

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.04.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.4557 of 2017  
and  
W.M.P.No.4865 of 2017

P.Saraswathi

.. Petitioner

/versus/

1.The Deputy Registrar of Co-operative Societies,  
Tindivanam Circle,  
Tindivanam.

2.Oongur Primary Agricultural Co-operative Society,  
Rep.by its Secretary,  
Oongur Post,  
Tindivanam Taluk,  
Villupuram District.

3.K.Perumal

4.The Sub Registrar,  
Tindivanam, Villupuram District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the order of attachment passed by the 1<sup>st</sup> respondent in CEP No.8/2015-2016 dated 11.03.2016 quash the same and direct the 4<sup>th</sup> respondent to raise the attachment made in S.No.203/3B(Patta No.1035) measuring 3.42 acres at Oongur Village, Tindivanam Taluk.

For Petitioner

:Mr.C.K.Chandrasekar

For Respondents

:Mr.V.Selvaraj,

AGP for R1 and R4

Mr.M.S.Palanisamy, for R2

O R D E R

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus calling for the records of the order of attachment passed by the 1<sup>st</sup> respondent in CEP No.8/2015-2016, dated 11.03.2016, quash the same and direct the 4<sup>th</sup> respondent to raise the attachment made in S.No.203/3B(Patta No.1035)

measuring 3.42 acres at Oongur Village, Tindivanam Taluk.

2. According to the petitioner, the petitioner purchased a property in S.No.203/3B measuring to an extent of 3.42 acres at Oongur Village, Tindivanam Taluk in the year 2006 under a registered sale deed dated 12.06.2006. The petitioner's husband was working as Junior Assistant in the second respondent's Society. The second respondent has preferred ARC.No.102/2015-2016 against the third respondent for recovery of Rs.17,12,152/- before the first respondent. The first respondent has passed conditional attachment order dated 11.03.2016 against the third respondent, who is the husband of the petitioner, under Section 167 of the Tamil Nadu Co-operative Societies Act, 1983, without issuing notice to the petitioner. Challenging the said conditional order dated 11.03.2016, the petitioner has filed the present writ petition before this Court.

3. The learned counsel appearing for the second respondent would submit that the first respondent has passed conditional attachment order dated 11.03.2016, without issuing notice under Section 176 of the Tamil Nadu Co-operative Societies Act, 1983.

4. The learned Additional Government Pleader appearing for the first respondent would submit that no notice has been served to the petitioner before passing the impugned order.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 and 4 and the learned counsel appearing for the 2<sup>nd</sup> respondent and also perused the materials available on record.

6. Admittedly, the petitioner purchased the property in the year 2006 under a registered sale deed dated 12.06.2006. The second respondent preferred ARC.No.102/2015-2016 against the third respondent for recovery of Rs.17,12,152/- before the first respondent and the first respondent has passed the conditional attachment order dated 11.03.2016 against the third respondent under Section 167 of the Tamil Nadu Co-operative Societies Act, 1983, without following the procedure as contemplated under the Act.

7. Earlier on a similar circumstances, this Court has considered liberally and passed a detailed order in W.P.Nos.38843 and 38844 of 2015, dated 10.12.2015, wherein paragraphs 4 and 5 extract as follows:

"4. In fact, an identical issue was considered by this Court in E.MURUGAN AND ORS V. THE REGISTRAR OF CO-OPERATIVE SOCIETIES AND ORS [W.P.Nos.11143 to 11146 OF 2015 DT.17.04.2015], wherein this Court accepted the contentions raised by

petitioners therein and set aside the impugned proceedings. The operative portion of the order reads as follows:

"9.It is relevant to extract Section 167 as well as Rule 149 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 subsection 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 whole 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, no 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."

8. The issue involved in this writ petition is squarely covered by the order passed by this Court in W.P.Nos.38843 and 38844 of 2015, dated 10.12.2015 cited supra. Hence, I have no hesitation to quash the impugned conditional attachment order dated 11.03.2016 passed by the first respondent.

9. Accordingly, the writ petition is partly allowed and the impugned order dated 11.03.2016 is set aside and the matter is remitted back to the first respondent for fresh adjudication in

accordance with Section 167 of the Tamil Nadu Co-operative Societies Act, 1983 r/w Rule 140 of the Tamil Nadu Co-operative Societies Rules. It is made clear that in the interregnum, the petitioner shall not alienate or encumber or create third party right in respect of the immovable properties. The first respondent shall consider and pass fresh orders in terms of the above said provisions, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected W.M.P.No.4865 of 2017 is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Deputy Registrar of Co-operative Societies,  
Tindivanam Circle,  
Tindivanam.

2.Oongur Primary Agricultural Co-operative Society,  
Rep.by its Secretary,  
Oongur Post,  
Tindivanam Taluk,  
Villupuram District.

3.The Sub Registrar,  
Tindivanam, Villupuram District.

+1 cc to M/s.M.S.Palaniswamy Advocate sr 23732

+1 cc to M/s.L.P.Shanmugasundaram Advocate sr 23707

+1 cc to M/s.C.K.Chandrasekar Advocate sr 23731

+1 cc to Government Pleader sr 24092

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