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W.P.No.15592 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**Writ Petition No.15592 of 2022
and WMP.No14792 of 2022**

V.Vijayalakshmi

.... Petitioner

-Vs-

1.The Deputy Registrar of
Co-operative Societies
Pollachi
Coimbatore District.

2.K.No.2426, The Ravauthar Primary
Agricultural Co-operative Credit Society
Rep.by its President
Ravathur Post
Irugur Via
Coimbatore.

.. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the auction sale notice in Tha.Thi.Ni.ma.No.49/2009-10 dated 04.05.2022 on the file of 1st respondent and quash the same and consequently forbearing the 1st respondent from auctioning the petitioner's property registered as Doc.No.4025 of 1997 dated 11.11.1997, on the file of Sub-Registrar, Sultur.

For Petitioner : Mr.N.Ponraj



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For Respondents : Mr.B.Tamilnithi
Additional Government Pleader
for R1

Mr.E.Vijay Anand
for R2

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records relating to an auction sale notice dated 04.05.2022, on the file of the 1st respondent, Deputy Registrar of Co-operative Societies at Pollachi in Coimbatore District and quash the same and consequently restrain the 1st respondent from bringing to auction the property of the petitioner at Plot Nos.44 & 45, Amarjothi-Jai Nagar in Kannampalayam, Palladam Taluk in Tiruppur District, which has been purchased by the petitioner on 11.11.1997 by a registered sale deed registered as Document No.4025 of 1997, on the file of the Sub-Registrar, Sulur.

2.In the affidavit filed in support of the writ petition, it had been stated that the husband of the petitioner, Chinnasamy was working as a Secretary in the 2nd respondent Co-operative Society, The Ravauthar Primary Agricultural Co-operative Credit Society at Irugur in Coimbatore District. In the year 2009, he was suspended alleging that he had committed irregularities in grant of crop



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loan, jewellery loan etc., and was dismissed service on 28.06.2010. Thereafter, surcharge proceedings had been initiated and the petitioner claims that the 1st respondent had issued Form 8 & Form 9 of the Rules under the Tamil Nadu Co-operative Societies Rules, 1988, to bring the property standing in the name of the petitioner for auction on 23.06.2022. The petitioner claims that she has been working as a teacher and she had purchased the same out of her independent income in the year 1997. It had been stated that the act of misappropriation were said to have been committed only much later between 2004 and 2005 by her husband. It had been therefore contended that there is no nexus between the purchase of the property and the misappropriation committed by the husband of the petitioner herein.

3.A counter affidavit had been filed on behalf of the 2nd respondent wherein the statement of the petitioner that the property was purchased by her had been disputed and denied. It had also been stated that the auction notice, can also be questioned before the Sales Officer under Rule 135 of the Tamil Nadu Co-operative Societies Rules 1998 and when there is that effective alternate remedy, the petitioner had approached this Court without exhausting such alternate remedy. It had been therefore contended that the writ petition should be



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4.The petitioner claims that she had been working as a teacher in Government School and during the year 1997, she had purchased the two Plots bearing Nos.44 & 45 in Amarjothi-Jai Nagar in Kannampalayam Village, Palladam Taluk in Tiruppur District on 11.11.1997, which sale deed had been registered as Document No.4025 of 1997 in the office of the Sub-Registrar, Sultur. The petitioner claims that it has been purchased out of her own income. The husband of the petitioner, Chinnasamy was working as a Secretary in the 2nd respondent Co-operative Society and he was suspended from the service in the year 2009 alleging misappropriation and irregularities in granting of loan. He was thereafter dismissed service on 28.06.2010. The respondents then initiated proceedings to recover the amount misappropriated. As a step in that regard, the impugned notice had been issued attaching the property of the petitioner herein and bringing it for sale. The writ petition has been filed questioning in that particular notice of sale.

5.Rule 135 of the Tamil Nadu Co-operative Societies Rules 1988, provides for investigation of claims and objections to attachment of property. The Sales



Officer shall investigate any claim or objection and Rule 135(2) also provides that when the property had been advertised for sale, the Sales Officer may postpone the same pending the investigation of the claim or objection. Rule 135 (3) states that where a claim or objection is preferred, and when an order is passed by the Sale Officer, then a suit could be instituted within six months from the date of the order to establish their right under which the claim is made to the property. Rule 135 (1)(2) and (3) of the Tamil Nadu Co-operative Societies Rules 1988, are as follows:

135. Investigation of claims and objections to attachment of property.-

(1) Where any claim is preferred to, or any objection is made to, the attachment of any property attached under these rules on the ground that such property is not liable to such attachment, the sale officer shall investigate the claim or objection and dispose of it on merits:

Provided that no such investigation shall be made when the sale office considers that the claim or objection is frivolous.

(2) Where the property to which the claim or objection relates has been advertised for sale, the sale officer may postpone the sale pending the investigation of the claim or objection.

(3) Where a claim or an objection is preferred, the party, against whom an order is made by the sale officer, may institute a suit within six months from the date of the order to establish the



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right which he claims to the property in dispute, but subject to the result of such suit, if any, the order made by the sale officer shall be conclusive.

6.It is clear that the petitioner has an alternate remedy to raise the claim or objection before the Sale Officer. If an objection is raised, an obligation is placed on the Sale Officer to investigate the claim or petition and pass necessary orders. The assertion by the learned counsel for the petitioner that the property had been purchased exclusively by the petitioner and that it has no nexus with the misappropriated amounts of the husband is an issue which can be examined only after due enquiry which enquiry can be undertaken by a Sale Officer in an enquiry under the Rule 135(1)(2) and (3) of the Tamil Nadu Co-operative Societies Rules 1988. I would therefore give necessary opportunity to the petitioner to approach the Sale Officer. She must make such objection within a period of two weeks from the date of receipt of copy of this order. If such petition is made then an obligation is placed on the Sale Officer to investigate the claim and objections and dispose the same on its merits.

7.The Writ Petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.



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Index : Yes/No

NCS: Yes/No

KP

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