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W.P.No.3536 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2026

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

W.P.No.3536 of 2019

B.A.Ponnusamy
S/o.late Appachi Gowder,
1/225, Old Kothamangalam,
Sathyamangalam Taluk,
Erode District.

... Petitioner

Vs.

1.The Deputy Registrar of Cooperative Societies/
Registrar of the District,
Gobichettipalayam,
Erode District.

2.The Sale Officer/Cooperative Sub Registrar,
Kothamangalam Primary Agricultural
Cooperative Credit Society K. 445,
Kothamangalam,
Sathyamangalam Taluk,
Erode District.

3.K.445, Kothamangalam Primary Agricultural
Cooperative Credit Society
rep. by its President,
Kothamangalam,
Sathyamangalam Taluk,
Erode District.

4.K.445, Kothamangalam Primary Agricultural
Cooperative Credit Society
rep. by its Secretary,

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Kothamangalam,
Sathyamangalam Taluk,
Erode District.

5.The Tahsildar,
Sathyamangalam Taluk,
Erode District.

(R5 – Suo motu impleaded as per order dated
09.12.2024 in W.P.No.3536 of 2019 by this Court) ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 17.11.2018 made in Ref: 'nil' passed by the respondents 3 and 4 jointly, quash the same and consequently direct the respondents to order refund of Rs.19,38,095/- with interest at the rate of 18% from the date of payment till realization from the sale price paid less the value for the actual extent sold in the public auction sale conducted on 03.02.2011, by considering the petitioner's representation dated 31.08.2018.

For Petitioner : Mr.Shrish
for Mr.N.Manokaran

For Respondents : Mr.L.S.M.Hasan Faizal for R1 & R5
Additional Government Pleader

Mr.Rajendran
for Mr.L.P.Shanmuga Sundaram for R2 to R4

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ORDER

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Heard Mr.Shrish for Mr.N.Manokaran for the petitioner, Mr.L.S.M.Hasan Faizal, learned Additional Government Pleader for R1 & R5 and Mr.Rajendran for Mr.L.P.Shanmuga Sundaram for R2 to R4.

2.Shorn off all unnecessary facts, the necessary facts for disposing the case are as follows:

2.1.The property situated in S.F.Nos.42/6, 42/7, 42/8, 43/1 and 44/3 of Kothamangalam Village, Sathyamangalam Taluk, Erode District belonged to one, Murugesan. The said Murugesan was the Secretary of the 3rd and 4th respondent Society. During the course of his employment, he had misappropriated funds belonging to the Society. The 1st respondent herein initiated proceedings under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter referred to as 'TNCS Act'), which indicated the misappropriation by Murugesan. Consequently, the 1st respondent initiated surcharge proceedings under Section 87 of TNCS Act, which ended in favour of the Society. An amount of Rs.1,07,21,563/- was fastened on Murugesan. This was by way of an award dated 27.01.2009.



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2.2.Since Murugesan did not discharge his liability under the award, the 1st respondent initiated proceedings for execution. A petition was filed in E.P.No.268 of 2002. An order of attachment was passed on that date. Despite the attachment, Murugesan did not discharge his liability. Consequently, the 2nd respondent brought the property for sale by auction. The property was sold on 03.02.2011. The writ petitioner participated in the same. He was successful in the auction and he purchased the property for a sum of Rs.91,05,000/-. He was also benefited with a sale certificate on 15.09.2011. After the registration of the sale certificate, possession was also handed over to him. The petitioner, on the strength of the sale certificate, mutated the revenue records in his favour. He obtained service connections for the property.

2.3.In the meantime, one, Neethipathi, claiming to be an agreement holder from Devi, the wife of Murugesan, presented a suit for specific performance of the said agreement of sale dated 04.01.2002. The suit, obviously, was a mock fight. It ended in the Court passing a consent decree on 10.01.2011. On the strength of the consent decree, Neethipathi filed an Execution Petition in E.P.No.5 of 2011 and got a Sale Deed executed in his favour on 04.11.2011. When Neethipathi attempted to make a claim over the property, the writ petitioner presented O.S.No.196

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of 2014, on the file of the learned District Munsif Court, Sathyamangalam. The relief sought in this suit was for a declaration that the Sale Deed executed in favour of Neethipathi is null and void. He also sought the consequential relief of an injunction restraining Neethipathi from interfering with the peaceful possession and enjoyment of the property. This suit did not see the light of trial. A compromise decree was passed on 04.07.2018. It is stated that in terms of the compromise, the petitioner had paid a sum of Rs.3,00,000/- to the said Neethipathi to purchase peace.

3.The petitioner states that one, Mani, expressed interest in purchasing the property, which he had obtained under the auction sale. He also executed a Sale Deed in favour of the said Mani on 22.02.2018. At that time, the purchaser Mani requested the petitioner to measure the property. It was only then, that the petitioner came to know that instead of owning 6.95 acres sold through the auction on 03.02.2011, what he had, in fact, been in possession of was only 5.47 acres. Hence, he sent a representation to the respondents on 31.08.2018 seeking a refund of Rs.19,38,095/- together with interest, and for a refund of 5% tax that he paid for the purchase of the property. On receipt of the representation, the respondents 3 and 4 replied that more than 7 years had lapsed from the

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date of auction till the date of notice hence, they are not in a position to refund the said amount to the petitioner. It is this order that is presently being challenged. This Court entertained the writ petition and ordered notice to the respondents. With the pleadings being completed, the matter was taken up for final disposal.

