

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.27265 of 2016
and W.M.P.Nos.23436 and 23437 of 2016

B.Palaniammal .. Petitioner
Vs.

- 1.The Assistant Director of Handloom and
Textiles
Office of the Assistant
Director of Handloom
and Textiles, Kumbakonam.
- 2.The President
Sengunthapuram Tiruvalluvar
Handloom Weavers
Co-operative Production and
Sale Society Limited
T.R.(H) 139
Sengunthapuram Post, Jayamkondam Via
Ariyalur District 621 802. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings C.A.C.E.P.No.1/2013/A4(1), dated 10.10.2013 and quash the same.

For petitioner : Mr.C.Prakasam

For respondents : Mr.L.P.Shanmugasundaram,
Special Government Pleader

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This writ petition has been filed seeking a writ of certiorari calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings C.A.C.E.P.No.1/2013/A4(1), dated 10.10.2013 and quash the same.

2. According to the learned counsel for the petitioner, the petitioner purchased the property in question in the year 2007. The said property is a self acquired property of the petitioner. While so, the first respondent, without giving any notice or opportunity to the petitioner has passed the

attachment order, violating the principles of natural justice. Therefore, the petitioner has filed the present writ petition before this Court.

3. The learned Special Government Pleader (Cooperatives) appearing for the respondents submitted that if the petitioner is aggrieved by the impugned attachment order, she can very well avail the alternative remedy available to her under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983 [for brevity "the Act"]. Further, relying on a Division Bench judgment dated 11.12.2008 passed by this Court in W.A.No.1101 of 2008, wherein, without going into the merits of the case, this Court has dismissed the said writ appeal with an observation that it is open to the appellants therein to file an appeal before the Appellate Tribunal, the learned Special Government Pleader submitted that this writ petition is liable to be dismissed.

4. Heard the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents.

5. The point that emerges for the consideration of this Court is whether the first respondent has passed the impugned attachment order without affording any opportunity to the petitioner, thereby, violating the principles of natural justice.

6. According to the petitioner, the impugned attachment order passed by the first respondent without giving notice to the petitioner is violative of principles of natural justice. Therefore, the contention of the learned Special Government Pleader that as per the Division Bench judgment referred to above, the petitioner can avail alternative remedy cannot be countenanced, because, the Division Bench has not dealt with the issue as to whether there was a violation of principles of natural justice or not, but has dismissed the case on the ground of non exhaustion of alternative remedy.

7. In an identical matter, this Court, by order dated 10.12.2015, has considered the earlier decision of this Court in E.Murugan and others v. The Registrar of Co-operative Societies and others in W.P.Nos.11143 to 11146 of 2015 dated 17.04.2015 and had set aside the proceedings impugned therein. The operative portion of the said order reads 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.-

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. "

8. Following the aforesaid decision, this Court, in W.P.Nos.38843 and 38844 of 2015, vide order dated 10.12.2015, has held as follows:

"6. Accordingly, these Writ Petitions are partly allowed, the impugned orders dated 04.12.2015 & 02.12.2015 are set aside and the matter is remitted back to the second 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 second 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.

9. In the light of the aforesaid decision of this Court, the impugned proceedings dated 10.10.2013 passed by the first respondent is quashed and the matter is remitted back to the first respondent for fresh adjudication under Section 167 of the Act.

With the above observation, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Director of Handloom and
Textiles
Office of the Assistant Director of Handloom
and Textiles, Kumbakonam.

2.The President
Sengunthapuram Tiruvalluvar Handloom Weavers
Co-operative Production and Sale Society Limited
T.R.(H) 139
Sengunthapuram Post, Jayamkondam Via
Ariyalur District 621 802.

+lcc to M/s. L.P. Shanmugasundaram, Advocate, S.R.No.15032
+lcc to Mr.C. Prakasam, Advocate, S.R.No.15099
+lcc to the Government Pleader, S.R.No.15016

MV(CO)
EU 10.4.17

W.P.No.27265 of 2016



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