



W.P.(MD) No.24149 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD) No.24149 of 2024
and W.M.P.(MD)No.20432 of 2024

Saravanan

... Petitioner

Vs.

1.The District Registrar,
Deputy Registrar of Co-operative Societies,
Thoothukudi Circle,
Thoothukudi.

2.The Sub Registrar of Co-operative Societies,
Thoothukudi.

3.Johnson.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus to declaration to declare the auction sale conducted by the respondents 1 and 2 pursuant to the auction notice issued by the second respondent in his proceedings in Ni.Ma.No.01/2024-25 dated 19.09.2024, in respect of the house property measuring to an extent of 585 sq.ft comprised in Survey No.44/1C30, situated at Kandasampuram Village, Thiruchendur Taluk, Thoothukudi on 23.09.2024 as null and void.



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For Petitioner : Mr.T.Dhandapani
For R1 & R2 : Mr.A.Kannan,
Additional Government Pleader

ORDER

This Writ Petition is filed for issuance of writ of mandamus to declare the auction sale conducted by the respondents 1 and 2 pursuant to the auction notice issued by the second respondent in his proceedings in Ni.Ma.No.01/2024-25 dated 19.09.2024, in respect of the house property measuring to an extent of 585 sq.ft comprised in Survey No.44/1C30, situated at Kandasampuram Village, Thiruchendur Taluk, Thoothukudi on 23.09.2024 as null and void.

2.Mr.A.Kannan, learned Additional Government Pleader takes notice for the respondents 1 and 2.

3.With the consent of the learned counsel appearing for the petitioner and the learned Additional Government Pleader, this Writ Petition is taken up for final disposal at the time of admission itself. Notice to the third respondent is dispensed with.

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4. The brief facts which gave rise to the case are that:

(i) The petitioner has been employed as a writer in the O.344 Palayakayal Primary Agriculture Co-Operative Credit Society, Thoothukudi since 1996. The second respondent *vide* his proceedings Na. Ka.4252/2022/SaPa, dated 28.02.2023 concluded that there was an embezzlement of the society's funds to the tune of Rs.73,55,748/- and alleged his indulgence in such inappropriate activity.

(ii) The petitioner elaborately enunciated the happenings and maladministration in the society with justified reasons, but, the 1st respondent shunned the explanations and vide his proceedings Na.Ka.4253/2022/Sa.Pa, dated 27.08.2023 invoked section 87 of the Tamil Nadu Co-Operative Societies Act, 1983 and initiated the recovery proceedings.

(iii) Challenging the said order, the petitioner filed a writ petition in W.P. (MD) No.3992 of 2024. On 21.02.2024, this Court directed the petitioner to file an appeal against the said order within a period of three weeks. This Court, after



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directing the petitioner to file an appeal, directed the first respondent not to proceed with the surcharge proceedings.

(iv) Since the petitioner was arrested on the basis of the first respondent's complaint, he failed to file an appeal within the stipulated time. After the petitioner was released on bail, he filed petition for extension of time before this Court. This Court granted two more weeks to file appeal. Accordingly, the petitioner filed appeal before the Co-operative Tribunal, Thoothukudi in CMA.No.15 of 2024 is pending for consideration.

(v) The petitioner filed a writ petition before this Court in W.P.(MD) No. 19523 of 2024 for challenging the auction notice. On 14.08.2024, when the writ petition came up for hearing, this Court stayed the order subject to the condition that the petitioner shall deposit a sum of Rs.20,00,000/- within a period of 2 weeks and if he fails to do so, the respondents are at liberty to proceed with the auction.

(vi) Since the petitioner was not able to mobilize money, he requested the second respondent to grant him a month time to pay the money. Without



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responding to the petitioner's request, the second respondent passed the impugned order by fixing the auction by 03.09.2024. Aggrieved over said order, the petitioner filed a writ petition in W.P.(MD) No.21201 of 2024 before this Court. In the meantime, on 03.09.2024, the said auction was cancelled by the respondents 1 and 2. Hence, on 05.09.2024, the petitioner withdrew the said writ petition.

