



W.P.(MD).No.20943 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD).No.20943 of 2015

and

M.P.(MD)Nos.1 and 2 of 2015 &

W.M.P.(MD)No.2354 of 2016

Minor.Balaji

...Petitioner

Vs

1.The Deputy Registrar of Cooperative Societies,
Palani Circle,
Raja Nagar, Palani,
Dindigul District.

2.The Secretary,
A.2205, Veeralapatty Primary Agricultural
Co-operative Credit Society,
Veeralapatty,
Oddanchatram Taluk,
Dindigul District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari, calling for the records from the first respondent in his proceedings dated 01.10.2015 and auction sale notice in CEP No.279/06-07 dated 27.10.2015 and quash the same.



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For Petitioner : Mr.N.Sathish Babu
For R-1 : Mr.J.K.Jayaselan
Government Advocate
For R-2 : No Appearance

ORDER

The challenge in this Writ Petition is to the order dated 01.10.2015, passed by the first respondent, rejecting the petitioner's challenge to set aside the demand notice in E.P.No.279/2006-2007, which was issued to the petitioner's mother, a judgment debtor in the surcharge proceedings dated 08.04.2015, and the subsequent communication of the order of attachment dated 27.10.2015, which was also issued in the name of the petitioner's mother.

2. A primordial contention of the learned counsel for the petitioner is that the land belongs to the petitioner, having been acquired by him through two settlement deeds executed by his mother. Under one settlement deed, the mother of the petitioner had settled the property that had earlier been settled by the petitioner's deceased father as early as in the year 2003. He would further submit that during the proceedings in



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response to the demand notice, the petitioner had stated that the properties belonged to him. However, the first respondent erroneously held that the properties continued to belong to the petitioner's mother, rather than the petitioner. When the petitioner had demonstrated that he is the owner of the property, the impugned auction notice issued by the first respondent was erroneously addressed to the petitioner's mother, rather than the petitioner himself, who is the actual owner of the property. He would further submit that, with regard to the first item mentioned in the property, even according to the respondents' allegations, the said property could not have been acquired by the petitioner's mother using the proceeds of the alleged misappropriation. This is because the property was purchased by the petitioner's father and had been settled in favour of the petitioner's mother as early as 2003. On this ground alone, he submits that the impugned orders would have to be set aside. That apart he would also submit that once the respondents were aware that the property stood in the name of the petitioner, they were obligated to issue notice to him. Without issuing such notice, they could not have proceeded further. Therefore, he seeks the interference of this Court.



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3. Countering his arguments, the learned Government Pleader appearing on behalf of the respondents submitted that the petitioner's mother had committed misappropriation of the society's funds, along with other individuals, prompting the initiation of surcharge proceedings against her. She was found guilty of misappropriation and is therefore liable to make good the loss inflicted upon the second respondent society. He would submit that the transactions made by the mother of the petitioner are all sham and nominal, and therefore, the petitioner's claim that the land belongs to him is solely intended to defeat the interests of the second respondent society, and as such, should not be entertained by this Court.

4. I have considered the submissions made on either side and perused the materials available on record.

5. Admittedly, three items of properties were included in the demand notice as well as the auction notice. The petitioner's mother had executed two settlement deeds in favour of the petitioner, one on



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15.06.2011 and the other on 14.08.2015. A perusal of the sale deed dated

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2011 reveals that the petitioner's mother was settled with the property purchased by the petitioner's father as early as 2003, which is well before the period of alleged misappropriation by the petitioner's mother. Therefore, the said property cannot be considered a self-acquired property of the petitioner's mother. On this ground alone, the said property ought not to have been included in either the demand notice or the auction notice. Further, since the petitioner had made it clear that the property stood in his name, appropriate notice should have been issued to him before proceeding any further. As per the Act and Rules, if the property in question belongs to someone other than the person against whom surcharge proceedings have been concluded, it is imperative that the authority provide findings to justify proceeding against the property, specifically determining whether the property was acquired using the misappropriated funds. In the present case, there are no findings to justify proceeding against items 2 and 3, which were settled in favour of the petitioner by his mother in 2015. Hence, the impugned orders are set aside with respect to the properties covered under the settlement deeds of 2011 and 2015. The matter is remitted back to the respondents for fresh



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consideration, with directions to follow the due process of law as prescribed under the Act and relevant Rules.

6. In fine, the Writ Petition is allowed on the terms indicated above. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

04.12.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To:

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K.KUMARESH BABU, J.

Nsr

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