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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2024

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 19556 of 2019

And

W.M.P.Nos. 19051 & 19052 of 2019

Sampathkumar

... Petitioner

..Vs..

1. The Deputy Registrar of Cooperative Societies
Tindivanam Circle
Tindivanam.
2. The Sub Registrar
Tindivanam
Villupuram District.
3. Ongur Primary Agricultural Cooperative Credit Society
Rep. By its Secretary
Ongur Post, Tindivanam Taluk
Villupuram District.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records and auction notice dated 29.05.2019 in Ni.Ve.Ma.No. 24/2016-17 on the file of the second respondent herein and quash the same as illegal.



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2

For Petitioner :: Mr. Antony Jesus
For RR 1 & 2 :: Mr. S.Ravikumar
Special Government Pleader
For 3rd Respondent :: Mr.L.P.Shanmugasundaram

ORDER

The Writ Petition has been filed in the nature of a Certiorari calling for the records of an auction notice dated 29.05.2019 on the file of the second respondent / the Sub Registrar, Tindivanam, Villupuram District and quash the same.

2. In the affidavit filed in support of the Writ Petition, it had been stated that the property at S.No. 203/3B, patta No. 1035, measuring 3 acres and 42 cents at Ongur Village, Tindivanam Taluk, Villupuram District, belonged to P.Saraswathi and an order under Section 87 of the Tamil Nadu Co-operative Societies Act 1983 had been passed against the husband of the said Saraswathi by the Deputy Registrar of Co-operative Societies by proceedings dated 20.07.2017. Subsequently, the first respondent had passed an order under Section 167 of the Act attaching the property of Saraswathi by proceedings dated 05.03.2018.



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3. It is further contended that P.Saraswathi filed W.P.No. 14041 of 2018 before this Court seeking to quash the conditional attachment order. It is contended that the learned Single Judge had allowed the Writ Petition by an order dated 02.11.2018. It had been observed by the learned Single Judge that the proceedings under Section 87 of the Act had already been passed and that the matter is pending execution and therefore, the interim attachment would not stand and had therefore allowed the Writ Petition.

4. But the fact is that an order under Section 167 of the Co-operative Societies Act 1983 is a conditional attachment and thereafter, when an execution petition is made, the property subjected to attachment, would also be the subject of the execution petition.

5. The petitioner had purchased the property from Saraswathi on 11.01.2019 by a sale deed registered as Document No. 504 of 2019 in the office of the Sub Registrar, Tindivanam. He had thus purchased the property pending execution proceedings. He cannot get any better title which is subject to attachment.

6. The only appropriate relief for the petitioner would be to



seek to be indemnified by his vendor for sale of a property which was already the subject matter of attachment. if he raises a claim, he has to establish the bona fide nature of the purchase without notice of the attachment. But the petitioner knew about the attachment. As a matter of fact, the petitioner knew about the nature of the order passed in W.P.No. 14044 of 2018.

7. At any rate, the claim of the petitioner cannot be adjudicated in this Writ Petition filed under Article 226 of the Constitution of India. The Tamil Nadu Co-operative Societies Act 1988 provides specific appeal provision under Section 152(1) of the said Act and also Rule 135 (2) of the Tamil Nadu Co-operative Societies Rules, 1988 provides for a claim to be preferred against any order of attachment.

8. The petitioner will necessarily have to work out his remedy in an other forum. This Court cannot grant any relief to the petitioner. This Writ Petition sands dismissed. Consequently, connected Miscellaneous Petitions stand closed. No order as to costs.

17.12.2024

vsg
Index: Yes/No



Internet: Yes/No
Speaking / Non Speaking Order

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To

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Tindivanam.
2. The Sub Registrar
Tindivanam
Villupuram District.
3. Ongur Primary Agricultural Cooperative Credit Society
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6

C.V.KARTHIKEYAN, J.,

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