(vii) The second respondent vide his proceedings Ni.Ma.No.01/2024-25 dated 19.09.2024 brought the property for auction to be held on 23.09.2024. The third respondent participated and quoted meagre bid amount of Rs.13,00,000/-. Since no one participated in the auction, except the third respondent, the property was sold to him. The entire auction conducting by the respondents 1 and 2 is illegal.

5.The learned counsel appearing for the petitioner would submit that the petitioner was unable to comply with the conditional order passed by this Court in WP.(MD)No.19523 of 2024. The second respondent brought the property for auction on 23.09.2024 and the first respondent sold the property to the third



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respondent for a meager bid of Rs.13,00,000/-. Except the third respondent, no one has participated in the auction. From this, it is evident that the first and second respondents colluded with the third respondent and sold the property. The first and second respondent with malafide intention brought the petitioner's property for auction. He would further submit that Rule 119 of the Tamil Nadu Cooperative Societies Rules, 1988, mandates the second respondent to issue demand notice before issuing auction notice and failure to follow the procedure under the statutory Rule would vitiate the entire proceedings.

6.Per contra, the learned Additional Public Prosecutor appearing for the first and second respondents would contend that the petitioner has challenged the Surcharge proceedings in WP.(MD)No.3992 of 2024 before this Court. This Court, vide order dated 21.02.2024 dismissed the said writ petition by giving liberty to file an appeal before the Co-operative Tribunal. The petitioner has also chosen to challenge the auction notice in WP.(MD)No.19524 of 2024 before this Court. This Court, vide order dated 14.08.2024, has passed a conditional order to deposit a sum of Rs.20,00,000/-, within two weeks. Further, the petitioner also challenged the auction notice in WP.(MD)No.21201 of 2024 before this Court and



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the same was withdrawn by the petitioner on 05.09.2024. The first and second respondents have followed the procedures contemplated under the Co-operative Societies Rules. The petitioner, in the habit of filing writ petitions one after another, is dragging the proceedings. If the petitioner really aggrieved over the sale proceedings, then, he may take his remedy before the District Registrar as per Rule in Tamil Nadu Co-operative Societies Rules.

7.This Court has given its careful consideration to the submissions made on either side and perused the records available before this Court.

8.A perusal of records, it is seen that the petitioner has challenged the Surcharge order passed under Section 87 of the Tamil Nadu Co-operative Societies Act in WP.(MD)No.3992 of 2024. This Court vide order dated 21.02.2024 granted liberty to the petitioner to file an appeal before the Co-operative Tribunal. The petitioner has also challenged the sale notice issued by the first and second respondents to bring the petitioner's property for auction in WP.(MD)No.19523 of 2024. This Court vide order dated 14.08.2024, has granted interim stay of the proceedings on condition that the petitioner should deposit a



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sum of Rs.20,00,000/- to the first and second respondents, within a period of two weeks from the date of receipt of copy of that order and if the said conditional order has not been complied with, the respondents are at liberty to proceed further with the auction on the basis of the notice already issued as per law. Thereafter, the petitioner has challenged the impugned order passed by the first respondent in his proceedings in Ni.Ma.No.01/2024-25 dated 30.08.2024, in WP.(MD) No.21201 of 2024. The petitioner had withdrawn the said writ petition on 05.09.2024 and hence, the first and second respondents were given liberty to proceed as per law.

9.It is learnt that in obedience to the directions of this Court vide order dated 14.08.2024 and 05.09.2024, the first and second respondents have proceeded further and brought the property for auction. When the petitioner is having a remedy to challenge the auction conducted by the first and second respondents, before the District Registrar, in accordance with the Rules prescribed under Tamil Nadu Co-operative Societies Rules, preferring writ petitions one after another before this Court is not proper. Hence, this Court concludes that this petition is devoid of merits and deserves dismissal.



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10.In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No
apd/CM

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To

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Thoothukudi Circle,
Thoothukudi.

2.The Sub Registrar of Co-operative Societies,
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M.JOTHIRAMAN, J.

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