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W.P. No.20231 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

**W.P.No.20231 of 2024
and
W.M.P.Nos.22142 & 22143 of 2024**

K. Mohan

....Petitioner

..Vs..

1. The Co-Operative Sub-Registrar/Sale Officer,
S-877, Vellarvelli Primary Agricultural Co-operative
Credit Society Ltd. Vellarivelli, Edappaid Taluk,
Salem District.
2. The Deputy Registrar of Co-operative Societies,
Sankari, Salem District.
3. S-877, Vellarvelli Primary Agricultural Co-operative
Credit Society Ltd. Rep. By its Secretary,
Vellarivelli, Edappaid Taluk,
Salem District.

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records relating to the auction notice of the 1st respondent published in “Dinamalar” Tamil Daily dated 20.06.2024 and quash the same.

For petitioner

: Mr. K. Selvaraj



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W.P. No.20231 of 2024

For Respondents : Mr.G. Krishna Raja for R1 & R2
(Addl. Govt. Pleader)
: Mr.M. Murali for R3
(Govt. Advocate)

ORDER

This Writ petition has been filed seeking to issue a Writ of Certiorari calling for the records relating to the auction notice of the 1st respondent published in “Dinamalar” Tamil Daily dated 20.06.2024 and quash the same.

2. The case of the petitioner in a nutshell is as follows:

The petitioner being the Secretary of the Society, has committed irregularities and dereliction of duty in the Crop Loans from the Society. An enquiry under Section 81 was initiated against the petitioner. Based on the enquiry, a Surcharge proceedings under Section 87 of the Tamil Nadu Co-Operative Societies Act, 1983 has been initiated against the petitioner and others fixing the liability to the tune of Rs.3,63,46,798/- on 18.11.2022. Against the said Surcharge proceeding, the petitioner has challenged by virtue of filing CMA (C.S) No.10 of 2023 before the Principal District Court, Salem/Special Tribunal for Co-operative cases for Salem



W.P. No.20231 of 2024

District along with the Stay petition in I.A. No.1 of 2023. During the pendency of the surcharge proceedings, the petitioner and others have also deposited a sum of Rs.1,47,00,000/- under protest before the 3rd respondent society. In such circumstances, while CMA (CS) No.10 of 2023 and I.A. No.1 of 2023 are pending before the competent special Tribunal for adjudication, the 1st respondent has published an auction sale notice in Dinakaran Tamil Daily dated 20.06.2024 proposing to conduct the Public Auction for the 7 items of the properties of the petitioner which derived from his ancestor. The said properties devolve on the petitioner, his mother and his sister. Under such circumstances, the mother and sister of the petitioner have filed the suits in O.S. No.67 of 2023 on the file of the Sub-Court, Sankari and O.S. No.21 of 2024 on the file of the District Munsif Court, Edappadi which are pending. Further, a detailed objections have been filed by the petitioner along with mother and sister of the petitioner. In such circumstances, the auction proceedings is in total violation of the provisions of the Section 167 of the Tamil Nadu Co-Operative Societies Act, 1983. Aggrieved by this, the petitioner has filed the present Writ petition.

3. The learned counsel for the petitioner submits that the



W.P. No.20231 of 2024

petitioner has already deposited a sum of Rs.1,47,00,000/- before the 3rd respondent under protest. In such circumstances, the properties belonged to the petitioner, mother and sister of the petitioner since they are ancestral properties, are proposed for Auction sale by impugned proceedings. Pending of two suits before the Trial Court concerned and objections filed by the mother and sister of the petitioner, the impugned proceedings is illegal and unsustainable in law. Hence, he seeks appropriate relief as stated in the Writ petition.

4. The learned counsel for the respondents submits that the petitioner and others are wilfully involved in the misappropriation of the Society by preparing bogus loan and fraud in the deposit in order to defraud causing loss to the institution. Hence, the petitioner is liable to recover the amount as per the Judgment of Deputy Registrar of Co-operative Societies, Sankagiri, under Section 87 of TNCS Act, 1983. The board had requested to take action on conditional attachment under Section 167 against the petitioner and others. Accordingly, Surcharge award was passed on 18.11.2022 in RC. No.2945 of 2022 against the petitioner to the tune of Rs.2,87,41,007.80 and as per Section 167 of TNCS Act, 1983, his property



W.P. No.20231 of 2024

was attached based on an order of attachment passed on 11.05.2022 and consequential auction Form 8, 9 dated 19.06.2024 was issued with E.P. No.1/2023-2024. Further, the sale Auction on his attached property is to be commenced on 24.07.2024.

5.It has been further submitted by the learned counsel for the respondents that an FIR No.2/2023 was filed against the 13 accused including the petitioner by the EOW, Salem under Section of IPC, 1860 on 09.07.2023. The petitioner was then remanded and taken into Judicial Custody and released under bail.

6.The learned counsel for the respondent further submits that the petitioner has involved in this misappropriation directly such as Crop Loan and Public Deposit, and Public money, thereby the Society has incurred huge loss. Hence, the Writ petition filed by the petitioner is liable to be dismissed.

7. Heard both sides and perused the materials available on record.

8. Having considered the facts and circumstances of the case



W.P. No.20231 of 2024

and submissions made by both side counsel, it seems that the petitioner was subjected to under enquiry for his misappropriation in the Society.

Accordingly, Surcharge proceedings and Criminal proceedings in FIR No.2/2023 have filed against him. Under such circumstances, this Court is not inclined to entertain the present Writ petition and directs the petitioner to pay a sum of Rs.2 crore before the Society on or before 31.08.2024. If the petitioner fails to pay the aforesaid amount within the stipulated period, the respondents are at liberty to proceed with the auction proceedings in the manner known to law on 01.09.2024 itself. Until then, interim stay of the impugned proceedings shall be granted subject to payment of Rs.2 Crore.

9. In view of the above, the Writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

23.07.2024

Index : Yes/No
Internet: Yes/No
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W.P. No.20231 of 2024

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V.BHAVANI SUBBAROYAN, J.,



WEB COPY



W.P. No.20231 of 2024

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