

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.04.2015

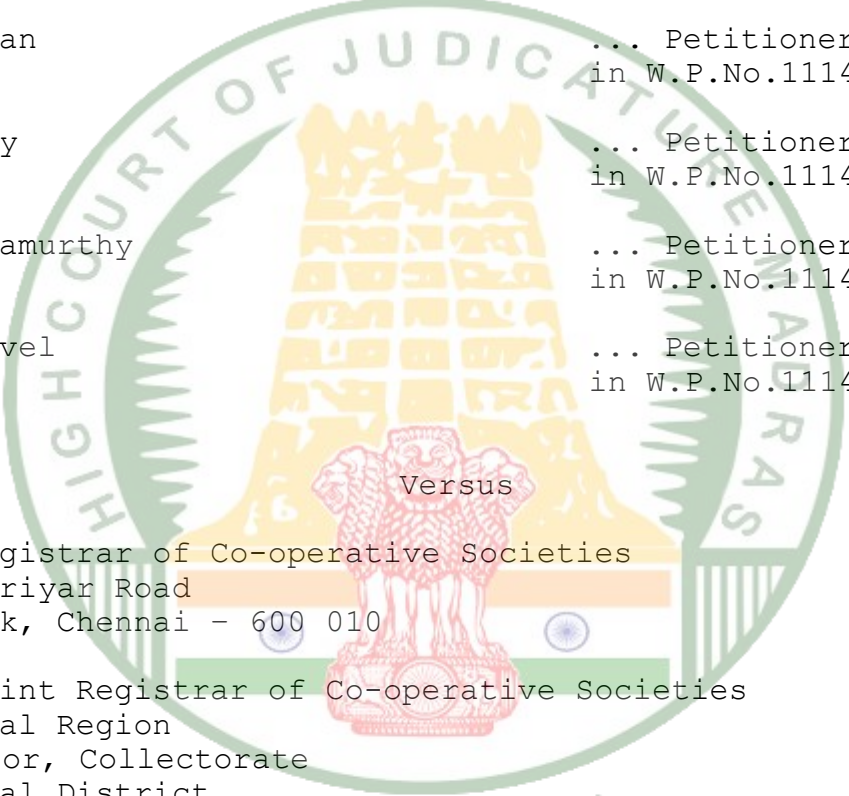
CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.Nos.11143 to 11146 of 2015

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M.P.Nos.1 to 1 of 2015

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1. E.Murugan ... Petitioner
in W.P.No.11143 of 2015
- 2.K.Mythily ... Petitioner
in W.P.No.11144 of 2015
- 3.A.Krishnamurthy ... Petitioner
in W.P.No.11145 of 2015
- 4.S.G.Manivel ... Petitioner
in W.P.No.11146 of 2015

Versus

1. The Registrar of Co-operative Societies
EVR Periyar Road
Kilpauk, Chennai - 600 010
2. The Joint Registrar of Co-operative Societies
Namakkal Region
2nd Floor, Collectorate
Namakkal District
3. The Deputy Registrar of Co-operative Societies
R.M.S. Complex
Trichy Main Road
Namakkal
4. The Co-Op Sub Registrar/Executive Officer
S.336, Nachipatti Primary Agricultural
Credit Society Limited
Nachipatty, Namakkal District
5. The Co-Op, Sub-Registrar/Field Officer
Vennandur, Rasipuram Circle
Namakkal District

6. The Sub-Registrar
Mallasamudhuram
Trichengode Circle
Namakkal District

... Respondents
in all the petitions

Prayer in W.P.No.11143 to 11146 of 2015: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking issuance of a Writ of Certiorarified Mandamus calling for records on the file of the third respondent relating to the order issued in C.E.P.No.1/2015/SF (1), (5), (8), (6) Respectively dated 09.04.2015 and to quash the same and consequently direct the sixth respondent not to make any encumbrance on the attached properties of the petitioners.

For Petitioners : Mr.R.Chandrasekaran

For Respondents : Mr.D.Venkatachalam
Government Advocate

O R D E R

By consent, the writ petitions itself are taken up for final disposal.

