

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.03.2017

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THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.23615 of 2016
and
W.M.P.No.20226 of 2016

Tmt.R.Ayyammal

... Petitioner

/versus/

- 1.The Deputy Registrar of Co-operative Societies,
No.42-B, Balaji Nagar,
Gobichettipalayam,
Erode District.
- 2.The Sale Officer,
o/O The Deputy Registrar of Co-operative Societies,
No.42-B, Balaji Nagar,
Gobichettipalayam,
Erode District.
- 3.The President,
Gobichettipalayam Agricultural
Producers Co-operative Marketing Society Ltd., K-544
No.36, Modichur Road,
Gobichettipalayam,
Erode District.
- 4.The Sub Registrar of Registration (Joint No-1),
Bazar Road,
Gobichettipalayam,
Erode District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for records pertaining to the orders of conditional attachment passed by the first respondent CEP No.6 of 2006 A dated 11.5.2006 and quash the same and consequently direct the fourth respondent to remove the encumbrance registered as document No.9 of 2006 relating to property at Door Old No.2 New No.33/A1, at ward No.14, Survey No.14-B Veerapandi Village (now GCR Lakshmi Nagar) Gobichettipalayam Town, Erode District.

For Petitioner :Mr.S.Kamadevan
For Respondents :Mr.V.Selvaraj, AGP for R1 and R2
Mr.L.P.Shanmugasundaram, Spl.GP
for R3 and R4

O R D E R

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the orders of conditional attachment passed by the first respondent C.E.P.No.6 of 2006/A, dated 11.5.2006 and quash the same and consequently, direct the fourth respondent to remove the encumbrance registered as Document No.9 of 2006 relating to property at Door Old No.2 New No.33/A1, at ward No.14, Survey No.14-B Veerapandi Village (now GCR Lakshmi Nagar) Gobichettipalayam Town, Erode District

2. According to the petitioner, the petitioner has purchased house side plot measuring to an extent of 1650 sq.ft. in the approved layout under a registered sale deed, dated 10.04.1996. Out of her own earning, she purchased the property and hence, the property is the self-acquired property of the petitioner. The second respondent, who is the Sale Officer of the third respondent Society, has issued notice on 01.03.2010 in Form-VI of the Tamil Nadu Co-operative Societies Act, 1983 (herein after called as "the Act") and particularly, Rule 126 of the Tamil Nadu Co-operative Societies Rules. The petitioner came to know that on 11.05.2006, the petitioner's property was attached by the first respondent under Section 167 of the Act claiming to be an order of conditional attachment, even without issuing any notice under Section 87 of the Act. The said attachment proceedings have been forwarded to the fourth respondent and the same has been registered as an encumbrance in Doc.No.9 of 20016.

3. Further, a surcharge award was passed on 20.04.2009 against the husband of the petitioner viz., Meenakshisundaram and others, who were former employees of the third respondent Society. However, neither the petitioner is a party to the surcharge proceedings nor in the award proceedings passed by the first respondent. Therefore, the petitioner has filed the present writ petition before this Court for the aforesaid prayer.

4. The learned Special Government Pleader appearing for respondents 3 and 4 submitted that the property was attached and the impugned order was passed by the first respondent as early as in the year 2006. Now, the petitioner has filed the present

writ petition challenging the impugned order passed by the first respondent dated 11.05.2006. Further, There is no dispute with regard to neither notice has been issued to the petitioner nor an opportunity has been given to the petitioner before passing the conditional order of attachment.

5. It is brought to the notice of this Court by the learned counsel appearing for the petitioner that the petitioner's husband Meenakshisundaram has filed a Statutory Appeal in C.M.A.No.2 of 2010 before the Principal District Court, Erode and the same was allowed on 17.12.2012 and the matter was remitted back to decide the dispute afresh. Thereupon, the first respondent initiated fresh surcharge proceedings by issuing notice dated 08.08.2013 to the petitioner's husband calling for his explanation. Challenging the said notice, the petitioner's husband filed a petition in W.P.No.34352 of 2013 before this Court in which he has obtained interim stay.

6. In support of his contention, the learned counsel appearing for the petitioner relied upon a batch of the case rendered by this Court in W.P.Nos.11143 to 11146 of 2015 and M.P.Nos.1 to 1 of 2015, dated 17.04.2015, wherein, this Court has considered the issue with regard to Section 167 of the Tamil Nadu Co-operative Societies Act, 1983 r/w 140 of the Tamil Nadu Co-operative Societies Rules and held in paras 9,11 and 12, which reads as follows:-

"9. 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 the interregnum, the petitioners shall not alienate or encumber or treat 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."

7. Following the aforesaid order passed by this Court, yet another decision rendered by this Court in W.P.(MD).No.3836 of 2009 dated 16.11.2016 (K.Vasantha v. The Deputy Registrar of Co-operative Societies, Dindigul and another), wherein, this Court has considered the issue with regard to Section 167 of the Tamil Nadu Co-operative Societies Act, 1983 r/w 140 of the Tamil Nadu Co-operative Societies Rules and allowed the writ petition.

8. In the light of the decisions cited supra, this Court is inclined to set aside the impugned order passed by the first respondent and remitted back the matter to the first respondent for fresh adjudication and pass appropriate orders, on merits and in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order. It is made clear that the petitioner shall not alienate or encumber the subject matter of the property to any third party, pending the aforesaid proceedings.

9. With the above directions, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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 - 4.The Sub Registrar of Registration (Joint No-1),
Bazar Road,
Gobichettipalayam,
Erode District.
- +1cc to Mr.Kamadevan, Advocate, S.R.No.16300
+1cc to Mr.Shanmugasundaram, Advocate, S.R.No.16322
+1cc to the Government Pleader, S.R.No.16541

SVI (CO)
RS (07/04/2017)

W.P.No.23615 of 2016

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