



W.P.(MD) No.16777 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.06.2025

CORAM

THE HON'BLE MR.JUSTICE C. SARAVANAN

W.P.(MD) No.16777 of 2025

and

W.M.P.(MD) No.12744 of 2025

K.Rajalingam

... Petitioner

Vs.

1.The Deputy Registrar of
Co-operative Societies,
Nagercoil.

2.S.Sairam

3.Y.48 Mylaudi Primary Agriculture
Co-operative Society,
Mylaudi Post,
Agastheeswaram Taluk,
Kanyakumari.

... Respondents

[R3 is *suo motu* impleaded *vide* order of the
court dated 20.06.2025]

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned Auction Sale Notice under Rule 126 of the Tamil Nadu Co-operative Societies Rules, 1988 in E.P.No.1/2022-23 dated 14.05.2025 passed by the first respondent, quashing the same as illegal



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and consequently directing the first respondent to raise the attachment made in respect of the petitioner's property.

For Petitioner : Mr.A.Arun Ramnath
for M/s.Spicy Law Firm

For R1 : Mr.K.R.Badurus Zaman
Government Advocate

For R2 : No appearance

For R3 : Mr.R.Maheswaran

ORDER

The petitioner has challenged the impugned Auction Notice proposing to auction the subject property, which was purchased by the petitioner on 22.09.2020 from the second respondent, who was then the President of the third respondent society.

2. It is the specific case of the petitioner that, despite the petitioner having filed an application under Rule 135(1) of the Tamil Nadu Co-operative Societies Rules, 1988 on 29.10.2020, the first respondent has issued the impugned Auction Notice dated 14.05.2025. It is submitted by the learned counsel for the petitioner that the subject property was attached only on 13.10.2020, and that the petitioner filed the said application on 29.10.2020 under Rule 135(1) of the Tamil Nadu Co-



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operative Societies Rules, 1988. However, the impugned Auction Notice dated 14.05.2025 has been issued, proposing to auction the aforesaid property purchased by the petitioner, on 27.06.2025 at 11:00 a.m.

3. The learned counsel for the petitioner places reliance on the decision of this Court in ***Sudharsingh v. The Deputy Registrar of Co-operative Societies, Thuckalay Circle, Thuckalay, Kanyakumari District and others***, reported in 2014 SCC OnLine Mad 6300.

4. That apart, the learned counsel for the petitioner submits that the impugned auction notice was issued in violation of Rule 126 of the Tamil Nadu Co-operative Societies Rules, 1988. It is submitted that, insofar as the attachment and sale of immovable property are concerned, specific reference is made to Rule 126(2)(d)(i) and (iv) of the said Rules. It is submitted that as per the said provisions, where attachment is required before sale, the officer shall, if possible, cause a notice of attachment to be served on the judgment-debtor personally, and such notice shall state that unless the amount due, along with interest and expenses, is paid within the time specified therein, the property shall be brought to sale.



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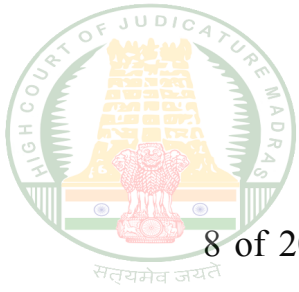
5. It is further submitted that, as per Rule 126(2)(f)(i) of the Rules, the first respondent is required to ensure that the sale shall be subject to the prior encumbrances on the property, if any.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate appearing for the first respondent and the learned counsel for the third respondent.

7. There is no doubt that proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, were initiated against the second respondent on 24.05.2019. Therefore, a surcharge proceeding was also initiated under Section 87 of the Act on 28.08.2019 against the second respondent, pursuant to the enquiry report dated 26.06.2019.

8. Pending the said surcharge proceedings, the petitioner purchased the property on 22.09.2020. The surcharge order was ultimately passed on 27.04.2021 against the second respondent and others.

9. The second respondent, along with others who had been proceeded against under Section 87 of the Act, has filed C.M.A. (CS) No.

