

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.29263 of 2017
and
WMP No.31533 of 2017

V.Munuswamy Naidu

.. Petitioner

Vs.

1.The Deputy Registrar (Tiruttani)
Office of Co-operative Societies,
Tiruttani.

2.The Secretary,
U.509,
Sivada Primary Agricultural Co-operative
Credit Society,
Tiruttani Taluk,
Thiruvallur District.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari to call for the records pertaining to the impugned proceedings dated 26.08.2016 vide C.A.M.2/2016-17/C1 by the first respondent and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.V.Manohar

For Respondents : Mr.L.P.Shanmugasundaram for R1
Special Government Pleader

O R D E R

The petitioner is aggrieved against the proceedings of the first respondent dated 26.08.2016, wherein and whereby, the petitioner was called upon to furnish security for a sum of Rs.44,90,247/-, failing which, to make conditional attachment of the immovable properties specified in the schedule annexed to the impugned proceedings.

2.According to the petitioner, he has nothing to do with the proceedings initiated against one V.Vikram and another under the Tamilnadu Cooperative Societies Act, 1983 and therefore, his property cannot be attached by way of the impugned proceedings.

3.Learned Special Government Pleader, who took notice for the respondents, submitted that the petitioner has statutory right of appeal under Section 152 of the said Act before the Cooperative Tribunal and therefore, without exhausting such statutory appellate remedy, the petitioner cannot file the present writ petition.

4.In support of the said contention, the learned Special Government Pleader relied on an order passed by the Division Bench of this Court in W.A.No.1101 of 2008 dated 11.12.2008.

5.Perusal of the said order of the Division Bench would show that the appeal remedy provided under Section 152 of the said Act is available also to the persons, who are not parties to the proceedings initiated under the Tamilnadu Cooperative Societies Act. The relevant paragraph Nos.3 to 5 of the said order reads as follows:

"3. The main grievance of the writ petitioners before the writ Court was that the petitioners are no way connected with the dispute in question since they are neither the present members nor the past members as enumerated under Section 90 of the said Act. Since, the petitioners did not come under the category of the people, who are enumerated in Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as the Act), the petitioners cannot file an appeal under Section 152 of the Act. This contention was sought to be denied by the learned counsel for the third respondent, who submits that the proceedings was initiated against the second respondent under Section 87 of the said Act and it is surcharge proceedings and not referable to Section 90 of the said Act.

4. Learned Judge has not accepted the submissions made by the writ petitioners, and in our view, rightly so. The appellate provision under Section 152 of the said Act has been very widely worded. The said right of appeal has been given from orders passed under various provisions. The appellate provision is very comprehensive in nature. Section 152(1) of the said Act clearly says that any person aggrieved by any decision or award passed or order made or proceedings taken under sub-Section (1) of Section 87, sub-Section (2), sub-Section (3) or sub-Section (4) of Section 90, Section 118,

Section 119, Section 143, Section 144 or Section 167 may appeal to the Tribunal. The meaning of the word "any" means "all". So, any person who is aggrieved by any of the proceedings mentioned in Section 152(1)(a) of the said Act, can file an appeal. The said appeal is to be heard and disposed of by the Co-operative Tribunal, which consists of a senior District Judge.

5. Therefore, the remedy of the writ petitioners/appellants was to file an appeal before the said high powered Tribunal, which has the trappings of a civil Court. Bypassing the said Tribunal, this writ petition has been filed, which, in our view is totally mis-conceived. It is not only the question of availing the statutory remedy. Here, what is in issue is where the statute is specific and creates a special right which creates a remedy whether for enforcing the said rights, such remedy has to be invoked. Here, the rights and remedies have been granted unto flato."

6.Mr.V.Manohar, learned counsel for the petitioner submitted that when such being the legal position, the petitioner may be given opportunity to file such an appeal before the Appellate Cooperative Tribunal by fixing a time frame for disposal of the same as well.

7.Considering the above stated facts and circumstances and the order passed by the Division Bench as stated supra and also the submission made by the learned counsel for the petitioner, this Court is of the view that the present writ petition is not maintainable, as the petitioner is having an effective alternative appeal remedy available under Tamilnadu Cooperative Societies Act. Accordingly, this writ petition is disposed of, without expressing any view on the merits of the claim made by the petitioner as well as the respondents, only by granting liberty to the petitioner to file such an appeal before the concerned Cooperative Tribunal within a period of two weeks from the date of receipt of a copy of this order. If any such appeal is filed, the concerned Cooperative Tribunal will take up the appeal and pass orders on the same on its own merits and in accordance with law, without reference to the period of limitation if any, within a period of twelve weeks from the date of receipt of such appeal.

Registry is directed to return the impugned order to the petitioner. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

+1cc to Government Pleader SR.No.2392
+1cc to Mr.V.Selvaraj, Advocate SR.No.2508
+1cc to Mr.V.Manohar, Advocate SR.No.2217

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W.P.No.29263 of 2017



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