4.It is the plea of Mr.Shrish, that the 3rd and 4th respondents held out the extent of the property to be 6.95 acres at the time of auction, whereas, the petitioner ascertained only in 2018 that the area was, in fact, 5.47 acres. He states that, having pocketed the sale consideration for the extent of 6.95 acres, it is not open to respondents 3 and 4 to retain any amount in excess of what he is actually liable to pay for the extent purchased by him. He relies upon Section 55 of the Transfer of Property Act, 1882 and pleads that the purchaser is also entitled to certain rights, as is found under Section 55(6) of the said legislation. He also relies upon the report of the Tahsildar filed pursuant to the order of this Court dated 09.12.2024 which states that the difference between the extent auctioned by the Society and the extent purchased by the writ petitioner is 1.25 acres. Hence, he pleads that the impugned order be set aside and the Writ Petition be allowed with a direction to the respondents to refund the excess amount received by them.

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5.Per contra, Mr.L.S.M.Hasan Faizal, learned Additional Government Pleader for R1 & R5 and Mr.Rajendran for Mr.L.P.Shanmuga Sundaram for R2 to R4, plead that the petitioner has made a claim belatedly, that too, after a period of 7 years. They urge that the petitioner, being an auction purchaser, is bound by the *Doctrine of Caveat Emptor* and it is not open to him to make a claim so belatedly. Hence, they seek that the order be affirmed and the Writ Petition be dismissed.

6.I have carefully considered the submissions on both sides and I have gone through the records.

7.It is not in dispute that the purchase made by the petitioner was in an auction sale held under the provisions of the TNCS Acts and the Rules made thereunder. Unlike Order XXI Rule 91 of the Code of Civil Procedure, my attention has not been drawn to a similar provision under the TNCS Rules, enabling a party to seek to setting aside a sale on the ground that the judgment debtor had no saleable interest on the date of sale. In terms of Rule 126 of the TNCS Act, the sale of property is governed by Rule 126(2)(e)(i) onwards. The sale proclamation under Rule 126(2)(e)(iv) must state the time and place of sale and specify, as

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accurately as possible, the property to be sold, any encumbrances to which the property is liable, the recovery amount for which the sale is ordered, and every other matter the Sale Officer considers material for a buyer to know, in order to judge the nature and value of the property. The proclamation of sale under the TNCS Act is more or less similar to a proclamation of sale held by the Court under the Code of Civil Procedure.

8.I should point out here that in terms of Section 146 of the TNCS Act, the Registrar has been empowered with the same power as that of the Civil Court, while ordering any recovery of amount or attachment of sale or while passing any orders on the application made to him for such recovery. The jurisdiction of the Civil Court is barred, insofar as the matters that can be dealt with by the Registrar or any Officer authorized in this regard by the Act and the Rules, is concerned. The petitioner, being an auction purchaser, claims that he is entitled to the same benefit as a purchaser *inter vivos* under the Transfer of Property Act, 1882.

9.I am unable to accept this plea of Mr.Shrish for the simple reason that in the matters of auction sale, there is no warranty of title. The *Doctrine of Caveat Emptor* applies to such a sale. The 3rd and 4th respondents had indeed given a sale proclamation, stating that they are

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going to alienate 6.95 acres to any intended purchaser in a Court auction sale. The writ petitioner ought to have verified the extent by exercising due diligence, but he did not do so.

10. Having failed at that stage, an opportunity was given to him at the time of mutation of revenue records post the sale. Even at that time, the petitioner did not move an application for refund. In fact, he was happy with the sale certificate that was given to him. He moved the revenue authorities and got a patta on the basis of the sale certificate. He also obtained electricity and other service connection on the basis of the sale certificate and mutated records. This opportunity to point out that the variance between the extent under his occupation, and the extent that had been sold, could have been pointed out at several points. However, the petitioner failed to do so.

11. Further, as settled by the Supreme Court in *Amirtham Kudumbah vs Sarnam Kudumban, (1991) 3 SCC 20*, it is the duty of an auction purchaser to do all that is necessary before participating in an auction. Having missed the bus at that stage, the petitioner cannot seek to board the same, 7 years after the bus had already left the station.

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12.I do not want to rest my findings only on those pleas. As stated above, the petitioner had presented a suit against Neethipathi, the agreement holder from Devi, the wife of delinquent employee, Murugesan. In that suit, in O.S.No.196 of 2014, the petitioner had specifically urged in Paragraph Nos.IV (3) and V of the plaint, that he had taken possession of the property on the basis of the sale certificate, i.e., 3 years after the sale, he had approached the Court with a plea that he had taken possession of the extent mentioned in the schedule to O.S.No.196 of 2014. The extent mentioned in that suit is 6.95 acres, as is clear, from the schedule of property on Page No.24 of the typed set of papers. This shows that the plaintiff had staked a claim before the Civil Court, stating that he was in possession of 6.95 acres and successfully, obtained a compromise decree on 04.07.2018. I should point out here that the suit had been pending for more than a period of 4 years. Even at that stage, the petitioner did not raise his little finger on the extent of his holdings.

