's father's from his own source of income in 1997 and the alleged delinquencies for which enquiry under Section 81 was conducted against the petitioner's mother 3 was pertaining to certain transactions which took place between 2002 and 2006. Therefore, it is stated that the property in question was not acquired from the funds of the mother and there is no allegation that the property was acquired by allegedly siphoning the funds of the respondent Bank. Therefore, it is stated that the property cannot be brought for auction. Under Rule 135 of the Tamil Nadu Co-operative Societies Rules, enquiry is required to be conducted in the event such objection is raised. In this regard, the petitioner has submitted his objection in person on 20.08.2014.

3.The learned counsel for the petitioner placed reliance on the decision of this Court in the case of R.Karuppusamy v. The Regional Manager, Tamil Nadu Co-operative Marketing Federation, reported in 2009 (6) CTC 765, wherein, somewhat an identical case was considered and it was observed by this Court that unless and until it is proved that the petitioner's property was acquired by using money siphoned of from the Federation, it is not possible to attach the property of the petitioner therein. In any event, in terms of Rule 135, if such an objection is raised, the respondents are bound to consider the same and thereafter only proceed to direct the property for sale, if it is proved to the satisfaction of the authority that the property proposed to be brought for sale was acquired from the funds siphoned of from the petitioner's mother 4 from the respondent Co-operative Society.

4.In the light of the above, there will be a direction to the respondents to postpone the sale, which is scheduled to be held on 27.08.2014, hear the objection submitted by the petitioner dated 20.08.2014, and after affording opportunity of personal hearing to the petitioner, take a decision in the matter within a period of three weeks from the date of receipt of a copy of this order.

5.The petitioner is directed to forward a copy of the objection dated 20.08.2014 along with a copy of this order to the first respondent. In the



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enquiry to be conducted by the first respondent, the petitioner is entitled to produce the oral and documentary evidence to establish his case. The petitioner is directed to cooperate with the enquiry without seeking for an adjournment.”

3.The learned Additional Government Pleader appearing for the authorities submits that pursuant to the said direction, enquiry was conducted by the District Revenue Officer, Kanyakumari. Vide order dated 17.09.2014, the District Revenue Officer, Kanyakumari held that the property belongs to the petitioner's mother Saraswathi. It is seen that the order of the District Revenue Officer has not been questioned. There is nothing on record to show that the subject matter of the impugned auction notice belongs to the petitioner's father.

4. The Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

22.09.2023

Index : Yes / No
Internet : Yes/ No
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To

1.The Deputy Registrar of Co-operative Societies,
Thuckalay Circle, Thuckalay,
Kanyakumari District.

2.The Joint Registrar of Co-operative Societies,
Nagercoil,
Kanyakumari District.



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G.R.SWAMINATHAN, J.

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