



W.P.No.28739 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.28739 of 2024

1.Nirvin

2.Anuprabha

... Petitioner

Vs.

1.The Deputy Registrar of Cooperative Societies,
Sangagiri,
Salem District

2.S.877, Vellarivelli Primary Agricultural Co-operative
Credit Society Ltd.,
Rep. By its Administrator,
Vellarivelli, Edappadi Taluk,
Salem District

3.The Co-operative Sub Registrar/Sale Officer,
S.877, Vellarivelli Primary Agricultural Co-operative
Credit Society Ltd.,
Vellarivelli,
Edappadi Taluk,
Salem District

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India
praying to issue a writ of mandamus directing the respondents not to
conclude the sale auction conducted on 17.09.2024 and register the same



W.P.No.28739 of 2024

in the office of Sub Registrar, Edappadi till complying the direction issued by this Court in WP.No.5913 of 2024 and the disposal of the original suit in OS.No.84 of 2024 pending on the file of the learned District Munsif Court.

For Petitioners : Mr.Balaramesh
for Mr.P.Vijayakumar

For Respondents : Mr.J.Ravindran,
Additional Advocate General
Assisted by
Mrs.M.Geetha Tamaraiselvan,
Special Government Pleader

ORDER

This writ petition has been filed for direction to the respondents not to conclude the sale auction conducted on 17.09.2024 till the compliance of the direction issued by this Court in WP.No.5913 of 2024 and disposal of the suit in OS.No.84 of 2024.

2. The petitioners' father was working as Secretary of the second respondent-Society. Due to irregularities and misappropriation committed by him, it was ordered to conduct enquiry under Section 81 of the Co-operative Societies Act, 1983. Based on the enquiry report,



W.P.No.28739 of 2024

surcharge proceedings was initiated under Section 87 of the Tamilnadu Cooperative Societies Act against the petitioners' father and others. Surcharge award was passed, thereby fixed liability as against the petitioners' father to the tune of Rs.2,87,41,007.80/- on 18.11.2022. Aggrieved by the same, the petitioners' father filed CMA(C.S) No.10 of 2023 on the file of the Principal District Court, Salem / Special Tribunal for Co-operative cases for Salem District and it is pending. During the pendency of the surcharge proceedings, the petitioners' father and other charged officials deposited a sum of Rs.1,47,00,000/-.

2.1 While being so, the property of the petitioners' father was brought for auction sale by the notice dated 20.06.2024 in respect of 7 items of the properties based on the surcharge proceedings. It was challenged before this Court in WP.No.20231 of 2024. This Court, by order dated 23.07.2024, directed the petitioners' father to pay a sum of Rs.2,00,00,000/- on or before 31.08.2024, failing which on 02.09.2024 itself, the auction proceedings may go on. However, the petitioners' father did not comply with the same and filed a petition in WMP.No.27121 of



W.P.No.28739 of 2024

2024 for modification to modify the order dated 23.07.2024. This Court, by order dated 30.08.2024, modified the order whereby the petitioners' father was directed to deposit a sum of Rs.1,00,00,000/- on or before 06.09.2024 and another sum of Rs.1,00,00,000/- on or before 13.09.2024, failing which the respondents shall conduct auction on 17.09.2024. It was also made clear that no further extension of time shall be granted to him.

2.2 The petitioners' father challenged the order passed in WP.No.20231 of 2024 in WA.No.2802 of 2024. The Hon'ble Division Bench of this Court, in CMP.Nos.20551, 20553 & 20554 of 2024 passed interim order thereby directed the petitioners' father to pay a sum of Rs.20,00,000/- to the Society on or before 5 p.m. on 14.09.2024 and on receipt of the said amount, the auction shall be postponed. Further directed that another sum of Rs.30,00,000/- shall be paid within a period of three weeks thereafter. However, the said order was also not complied with and as such, the properties of the petitioners' father were brought for auction and the properties were already sold out in favour of third parties.

3. The learned counsel appearing for the petitioners would



W.P.No.28739 of 2024

submit that while pending the appeal as against the surcharge award, the respondents ought not to have brought the properties for auction sale. The petitioners are also having share in the properties belong to their family. In fact already the petitioners' father's mother and the petitioners' father's sister filed suit for partition in OS.No.67 of 2013 on the file of the Sub Court, Sankari and OS.No.21 of 2024 on the file of the District Munsif Court, Edappadi for partition and both the suits are pending. Therefore, when the suits are pending for partition, the respondents ought not to have brought the subject property for sale. Therefore, the petitioners raised objections under Rule 135 of the Tamilnadu Cooperative Societies Rules for attachment of the properties including the ancestral properties.

4. On perusal of records, revealed that the petitioners also approached this Court in WP.No.6321 of 2021 seeking direction to the respondents to consider the objections raised by the petitioners dated 14.02.2024 by conducting enquiry, wherein this Court, by order dated 08.03.2024, issued the following directions:

“In such circumstances, this Court without expressing any view on the merits of the controversy involved in the matter, passes the following order.-



W.P.No.28739 of 2024

(i) it shall be incumbent upon the concerned authority to immediately examine the applications made on 14.02.2024 and 03.03.2024 by the Petitioner under Rule 135 of the Rules raising his objections for the attachment of the property in the impugned proceedings including 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) the impugned auction sale of the property shall be deferred till the aforesaid exercise is completed; and



W.P.No.28739 of 2024

(vi) if any adverse decision is taken, the Petitioners may pursue legal remedies before the proper forum in the manner recognized by law

5. Further, the petitioners' paternal aunt i.e. their father's sister also filed objections and filed writ petition before this Court in WP.No.5913 of 2024 challenging the auction notice dated 07.02.2024.

