

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.36149 of 2016

and

W.M.P.No.31099 of 2016

S.Krishnamoorthy

.. Petitioner

..Vs..

1.The Deputy Registrar of Co-operative Societies,
Tirukoilur Circle, Tirukoilur,
Villupuram District.

2.The Sale Officer,
O/o.Deputy Registrar of Co-operative Societies,
Tirukoilur Circle, Tirukoilur,
Villupuram District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 2nd respondent in his proceedings CEP.No.53/2016-17, dated 23.09.2016 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.L.P.Shanmugasundaram,Spl.GP

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O R D E R

The petitioner has filed the present Writ Petition, praying for writ of mandamus, seeks for issuance of a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order passed by the 2nd respondent in his proceedings CEP.No.53/2016-17, dated 23.09.2016 and quash the same.

2. According to the petitioner, the first respondent herein ordered enquiry U/s.81 of Tamil Nadu Co-operative Societies Act (in short, 'the Act') and on the basis of the enquiry report, the surcharge order passed in Na.Ka.No.287/2016 Sa.PA, dated 04.08.2016. The said copy of the proceedings was received by the petitioner on 19.08.2016. In the meantime, the 2nd respondent herein has passed the impugned order U/s.126(2)(d) of the Act, issuing demand notice for payment of the above said surcharge proceedings amount. It is also directed therein that if the said amount has not been paid, the property of the petitioner or his legal heirs would be attached. The said copy of the notice has not been served to the petitioner. But the same was affixed on the petitioner's house. Hence, the petitioner filed the Writ Petition before this Court, challenging the proceedings on the ground that the same were passed without giving opportunity to him.

3. The learned counsel for the petitioner would submit that as against surcharge order passed by the first respondent, the petitioner preferred an appeal before the Tribunal and the said appeal has been pending. The petitioner has also filed an application for the interim relief along with the appeal before the Tribunal/Principal District Judge/Co-operative Tribunal, Villupuram.

4. The learned Addl.Government Pleader would submit that even as per the statement made by the counsel for the petitioner, it is clear that the petitioner filed an appeal before the Tribunal and it is pending. Hence, the petitioner has to workout the remedy before the Tribunal for getting ad interim relief in the said appeal. Therefore, the present Writ Petition filed by the petitioner is liable to be dismissed.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

6. Admittedly, as against the surcharge order passed by the first respondent, the petitioner has preferred an appeal under Section 152 of Tamil Nadu Co-operative Societies Act before the Principal District Court/Co-operative Tribunal, Villupuram and it is pending.

7. It appears that the petitioner has also filed an interlocutory application for grant of interim stay of the surcharge proceedings along with the appeal.

8. As against the demand notice under Section 126 of the Act, for payment of the demand amount, the petitioner is having efficacious remedy of appeal before the appellate authority and he has to work out his remedy. The present impugned order is only a demand notice issued by the first respondent, as against which, admittedly, the petitioner has filed the appeal. Therefore, it is for the petitioner to workout his remedy in the appeal, now pending before the Tribunal.

9. In such view of the matter, I pass the following order:

(i) The first respondent shall defer the surcharge proceedings for a period of six weeks from the date of receipt of a copy of this order.

(ii) In the mean time, it is open to the petitioner to get appropriate interim orders or the final orders before the appellate Tribunal within a aforesaid period, in default, the first respondent shall proceed with surcharge proceedings in accordance with law.

With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

nvi

To

1. The Deputy Registrar of Co-operative Societies,
Tirukoilur Circle, Tirukoilur, Villupuram District.

2. The Sale Officer,
O/o. Deputy Registrar of Co-operative Societies,
Tirukoilur Circle, Tirukoilur, Villupuram District.

+1 CC to Mr.C.Prakasam, Advocate Sr.No.21074

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SSI(CO)
KP(21.04.2017)