



W.P.No.32475 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2025

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.32475 of 2024

U. Saraswathi

... Petitioner

Vs.

1. The Deputy Registrar of
Cooperative Societies
Tindivanam Circle, Tindivanam
Villupuram District.
2. The Registrar/Authorised Officer,
O/o.The Deputy Registrar of Cooperative
Societies Tindivanam Circle,
Tindivanam,
Villupuram District.
3. The Administrator,
Jakkampettai Primary Agricultural
Cooperative Credit Society
Jakkampettai, Thenpassar Post,
Tindivanam Taluk,
Villupuram District.

4. K.Ulaganathan

... Respondents



W.P.No.32475 of 2024

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the entire records relating to the impugned order passed by the 2nd respondent in his proceedings No.Nil dated 10.10.2024 and quash the same.

For Petitioner ... Mr.C.Prakasam

For Respondents ... Mr.S.Ravikumar
Special Government Pleader

ORDER

This writ petition has been filed for issuance of a Writ of Certiorari to call for the entire records relating to the impugned order passed by the 2nd respondent in his proceedings No.Nil dated 10.10.2024 and quash the same.

2. In the affidavit filed in support of the writ petition it had been contended that the husband of the writ petitioner was working as Secretary in Jakkampettai Primary Agricultural Cooperative Society, Jakkampet, Thenpazar Post, Tindivanam Taluk, Villupuram district. The said society had been impleaded as the third respondent. It had been



W.P.No.32475 of 2024

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stated that the first respondent had initiated surcharge proceedings against the husband of the writ petitioner under Section 87 (1) of the TNC Societies Act, 1983 on 11.08.2025 for recovery of a sum of Rs.5,86,092/-. Under the impugned notice which had been issued under Rule 119 read with 126 of the Tamil Nadu Cooperative Societies Rules, 1989, it had been stated that if the petitioner does not re-pay the debt amount, her property which had been described as land in S.No.22/18 measuring 0.05 cents in Jakkampettai Village, Mullai nagar, Tindivanam taluk along with the constructed house, would be brought for sale.

3. It is the contention of the petitioner that this particular property had been purchased by her in the year 1989 from one Janakiraman and others by a sale deed registered as Document No.77/89. It had been claimed that she had been in exclusive possession of the same and had enjoyed it with the children. It had been stated that this property is sought to be brought in auction by the 2nd respondent.

4. The learned counsel for the petitioner contended that the



W.P.No.32475 of 2024

WEB COPY

surcharge notice itself was issued only in the year 2005 and therefore the property which had been purchased in the year 1989 could not be attached or brought for sale by the respondents. It had been contended that only if it is established that the property had been purchased or obtained from and out of the misappropriated amount or tainted amount could it be attached or brought for sale by the respondents. The learned counsel asserted that the petitioner herein had independently purchased the property in the year 1989 much much earlier to the surcharge notice of the year 2005. It is therefore contended that the impugned order should be quashed.

5. The learned Special Government Pleader appearing on behalf of the respondents however contended that the husband of the petitioner had been working as Secretary from the year 1978 onwards. It had also been contended that questioning the order passed a Civil Miscellaneous Appeal had been filed before the Principal District Court at Villupuram and an order adverse to the petitioner had been passed. It had been stated that Rule 119 of the Tamil Nadu Co-operative Societies Rules, 1988 would



W.P.No.32475 of 2024

apply for execution of a decree and therefore stated that the writ petition is not maintainable and has to be dismissed.

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

7. The petitioner has questioned the auction notice issued by the 2nd respondent whereby the 2nd respondent had proposed to put up for auction property at S.No.22/18, Mullai Nagar, Jakkampettai Village, Tindivanam taluk and for this purpose had issued a notice under Rule 119 read with rule 126 of the Tamil Nadu Cooperative Societies Rule 1989. It is the contention of the learned counsel for the petitioner that this property was purchased in the year 1989. It had been further contended that surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983 had been initiated against the husband of the petitioner only in the year 2005 and therefore this particular property which had been purchased much earlier could not be brought to auction to satisfy the decree obtained pursuant to the surcharge notice.



W.P.No.32475 of 2024

WEB COPY

8. In effect, the petitioner claims that her property is independent of the misappropriated amount alleged by her husband. The Rule 135 of the Tamil Nadu Cooperative Societies Rules, 1988 is as follows:-

135. Investigation of claims and objections to attachment of property:-

1. where any claim is preferred to, or any objection is made to, the attachment of any property attached under these rules on the ground that such property is not liable to such attachment, the sale officer shall investigate the claim or objection and dispose of it on merits;

2. where the property to which the claim or objection relates has been advertised for sale, the sale officer may postpone the sale pending the investigation of the claim or objection.

3. where a claim or an objection is preferred, the party, against whom an order is made by the sale officer, may institute a suit within six months from the date of the order to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order made by the sale officer shall be conclusive.

4 (a) any deficiency of price which may happen on a resale held under sub-rule (16) of rule 121 or clause (k) or (n) of sub-rule (2) of rule 126 by reason of the purchaser's default and all expenses attending such resale shall be certified by the sale officer to the Registrar and shall at the instance of either the decree holder



W.P.No.32475 of 2024

or the judgment debtor be recoverable from the defaulting purchaser under the provisions of these rules. The costs, if any, incidental to such recovery shall also be borne by the defaulting purchaser.

(b) where the property may, on the second sale, fetch higher price than at the first sale, the defaulting purchaser at the first sale shall have no claim to the difference or increase.

The said Rule provides for any claim to be preferred before the sale officer and place an obligation on the sale officer to conduct an investigation on the claim petition. Sub Rule 2 also provides that pending such investigation any sale which is proposed to be brought should be postponed till conclusion of the investigation. Sub Rule 3 also provides that any order passed by the sale officer could be challenged by way of a civil suit to be filed before the jurisdictional District Court within a period of six months from the date of the order. The petitioner may therefore prefer a claim petition under Rule 135 of the Tamil Nadu Cooperative Societies Rules, 1989 and an obligation is placed on the sale officer to adhere to the provisions of Rule 135 particularly to sub rule 2 and conduct investigation in an appropriate manner. The petitioner may raise



W.P.No.32475 of 2024

WEB COPY

all claims about her right to the property in the said claim petition.

9. Accordingly, the writ petition stands dismissed giving liberty to the petitioner to approach the sale officer under Rule 135 of the Cooperative Societies Rules, 1988. No costs. Consequently connected miscellaneous petitions are also closed.

23.01.2025

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Neutral Citation: Yes/No

Index: yes/no

Speaking Order/Non-Speaking Order

C.V.KARTHIKEYAN, J.



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W.P.No.32475 of 2024

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To

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W.P.No.32475 of 2024

23.01.2025