This Court, by order dated 08.03.2024, issued the following directions:

(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 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;



W.P.No.28739 of 2024

(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.

6. As directed by this Court, order was passed on 16.09.2024, thereby the first respondent rejected the objections raised by the petitioners and others. Aggrieved by the same, the petitioners filed suit in OS.No.84 of 2024 challenging the order passed by the first respondent dated 16.09.2024 and it is pending without any interim order on the file of the District Munsif cum Judicial Magistrate Court, Edappadi. In fact,



W.P.No.28739 of 2024

the petitioners also filed suit in OS.No.80 of 2024 on the file of the District Munsif cum Judicial Magistrate Court, Edappadi for partition in respect of the properties belong to their family and it is pending. The petitioners have filed this writ petition for direction not to conclude the sale auction conducted on 17.09.2024 till the compliance of the direction issued by this Court in WP.No.5913 of 2024 and disposal of the suit in OS.No.84 of 2024 pending on the file of the District Munsif cum Judicial Magistrate Court, Edappadi.

7. On perusal of the order passed on the objections raised by the petitioners under Rule 135 of the Tamilnadu Cooperative Societies Rules, revealed that the properties belong to the petitioners' father were brought for auction sale for the misappropriation of huge money by their father. The property as mentioned by the petitioners through document No.736 of 1995 under patta Nos.3368, 3989, 2751 are not containing the petitioners' names. Therefore, the petitioners are no way connected with those properties. All the properties which stood in the name of their father only, were brought for auction sale. That apart, the properties



W.P.No.28739 of 2024

WEB COPY

which were brought for auction sale, were purchased by the petitioners' father only on 08.08.2019 during the period in which the petitioners' father committed misappropriation of huge money. Therefore, the objections raised by the petitioners was rightly rejected by the first respondent. That apart, the directions issued by this Court in WP.No.5913 of 2024 were not complied with by the petitioners and this Court initially directed the petitioners' father to deposit a sum of Rs.2,00,00,000/- on or before 31.08.2024 and subsequently modified and extended time for depositing a sum of Rs.1,00,00,000/- on or before 06.09.2024 and another Rs.1,00,00,000/- on or before 13.09.2024.

7.1 However, the said conditions were also not complied with and aggrieved by the said order, the petitioners' father preferred writ appeal in WA.No.2802 of 2024. The interim order granted by the Hon'ble Division Bench of this Court by order dated 13.09.2024, was also not complied with by the petitioners i.e. the petitioners' father shall deposit a sum of Rs.20,00,000/- on or before 14.09.2024, till then auction shall be postponed. Further a sum of Rs.30,00,000/- shall be paid within a period



W.P.No.28739 of 2024

of three weeks thereafter. However, the first condition was not complied with by the petitioners' father and as such, the respondents rightly conducted auction of the properties belongs to the petitioners' father.

8. Further, Mr.J.Ravindran, the learned Additional Advocate General appearing for the respondents submitted that the petitioners' father's properties were only brought for auction and the properties situated at Vellarivelli Village, Edappadi Taluk belong to the petitioners comprised in survey Nos.70/4, 80/1b, 80/3b were not brought for auction. He also furnished the details of the properties which were brought for auction sale belong to the petitioners' father and the same are extracted hereunder:

S No.	Survey No.	Patta No.	Proprietor Name
1	82/1	3368	Mohan, Matheswari, Kuppaye
2	78/6	3368	Mohan, Matheswari, Kuppaye
3	272/1E1	3615	Mohan, Matheswari, Kuppaye
4	70/1	3989	Mohan, Matheswari, Kuppaye, Semalaigounder, Sembagounder, Ragupathy
5	272/2A	2751	Mohan, Kuppaye, Matheswari, Gurusamy, Semalaigounder, Sanmugam



W.P.No.28739 of 2024

S No.	Survey No.	Patta No.	Proprietor Name
6	272/1C	2751	Mohan, Kuppaye, Matheswari, Gurusamy, Semalaigounder, Sanmugam
7	78/1	4519	Mohan, Kuppaye, Matheswari, Natarajan, Rangasamy, Semalaigounder

9. Further, the properties belong to the petitioners' father's mother as well as the petitioners' father's sister also were not brought for auction sale. Therefore, the directions sought for in this writ petition cannot be considered. As such, this writ petition is devoid of merits and liable to be dismissed. Accordingly, this writ petition is dismissed. The respondents are at liberty to proceed with the execution of the surcharge award in the manner known to law. There shall be no order as to costs.

26.09.2024
(2/2)

Neutral citation:Yes/No
Index: Yes/No
Speaking/Non-speaking order
lok

To

1.The Deputy Registrar of Cooperative Societies,

12/14

<https://www.mhc.tn.gov.in/judis>



W.P.No.28739 of 2024

- Sangagiri,
Salem District
2.S.877, Vellarivelli Primary Agricultural Co-operative
Credit Society Ltd.,
Rep. By its Administrator,
Vellarivelli, Edappadi Taluk,
Salem District
3.The Co-operative Sub Registrar/Sale Officer,
S.877, Vellarivelli Primary Agricultural Co-operative
Credit Society Ltd.,
Vellarivelli,
Edappadi Taluk,
Salem District

G.K.ILANTHIRAIYAN, J.

lok



WEB COPY



W.P.No.28739 of 2024

W.P.No.28739 of 2024

26.09.2024

(2/2)