



W.P(MD).No.17234 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P(MD).No.17234 of 2024

and

W.M.P(MD).No.14848 of 2024

Ramasamy

... Petitioner

Vs.,

1.The Deputy Registrar,
Office of the Deputy Registrar of
Co-operative Society, Srivilliputhur.

2.The President,
Sp.Spl.68 Kalaiyarkurichy Primary Agricultural
Co-operative Credit Society Limited,
Kalaiyarkurichi, M.Pudupatti Post,
Sivakasi Taluk, Virudhunagar District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to impugned demand notice made in Ni.Ma.No.7/2022-2023 dated 24.05.2024 passed by the first respondent and quash the same.

For Petitioner	: M/s.Viji
For R-1	: Mr.M.Senthil Ayyanar Government Advocate



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ORDER

The writ petition has been filed to quash the demand notice made in Ni.Ma.No.7/2022-2023 dated 24.05.2024 and the impugned sale notice in Ni.Ma.No.7/2022-2023 dated 02.07.2024 passed by the first respondent.

2. It is the case of the petitioner that he was appointed as Secretary on 29.02.1987 in the second respondent Society. However, during the stock verification, it is alleged that there was a deficit in the cash assets to meet the liabilities of the creditors to the tune of Rs.25,59,985/-. The petitioner paid the said deficit cash assets to the second respondent Society, immediately after the inspection, by borrowing money from his close relatives. He was also placed under suspension from the year 2017 and besides, he was issued with sur-charge proceeding under Section 87(1) of the Tamil Nadu Co-operative Societies Act (hereinafter referred to as 'the Act') 1983. In pursuant to the sur-charge proceeding, the property of the petitioner is brought under auction and the same has now been challenged.



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3. According to the learned counsel for the petitioner, before sale, the property ought to have been attached, which was not done so as per Rule 126 of the Tamil nadu Co-operative Society Rules, 1988. Therefore, the entire sale is void in law.

4. The learned counsel appearing on behalf of the first respondent would submit that the attachment is already passed on 23.05.2017 in execution petition in C.E.P.No.1850/17/Nima and the same has been challenged before this Court in W.P(MD).No.10837 of 2017. This Court, by order dated 26.04.2024, dismissed the said writ petition, granting liberty to the petitioner to challenge the proceeding issued under Section 87 of the Act.

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

6. A perusal of Rule 126 of the Tamil Nadu Co-operative Society Rules shows that the property should be attached before sale. The fact remains that in CEP proceedings, the property has already been attached, which has also been challenged before this Court and the same is dismissed. When the sur-charge proceeding has already been reached finality, without challenging the same, now,



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on technical ground the petitioner cannot come before this Court by way of certiorari. When the matter came up 'for admission', this Court asked the petitioner to deposit a sum of Rs.20,00,000/-, however, the learned counsel for the petitioner took adjournment in order to get instructions in this regard.

7. Today, when the matter is taken up for hearing, the learned counsel for the petitioner would submit that the petitioner is not in a position to pay that amount and he will not alienate the property.

8. The very purpose of sale itself is to realize the amount to the society. In such view of the matter, since attachment is already passed in CEP proceedings, this Court is of the view that there is no separate attachment be required and it should be brought under sale as contemplated Rule 126 of the Tamil Nadu Co-operative Society Rules.

9. It is reported before this Court that the petitioner has already challenged the sur-charge proceeding in C.M.A.(MD)No.31 of 2024 before the Principal District Court, Srivilliputhur. The said statement is recorded.



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10. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

07.08.2024

NCC : Yes/No
Index : Yes/No

Rmk

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N.SATHISH KUMAR, J.

Rmk

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