2. In W.P.No.11143 of 2015, the petitioner claims that he was the one of the elected members of the third respondent society and subsequently got elected as President. It is his claim that he is rendering his services "for improvement and development of the society in all aspects". The petitioner would further state that Co-Operative Sub-Registrar, Office Assistant, Village Administrative Officer of Vennandur area and police constables came to his residence and served a notice issued by the third respondent dated 09.04.2015 by force and similar notices were served on 6 other Board of members also. In the said notice it has been mentioned that as per Petition No.1/2015-16 filed by the fourth respondent herein, a sum of Rs.6,84,506/- has been misappropriated, for which 7 Board of Directors of the society were held responsible and recover the same before passing of decree. It is further informed that security for the said amount should be furnished on or before 09.04.2015, failing which all the immovable properties of the petitioner would be attached. Aggrieved by the said order, the present writ petition has been filed.

3. In W.P.No.11144 of 2015, the petitioner claims to be an elected member of the third respondent society. The petitioner would state that Co-Operative Sub-Registrar, Office Assistant and

Village Administrative Officer of Vennandur area and police constables came to his residence and served a notice issued by the third respondent dated 09.04.2015 by force and similar notices were served on 6 other Board of members also. In the said notice, it has been mentioned that as per Petition No.1/2015-16 filed by the fourth respondent herein, a sum of Rs.6,84,506/- has been misappropriated for which 7 Board of Directors of the society were held responsible and recover the same before passing of decree. It is further informed that security for the said amount should be furnished on or before 09.04.2015, failing which, all the immovable properties of the petitioner would be attached. Aggrieved by the said order, the present writ petition has been filed.

4. In W.P.No.11145 of 2015, the petitioner claims to be an elected member of the third respondent society. The petitioner would state that Co-Operative Sub-Registrar, Office Assistant and Village Administrative Officer of Vennandur area and police constables came to his residence and served a notice issued by the third respondent dated 09.04.2015 by force and similar notices were served on 6 other Board of members also. In the said notice, it has been mentioned that as per Petition No.1/2015-16 filed by the fourth respondent herein, a sum of Rs.6,84,506/- has been misappropriated for which 7 Board of Directors of the society were held responsible and recover the same before passing of decree. It is further informed that security for the said amount should be furnished on or before 09.04.2015, failing which all the immovable properties of the petitioner would be attached. Aggrieved by the said order, the present writ petition has been filed.

5. In W.P.No.11146 of 2015, the petitioner claims to be an elected member of the third respondent society. The petitioner would state that Co-Operative Sub-Registrar, Office Assistant and Village Administrative Officer of Vennandur area and police constables came to his residence and served a notice issued by the third respondent dated 09.04.2015 by force and similar notices were served on 6 other Board of members also. In the said notice, it has been mentioned that as per Petition No.1/2015-16 filed by the fourth respondent herein, a sum of Rs.6,84,506/- has been misappropriated for which 7 Board of Directors of the society were held responsible and recover the same before passing of decree. It is further informed that security for the said amount should be furnished on or before 09.04.2015, failing which all the immovable properties of the petitioner would be attached. Aggrieved by the said order, the present writ petition has been filed.

6. Mr.Chandrasekaran, learned counsel appearing for the petitioner would submit that the impugned order is not in consonance with Section 167 of the Tamil Nadu Co-operative Societies Act, 1983 r/w. Rule 140 of the Tamil Nadu Co-Operative

Societies Rules as according to the impugned order dated 09.04.2015, the petitioner is called upon to furnish security for a sum of Rs.6,84,506/- on the very same date itself and thus it exhibits total non-application of mind on the part of the third respondent and hence on the sole ground, the impugned order warrant interference.

7. Per contra, Mr.D.Venkatachalam, who accepts notice for the respondents 1 to 5, would submit that the remedy, if any, would be to move the concern authority for raising the attachment or to file an appeal under Section 152 of the Co-Operative Societies Act and in the light of the effective alternative available, he prays for the dismissal of the present writ petition.