13.In addition to this, there is another crucial factor that I have to consider. The petitioner had alienated whatever extent he had purchased from the respondents 3 and 4, by way of a registered Sale Deed in favour of one, Mani, on 22.02.2018. In other words, on the date of demand for refund, the petitioner did not have any right, title, or interest over the

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property sold by the respondents. In fact, the petitioner did not have any right to title and interest when he had settled the matter with Neethipathi.

The latter action of the writ petitioner can be condoned, as he owed a duty to Mani, in terms of Section 55 of the Act, but the delay from 2011 till 2018 is too vast a time to condone.

14.Mr.Shrish placed reliance upon the two judgments in ***Mandava Krishna Chaitanya vs. UCO Bank, Asset Management Branch, 2018 SCC OnLine Hyd 196*** and in ***K.Palanichamy Gounder vs. Kandasamy Gounder and Others, (2022) 5 LW 46*** to assert that he has the right to seek a refund. This requires me to analyze these two judgments in detail.

14.1.In ***Mandava Krishna's*** case, a Division Bench of Andhra Pradesh High Court was called upon to decide whether the auction purchaser is entitled to a refund of the sale consideration, by declaring the auction sale, held by the respondent bank as illegal and void. In that case, the writ petitioner had participated in an auction and had purchased a house property for a valuable consideration. When he went to take possession of the property, he was shocked to know that the residential unit constructed therein was illegal and unauthorized. Apart from that, the very land on which the house had been constructed vested with the

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Government, as it was a surplus land so declared under the Andhra Pradesh Land Ceiling Act. Hence, he moved the Court for the aforesaid relief. The Hon'ble Mr. Justice Sanjay Kumar held that in terms of the Rules made under the SARFAESI Act, the bank is responsible not only to get the best price for the property, but also owes a duty to ensure that a tainted property is not sold in auction. In this case, it is not the argument of Mr. Shrish that Murugesan did not have title to the property. Neither in his case was the land, which is the subject matter of the sale, taken over by the Government for which no saleable interest was available to Murugesan. It was in those circumstances that the Division Bench of Andhra Pradesh High Court came to the conclusion that, as a property vested with the Government had been sold, as if it was the property of the debtor, the sale certificate was not worth the paper on which it was written.

14.2. Another crucial distinguishing factor between that case and the one at hand is that, the petitioner therein had repudiated the entire auction sale and wanted a refund. However, in this case, the writ petitioner is not repudiating the entire sale. He is standing by the sale executed by him in favour of Mani, and only pleads that he is entitled to a refund insofar as the difference in extent is concerned. These two factors

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constrain me to hold that the judgment of Andhra Pradesh High Court does not come to the rescue of Mr.Shrish.

14.3.The next judgment is ***K.Palanichamy Gounder's*** case, where, the issue dealt with by the learned Single Judge was whether there existed an auction purchaser to seek partition *vis-a-vis* other co-owners and co-sharers. During the course of answering the said issue, the learned Single Judge held that the mode of acquisition, either through an auction purchase, or through sale *inter vivos*, does not affect the right of the purchaser to seek a partition. This is clear from Paragraph No.18.2(b), where he held that once the title to an immovable property is vested with the purchaser, there cannot be a discrimination between a purchaser in a Court auction sale and one in an *inter vivos* based on the mode of acquisition. I have absolutely no quarrel with the settled proposition of law that had been laid down by Hon'ble Mr.Justice N.Seshasayee. Unfortunately for Mr.Shrish, Paragraph No.20 reiterates the settled position of law that in a Court auction sale, there is no warranty of title of the judgment debtor. This judgment relied upon by Mr.Shrish, instead of going in his favour, unfortunately, is against him.



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15.In the light of the above discussion, I am not in a position to entertain the Writ Petition, especially when the claim was made after a lapse of nearly 7 years. Though there is no period of limitation for filing a Writ Petition, the Supreme Court, in ***State Of Madhya Pradesh vs Bhailal Bhai & Ors, AIR 1964 SC 1006*** has held that the Court must take into consideration the period fixed under the Limitation Act for the purpose of considering a Writ Petition.

16.If the cause of action arose for the petitioner in the year 2011, filing a Writ Petition in 2019 is hopelessly barred. If he could not have maintained a suit for recovery of money after the lapse of 3 years, certainly, he is not entitled to maintain a Writ Petition after a lapse of 7 years. The Writ Petition is dismissed. No costs.

10.02.2026

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No

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To

WEB COPY

1.The Deputy Registrar of Cooperative Societies/
Registrar of the District,
Gobichettipalayam,
Erode District.

2.The Tahsildar,
Sathyamangalam Taluk,
Erode District.



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V.LAKSHMINARAYANAN, J.

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