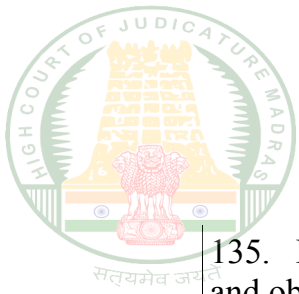


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8 of 2021. The learned Principal District Judge, Kanyakumari District at Nagercoil, by an order dated 13.12.2024, dismissed all three C.M.As., including the one filed by the second respondent.

10. Reference to Rule 135(1), Rule 126(2)(d)(i), Rule 126(2)(d)(iv), and Rule 126(2)(f)(i) of the Tamil Nadu Co-operative Societies Rules, 1988, is irrelevant. These provisions read as under:

Rule 135(1) of the Rules	Rule 126(2)(d)(i), (iv), and (f)(i) of the Rules
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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:

Provided that no such investigation shall be made when the sale office considers that the claim or objection is frivolous.

126. Procedure in attachment and sale of immovable property.

(1)

(2) In the attachment and sale or sale without attachment of immovable property, the following rules shall be observed:-

(a)

(b)

(c)

(d)(i) Where the attachment is required before sale, the officer shall, if possible, cause a notice of attachment to be served on the judgement-debtor personally.

(ii)

(iii)

(iv) The attachment notice shall set forth that unless the amount due with interest and expenses be paid within the date therein mentioned, the property shall be brought to sale.

(f) (i) When any immovable property is sold under these rules, the sale shall be subject to the prior encumbrances on the property, if any. The decree-holder shall, when the amount for the realization of which the sale is held exceeds one hundred rupees furnish to the Sale Officer within such time as may be fixed by him or by the Registrar an encumbrance certificate from the Registration department for a period of not less than twelve years-

(A) in case falling under the proviso to sub-rule (i) prior to the date of the application for execution; and

(B) in other cases prior to the date of attachment of the property sought to be sold.



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11. The petitioner, at best, can claim to be a bona fide purchaser of the property from the second respondent on 22.09.2020. Any proceedings to be initiated against the petitioner, either by the first respondent or the third respondent, should be in terms of Section 53 of the Transfer of Property Act, 1882, which reads as under:

53. Fraudulent transfer.—

- (1) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration. Nothing in this sub-section shall affect any law for the time being in force relating to insolvency. A suit instituted by a creditor (which term includes a decree -holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.
- (2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee. For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.



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12. The sale in favour of the petitioner by the second respondent on 22.09.2020, in the teeth of the report dated 26.06.2019 under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, and in the teeth of the initiation of surcharge proceedings under Section 87 of the Act on 28.08.2019, *prima facie* appears not to be *bona fide*. Therefore, the sale is *voidable* at the option of the third respondent, whose interest is represented by the first respondent, who was proceeding with the proposed auction under the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and the Tamil Nadu Co-operative Societies Rules, 1988.

13. Therefore, the auction proposed to be held tomorrow, i.e., on 27.06.2025, pursuant to the impugned Auction Notice, cannot be proceeded further in the absence of any proceeding before the civil court under Section 53 of the Transfer of Property Act, 1882.

14. As per Section 53 of the Act, a suit instituted by a creditor (the term 'creditor' includes a decree-holder, whether or not he has applied for execution of the decree), to avoid a transfer on the ground that it was



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made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

15. In such proceedings, it is open to the petitioner to prove that he is a *bona fide* purchaser, having purchased the property on 22.09.2020 in good faith and for valid consideration from the second respondent.

16. In the alternative, it is also open for the petitioner to seek a declaration that the purchase made by the second respondent in favour of the petitioner on 22.09.2020 was made in good faith and for valid consideration. Until the burden under Section 53 of the Transfer of Property Act, 1882 is discharged, no further sale or encumbrance of the property shall be allowed.

17. Under these circumstances, this Writ Petition is disposed of by quashing the impugned Auction Notice, with liberty to the petitioner, the first and third respondents to initiate appropriate proceedings under Section 53 of the Transfer of Property Act, 1882 before the civil court. This option shall be exercised within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected



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Miscellaneous Petition is closed.

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes/No

Speaking Order / Non-Speaking Order

To

The Deputy Registrar of Co-operative Societies,
Nagercoil.

Note: A copy of the order is directed to be sent to the Sub-Registrar
Office of the concerned jurisdiction.



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C.SARAVANAN, J.

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