

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.25559 of 2017

and

W.M.P.Nos.27069 and 27070 of 2017

E.L.Selva Meenakshi

...Petitioner

- Vs -

1. The Deputy Registrar of
Co-operative Societies,
Dharapuram, Dharapuram Taluk,
Thirupur District.

2. The President,
K1144, Dharapuram Co-operative
Marketing Society,
Dharapuram (Post),
Dharapuram Taluk,
Thirupur District.

...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 of the 1st respondent's show cause notice dated 11.7.2017 in C.E.P.No.2/2017-2018 in R.C.No.2692/2017 SF and the final order made in the same date and same number and quash the same as illegal and unlawful and further direct the 1st respondent to dismiss the dispute filed by the 2nd respondent under Section 90 of Tamil Nadu Co-operative Societies Act, 1983.

For Petitioner : Mr.M.K.T.Gopu

For R1 & R2 : Mr.L.P.Shanmugasundaram
Special Government Pleader

O R D E R

According to the petitioner, show cause notice has been issued to the petitioner to submit his explanation for the attachment of the property under Section 167(2) of Tamil Nadu Co-operative Societies Act, 1983 by the 1st respondent dated 11.07.2017. On the very same date, the impugned attachment order

has been passed under Section 167 of the Act. Hence, the petitioner has filed the present writ petition.

2. Further, the learned counsel for the petitioner relies upon the order passed in W.P. Nos.11143 to 11146 of 2015 dated 17.04.2015, wherein it is held as follows :-

"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. "

It cannot be disputed by the respondents that the legal issue involved in these writ petitions is squarely covered by the order passed by this Court in W.P.Nos.11143 to 11146 of 2015, referred to above.

Following the aforesaid judgment, this Court in W.P. Nos. 38843 & 38844 of 2015, by its order dated 10.12.2015, has set aside the impugned order and the matter was remitted back to the 2nd respondent therein, 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.

3. Considering the above submissions and in the light of the aforesaid decision of this Court, I have no hesitation to set aside the impugned order passed by the 1st respondent and therefore, I am inclined to pass the following order :

- i. The impugned order passed by the 1st respondent in his proceedings in Show Cause Notice dated 11.07.2017 in C.E.P.No.2/2017-2018 in R.C.No.2692/2017 SF is set aside and the matter is remitted to the 1st respondent for fresh adjudication, under Section 167 of the Tamil Nadu Co-operative Societies Act r/w Rule 140 of the Tamil Nadu Co-operative Societies Rules.
- ii. In the meantime, the respondents shall not alienate or encumber the immovable properties, which is the subject matter of this writ petition.
- iii. The 1st respondent shall consider the matter afresh and pass appropriate orders, in accordance with the above said provisions of law, within a period of three months from the date of receipt of a copy of this order.

4. Accordingly, the writ petition is allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Deputy Registrar of
Co-operative Societies,
Dharapuram, Dharapuram Taluk,
Thirupur District.

2. The President, K1144, Dharapuram Co-operative
Marketing Society, Dharapuram (Post),
Dharapuram Taluk, Thirupur District.

+ 1 cc to M/s. T. Gopu, Advocate SR.69978

+ 1 cc to the Government Pleader Sr.70836

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RK(CO)

EU 13.11.17