

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.43688 of 2016

and WMP No.37495 of 2016

K. Ponnusamy

.. Petitioner

Vs.

1 The Deputy Registrar of (Milk Development),
Dharmapuri.

2 The General Manager,
Dharmapuri District Co operative Milk,
Producers Federation, Krishnagiri.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India prays to Writ of Certiorari, calling for the entire records which culminated in the order passed in Na.Ka.Ni.Ma.1/2016/a dated 09.12.2016 of the first respondent, quash the same.

For Petitioner : Mr. C.Vediappan
for Mr.P.Ganesan

For RR 1 & 2 : Mr.L.P. Shanmugha Sundaram
Special Government Pleader.

O R D E R

The Writ Petition has been filed praying for issuance of a Writ of Certiorari, calling for the entire records which culminated in the order passed in Na.Ka.Ni.Ma.1/2016/a dated 09.12.2016 of the first respondent and quash the same.

2. Heard Mr.C.Vediappan, learned counsel appearing for Mr.P.Ganesan, learned counsel on record for the petitioner and Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader appearing on behalf of the respondents.

3. According to the petitioner, he was appointed as a Testor in the TPT 116 Pappiredipatti Milk Producers Co-operate Society. After he was promoted to the post of Assistant Secretary, he was further promoted as Secretary in the said Society, while so, he was to retire from service on 04.06.2015 but he was not allowed to retire from service not due to the pendency of any disciplinary proceedings but he was orally requested to continue in the post of Secretary due to lack of manpower to take care of the affairs of the Society. When he was retained in the service until further orders in the nature of re-employment, all of a sudden, he was issued with the impugned proceedings, dated 09.12.2016. In the meanwhile, enquiry has been ordered under Section 81 of the Tamil Nadu Co-operative Societies Act. The impugned attachment order was passed by the first respondent without following the procedures as contemplated under the relevant Rules and the Act. Therefore, the impugned order is liable to be set aside.

4. On the contrary, the learned Special Government Pleader would submit that it is open to the Writ petitioner to file an Appeal before the Appellate Tribunal. Hence, the present Writ Petition is not maintainable before this Court.

5. In the above said Writ Petition the Division Bench has considered the appeal provisions under the Tamil Nadu Co-operative Societies Act and liberty was granted to the petitioner therein to approach the Appellate Authority. Subsequent to the order passed by the Division Bench of this Court, same issue has been decided by this Court in WP Nos.38843 and 38844 of 2015 dated 10.12.2015, wherein this Court has considered the earlier decision of this Court in E.Murugan and Ors V.The Registrar of Co-operative Societies and Ors in [W.P.Nos.11143 to 11146 of 2015 dated 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 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 subsection (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 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 to 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.

6. In view of the said order passed by this Court the Writ Petitions in WP Nos. 38843 and 38844 of 2015 were partly allowed and impugned orders passed by the respondents therein are set aside and the matter was remitted back to the second respondent therein for fresh adjudication in accordance with Section 167 of the Tamil Nadu Co-operative Societies Act read with Rule 140 of the Tamil Nadu Co-operative Societies Rules.

7. In the light of the aforesaid decision of this Court, the facts of this case are also similar to the aforesaid case. In the present case, the impugned attachment order passed without following the procedures as contemplated under the Rules and Act. This Court has no hesitation to set aside the impugned order passed by the first respondent. Following the above decision of this Court and taking into consideration the facts and circumstances of the case, this Court passes the following order:

(1) The impugned order passed by the 1st respondent in Na.Ka.Ni.Ma.1/2016/a dated 09.12.2016 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 r/w. Rule 140 of the Tamil Nadu Co-operative Rules.

(2) In the meantime, the petitioner shall not alienate or encumber in respect of the immovable property.

(3) The 1st respondent shall consider the matter afresh and adjudicate in accordance with provisions of the law and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order.

8. The Writ Petition is allowed in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Jv

To

1 The Deputy Registrar of (Milk Development),
Dharmapuri.

2 The General Manager,
Dharmapuri District Co operative Milk,
Producers Federation, Krishnagiri.

+1 CC to Mr.P.Ganesan, Advocate Sr.No.16316

+1 CC to Mr.L.P. Shanmugha Sundaram, Advocate Sr.No.16320

+1 CC to Government Pleader, High Court, Chennai Sr.No.16539

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W.P. No. 43688 of 2016

SR(CO)
KP(20/04/2017)