

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.1.2016

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.106 of 2016 and WMP.No.54 of 2016

R.Eswaran

...Petitioner

Vs

1.The Deputy Registrar of Cooperative Societies, Dharapuram, Tirupur District.

2.The President,
K.797 Kongalnagaram
Primary Agriculgural Cooperative
Credit Society,
Kongalnagaram (Post)
Udumalpet Taluk,
Tirupur District.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the entire records relating to the impugned order and notice both passed by the first respondent in his proceedings C.E.P.No.65/2015-2016/R.C.No.3294/2014/CS dated 31.8.2015 and quash the same.

For Petitioner : Mr.H.Rajasekar

For Respondent-1 : Mr.L.P.Shanmugasundaram, SGP

ORDER

Mr.L.P.Shanmugasundaram, learned Special Government Pleader takes notice for the first respondent. Heard the learned counsel for the petitioner. In view of the nature of relief to be granted, the writ petition itself is taken up for final disposal without ordering notice to the second respondent.

2. The petitioner was working as a Senior Inspector in the second respondent society and due to certain allegations, the first respondent has commenced enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter referred to as the Act). During the pendency of such enquiry, the first

respondent invoked the powers under Section 167(2) of the Act and passed the impugned order of attachment, attaching the petitioner's immovable properties. Therefore, the petitioner is before this Court.

3. The challenge to the impugned order dated 31.8.2015 is on the short ground that the notice under Section 167(1) of the Act was issued on 31.8.2015 and on the same day, the impugned order of attachment was passed under Section 167(2) of the Act. In fact, an identical issue was considered by this Court in E.Murugan & Others Vs. The Registrar of Cooperative Societies & Others [W.P.Nos.11143 to 11146 of 2015 dated 17.4.2015] and while considering the scope of Section 167 of the Act read with Rule 140 of the Cooperative Societies Rules, 1988, it has been held as follows :

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

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 9.4.2015 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 read with 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."

4. The said order was followed subsequently in W.P.Nos.38843 and 38844 of 2015 dated 10.12.2015. It is not disputed by the first respondent that the issue involved in this writ petition is squarely covered by the above said decision.

5. Accordingly, the writ petition is partly allowed, the impugned order dated 31.8.2015 passed under Section 167(2) of the Act is set aside and the matter is remitted back to the first respondent for fresh adjudication in accordance with

Section 167 of the Act read with Rule 140 of the said Rules. In the interregnum, the petitioner shall not alienate or encumber or create third party rights in respect of the immovable properties in question. The first respondent shall pass orders in terms of the provisions of law within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Registrar of Cooperative Societies,
Dharapuram, Tirupur Dist.

2.The President, K.797 Kongalnagaram Primary
Agricultural Cooperative
Credit Society, Kongalnagaram (Post),
Udumalpet Taluk, Tirupur District.

+ 1 cc to Mr.L.P. Shanmugasundaram, Advocate Sr.1068
+ 1 cc to Mr.H. Rajasekar, Advocate Sr.804
+ 1 cc to Government Pleader SR.978

WP.No.106 of 2016 &
WMP.No.54 of 2016

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