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W.P. No. 5913 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

CORAM

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

W.P. No. 5913 of 2024

and

W.M.P. Nos. 6552 and 6553 of 2024

K.Madheswari

... Petitioner

-VS-

1. The Deputy Registrar of Co-operative Societies
Sankargiri Region
Sankagiri – 637301.
2. The Sale Officer Co-operative Sub Registrar
S.877, Vellarivelli Primary Agricultural Co-operative Thrift Society
Vellerivelli, Morasampatti Post
Edapadi Taluk, Salem District.
3. The Secretary
S.877, Vellarivelli Prmiary Agricultural Co-operative Thrift Society
Vellerivelli, Morasampatti Post
Edapadi Taluk, Salem District.
4. Mohan

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records relating to the impugned auction notice issued by the Second Respondent under Rule 126 of Tamil Nadu Co-operative Societies Rules and published in Tamil Daily 'Dinakaran' dated 07.02.2024 and quash the same in so far as it relates to item-1, Sl. Nos. 1 – 7 properties are concerned which are joint and family properties.



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For Petitioner : Mr. K.Govi Ganesan

For Respondents : Mr. P.Sathish (R3)

Mr. C.Selvaraj, AGP (RR1 & 2)

ORDER

Heard Mr. K.Govi Ganesan, Learned Counsel for the Petitioner, Mr. C.Selvaraj, Learned Additional Government Pleader appearing for the First and Second Respondents and Mr. P.Sathish, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent by Proceedings No. C.E.P.No. 1/2022-23(1) dated 11.05.2022 had attached properties of the Fourth Respondent, who was working as Secretary of the Co-operative Society of the Third Respondent pursuant to determination of liability against him in surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1987, in respect of that Co-operative Society. According to the Petitioner, who is the sister of the Fourth Respondent, her shares in the ancestral properties have been wrongfully attached and she had made representations dated 21.09.2023,



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10.02.2024 and 24.02.2024 to the First and Second Respondent raising

objections under Rule 135 of the Tamil Nadu Co-operative Societies Rules, 1988, which provides that where any claim or objection is made to the attachment of any property made 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, and the Sale Officer shall postpone the sale pending the investigation of the claim or objection. The grievance ventilated by the Petitioner is that without awaiting its outcome, the auction sale of the property has been advertised on 07.02.2024 by the Third Respondent in the tamil daily newspaper 'Dhinakaran', which has necessitated the filing of this Writ Petition.

3. Having regard to the aforesaid fact situation, 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 concerned authority to immediately examine the representations dated 21.09.2023, 10.02.2024 and 24.02.2024 made by the Petitioner to the First and Second Respondents as an application under Rule 135 of the Rules raising his objections for the attachment of the property made by the concerned authority including



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ascertaining as to whether the Petitioner 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 Petitioner or any other person as may be deemed necessary 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 Petitioner 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) any proposal for sale of the attached property through public auction or otherwise for the realization of the dues claimed from the Fourth Respondent shall be deferred till the aforesaid exercise is completed; and
- (vi) if any adverse decision is taken, the Petitioner may pursue legal remedies before the proper forum in the manner recognized by law.



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In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.05.2024.

Maya

To

1. The Deputy Registrar of Co-operative Societies
Sankargiri Region
Sankagiri – 637301.
2. The Sale Officer Co-operative Sub Registrar
S.877, Vellarivelli Primary Agricultural
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P.D. AUDIKESAVALU, J.

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