8. I have carefully considered the rival submissions.

9. It is relevant to extract Section 167 as well as Rule 140 of the Co-Operative Societies Act.

167. Furnishing of Security and attachment of property.-

(1) Where the Registrar is satisfied on the application of a registered society in respect of a reference made to him under sub-Section (1) of Section 90 or on the application of a liquidator appointed under Section 138 in respect of the proceedings of such liquidator for determining the contribution to be made by a person to the assets of the society under clause (b) of sub-section (2) of Section 139 or on the application of the board or liquidator or any creditor to the society or otherwise in respect of any inquiry ordered into the conduct of any person under Section 87 that any party to the reference or the person, as the case may be, is about to dispose of or remove from the local limits of the jurisdiction of the Registrar, the whole or any part of his property with intent to defeat or delay the execution of any decision that may be passed on the reference or of any order that may be passed against him by the liquidator or the Registrar, as the case may be, the Registrar may, by order, direct the party or the person to furnish security in such sum and within such time as may be specified in such order and to produce and place at the disposal of the Registrar when required, the said property or such part thereof as may be sufficient for the execution of any decision or order aforesaid.

(2) The Registrar may also in the order made under subsection (1), or by a separate order, direct the conditional attachment of the said property, or such part thereof and such attachment shall have the same effect as if it had been made by a competent Civil Court:

Provided that no order for conditional attachment

shall be made under this sub-section unless the Registrar, for the reasons to be recorded in writing, is satisfied that the whole or any part of the property will be disposed of or removed with intent to defeat or delay the execution of any decision or order of the liquidator or the Registrar, as the case may be.

"Rule 140. Mode of making attachment before judgment:

(1) Attachment of property under Section 167 shall be made in the manner provided in the foregoing rules of this chapter.

(2) Where a claim is preferred to property attached under sub-rule (1) such claim shall be investigated in the manner and by the authority specified in the foregoing rules of this chapter.

(3) Where a direction is made for the attachment of any property under sub-rule (1), the Registrar shall order the attachment to be withdrawn.-

(a) when the party concerned furnishes the security required together with the security for the cost of the attachment; or

(b) When the Registrar makes an order under sub-section (1) of Section 167 that the party concerned need not repay or restore any money or property or contribute any sum to the assets of the society by way of compensation; or

(c) when the dispute referred to in sub-section (1) of section 90 has been decided against the party at whose instance the attachment was made; or

(d) when the liquidator determines under clause (b) of sub-section (2) of section 139 that no contribution need be made by the party concerned.

(4) Attachment made under sub-rule(1) shall not affect the rights existing prior to the attachment of persons not parties to the proceedings in connection with which the attachment was made, not bar any person holding a decree against the person whose property is attached from applying for the sale of property under attachment in execution of such decree.

(5) Where property is under attachment by virtue of the provisions of this rule and a decree is subsequently passed against the person whose property is attached, it shall not be necessary upon an application for execution of such decree to apply for re-attachment of the property.

10. A perusal of the impugned order would disclose that in terms of Section 167(1), no order has been passed calling upon the petitioners to furnish security in such sum and within such time as

may be specified in such order and to produce and place at the disposal of the Registrar when required, the said property or such part thereof as may be sufficient for the execution of any decision or order aforesaid. Admittedly, the impugned order is dated 09.04.2015 and the petitioners were called upon to furnish security for the said sum on the very same date. According to the petitioners the notices were served on them by force on the very same date.

11. In the light of the said infirmity, it is not necessary for the writ petitioners to invoke the alternative remedy available as pointed by the learned counsel appearing for the respondents 1 to 5.

12. In the result, all the writ petitions are partly allowed and the impugned order dated 09.04.2015 is set aside and the matter is remitted back to the third respondent for fresh adjudication in accordance with Section 167 of the Tamil Nadu Co-Operative Societies Act r/w. Rule 140 of the Tamil Nadu Co-Operative Societies Rules. It is made clear that in the interregnum, the petitioners shall not alienate or encumber or create third party rights in respect of the immovable properties. The third respondent shall make every endeavour to pass fresh orders in terms of the above said provisions within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Registrar of Co-operative Societies
EVR Periyar Road
Kilpauk, Chennai - 600 010
2. The Joint Registrar of Co-operative Societies
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6. The Sub-Registrar
Mallasamudhuram
Trichengode Circle
Namakkal District

+4cc's to Mr.R.Chandrasekaran, Advocate,
S.R.No.20995 to 20997 & 20999
+1cc to the Government Pleader, S.R.No.21245

W.P.Nos.11143 to 11146 of 2015 &
M.P.Nos.1 to 1 of 2015

KV(CO)
CA(23/04/2015)



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