

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 14041 of 2018

and

W.M.P.s 16595 and 16596 of 2018

P.Saraswathi

... Petitioner

Vs

1. The Deputy Registrar of
Cooperative Societies,
Tindivanam Circle,
Tindivanam.

2. The Sub-Registrar,
Tindivanam,
Villupuram District.

3. Ongur Primary Agricultural Cooperative
Credit Society,
rep. by its Secretary,
Ongur Post, Tindivanam Taluk,
Villupuram District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue appropriate Writs, orders or Directions and in particular issue a Writ of Certiorarified Mandamus, calling for the concerned records from the 1st respondent, quash the conditional attachment order of the 1st respondent dated 05.03.2018 bearing CEP No.8/2015-2016 as illegal, arbitrary and contrary to law and consequently direct the 1st and 2nd respondents to raise the attachment made in respect of the land of the petitioner comprised in Survey No.203/3B, Patta No.1035 measuring 3 acres and 42 cents at Ongur Village, Tindivanam Taluk, Villupuram District.

For Petitioner : Mr.Balan Haridas
For Respondents : Mr.M.S.Palaniswamy,
Standing Counsel for R1

Mr.L.P.Shanmugasundaram,
Special Government Pleader
for R2 and R3

O R D E R

This writ petition has been filed challenging the order passed under Sec.167 of the Tamil Nadu Cooperative Societies Act attaching the petitioner's property, pending proceedings initiated against the petitioner's husband under Sec.87 of the Tamil Nadu Cooperative Societies Act (hereinafter called as "Act").

2. Mr.Balan Haridas, learned counsel appearing for the petitioner submitted that already an order has been passed by the authority under Sec.87 of the Act against the petitioner's husband. Thereafter, the execution proceedings also levied by the society to recover the amount. Earlier, the Deputy Registrar by an order dated 10.08.2017 has clearly held that since already an order has been passed under Sec.87 of the Act, there is no necessity to attach the property pending proceedings. Apart from that, the society also filed an execution application for recovery of the amount. Despite the same, interim order has been passed attaching the property under Sec.167 of the Act. That apart, the learned counsel appearing for the petitioner submitted that the property is exclusively belong to the petitioner. Thus, it is clear the property of the petitioner cannot be attached for the dues recoverable from the petitioner's husband.

3. The respondents have also filed their counter affidavit. I have heard both the counsels appearing for the petitioner as well as the respondents and perused the records.

4. It is an admitted fact that already an order has been passed under Sec.87 of the Act against the petitioner's husband by the Deputy Registrar of Cooperative Society in and by its proceedings dated 20.07.2017. In the said circumstances, once the proceedings initiated under Sec.87 of the Act has come to an end and terminated, now the respondents cannot initiate proceedings under Sec.167 of the Act, as it is only an interim order of attachment pending enquiry proceedings. Apart from that, the Deputy Registrar in the earlier proceedings also has clearly stated that already the order has been passed in the proceedings under Sec.87 of the Act and the society has also filed execution petition to recover the amount. In the said circumstances, the impugned order is liable to be set aside and accordingly, it is set aside.

5. In view of the same, this Writ Petition is allowed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpp

To

1. The Deputy Registrar of
Cooperative Societies,
Tindivanam Circle,
Tindivanam.
2. The Sub-Registrar,
Tindivanam,
Villupuram District.
3. The Secretary,
Ongur Primary Agricultural Cooperative
Credit Society,
Ongur Post, Tindivanam Taluk,
Villupuram District.

+1cc to Mr.Balan Haridas, Advocate, S.R.No.75834

+1cc to the Government Pleader, S.R.No.76488

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and
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of 2018

NMI (CO)
GSP (18/12/2018)