

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.7.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.W.P.No.19805 of 2002
and W.M.P.No.27340 of 2002

Mylsamy

... Petitioner

Vs.

1 The Deputy Registrar of Co-op. Societies,
11, Market Road,
Pollachi, Coimbatore District.

2 Eripatty Primary Agricultural Co-op. Bank Ltd.,
TP.SPL.40, rep. by its Special Officer,
Eripatty, Pollachi Taluk,
Coimbatore District.

3 K.Natarajan ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records relating to the order bearing CAM No.2873/2001, dt.23.3.2001 on the file of the first respondent and to quash the same in so far as it is relating to his absolute property bearing S.F.No.22/2 admeasuring 4.66 acres in Chinna Negamam Village, Pollachi Taluk, Coimbatore District.

For Petitioner : Mr.T.P.Manoharan
Sr. Counsel for
Mrs.D.Kamatchi

For Respondent No.1 : Mr.T.Girija, G.A.

For Respondent No.2 : Mr.L.P.Shanmugasundaram
Spl. Govt. Pleader

For Respondent No.3 : No appearance

ORDER

Challenging the order passed by the first respondent in CAM No.2873/2001, dt.23.3.2001, the petitioner has filed the present writ petition.

2 The learned counsel for the petitioner has relied on the decision rendered by this Court in W.P.No.11143 to 11146 of 2015, dated 17.4.2015. Following the aforesaid order, this Court has passed an order in W.P.No.38843 to 38844 of 2015, dated 10.12.2015. The relevant portion of the order is extracted hereunder:

"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, nor 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.

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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 In the light of the aforesaid order passed by this Court, the impugned order passed by the first respondent in CAM No.2873/2001, dt.23.3.2001 is quashed. It is made clear that the petitioner shall not alienate or encumber or create third party right in respect of the petitioner's immovable property. However, liberty is granted to the petitioner to make fresh representation to the first respondent if so advised, within a period of two weeks from the date of receipt of copy of this order and the same shall be considered in accordance with Section 167 read with Section 140 of Tamil Nadu Co-operative Societies Act. The said exercise shall be completed by the first respondent within a period of 12 weeks from the date of receipt of the petitioner's representation.

The writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst.Registrar

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To

1 The Deputy Registrar of Co-op. Societies,
11, Market Road,
Pollachi, Coimbatore District.
+1cc to the Government Pleader, Sr. 48445

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and W.M.P.No.27340 of 2002

AR (IV)
VR(27/07/2017)