

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No. 15210 of 2010

and

M.P.Nos. 2 & 3 of 2010

A.Krishnaveni

..Petitioner

Vs

The Deputy Registrar of Co-operative Societies,
Pollachi Circle,
Pollachi,
Coimbatore District.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Certiorari, to call for the records in pursuant to the impugned surcharge notice issued by the Respondent in proceeding Na.Ka.no.3575/2008 VeSeSa/ dated 24.03.2010 and the consequential attachment order issued in CEP1841/2010/NiMa dated 14.06.2010 and quash these orders.

For Petitioner : M/s.Swathi Subramaniam
for
M/s.R.Premnarayan

For Respondent : Mr.T.Girija,
Government Advocate.

सत्यमेव जयते
O R D E R

The prayer sought for herein in this Writ Petition is for issuance of a Writ of Certiorari, to call for the records in pursuant to the impugned surcharge notice issued by the Respondent in proceeding Na.Ka.No. 3575/2008 VeSeSa/, dated 24.03.2010 and the consequential attachment order issued in CEP1841/2010/NiMa dated 14.06.2010 and quash these orders.

2. The case of the petitioner is that the petitioner's husband (late) M.K.Ayyasamy was working as the Secretary of Jamin Kaliyapuram Primary Agricultural Co-operative Bank and retired from service on 30.06.2008. Subsequently, the petitioner's husband died on 17.11.2008. Thereafter, the

petitioner has settled with her son who is residing in Surat in the State of Gujarat.

3. While being so, the respondent issued the Impugned Surcharge notice dated 24.03.2010 under Section 87 of the Tamil Nadu Co-operative Societies Act, stating that her late husband Mr.Ayyasamy, while working as a Secretary of the Society during the year 1994, failed to recover the advance amount from one Mr.Chellappan and other persons. In fact, allegations are pertaining to the year 1994-98 and infact all the allegations are that he failed to recover the amounts due to the Society.

4. The petitioner had received the Impugned Notice belatedly and subsequently, reminders were sent to the petitioner. The petitioner has submitted her explanations on 30.06.2010 and to her shock and surprise, her property was attached under Section 167 of the Tamil Nadu Co-operative Societies Act and a publication was made in the local newspaper regarding the attachment of her property. As against the same, the present writ petition is filed.

5. The learned counsel appearing for the petitioner would submit that all the allegations made out against her deceased husband in the Impugned Surcharge notice are relating to non-recovery of the dues of the Society, pertaining to the year 1994-98. Learned counsel would further submit that the petitioner is only a legal heir of the said Late.Mr.Ayyasamy.

6. Per contra, learned counsel appearing for the respondent relied on a Judgment of a Division Bench of this Court in S.V.K.Sahasraman Vs. Deputy Registrar of Cooperative Societies, Tiruvannamalai Circle, Tiruvannamalai & Others, (2008) 8MLJ 231, wherein Hon'ble Division Bench of this Court has observed as follows;

31. " Where there are allegations of embezzlement and misappropriation of public funds, the members of general public who have been cheated have no control over those who hold the enquiry in respect of the time limit. To hold that such an enquiry that has been continued beyond the time limit is bad would cause great injustice. Therefore, enquiry continued beyond the time limit mentioned in the relevant statute, the said time cannot be held to be mandatory in view of principles laid down in Montreal Street Railway Company V.Normandin AIR 1917 PC 142 which has been affirmed by Supreme Court."

7. On a perusal of the records, it seems that admittedly, the petitioner's husband was employed as Secretary and subsequently, he retired from service on 30.06.2008 and thereafter, the petitioner's husband died on 17.11.2008. A surcharge Notice was issued on 24.03.2010, followed by a paper publication, dated 14.06.2010 proposing attachment of an immovable property. In the Surcharge Notice as well as the attachment, no explanation was given for initiating action after 10 years, though the Division Bench of this Court held that it is not mandatory in view of the principles laid down in Mobtreal Street Railway Company V.Normandin AIR 1917 PC 142 which has been affirmed by the Hon'ble Supreme Court.

8. This Court is of the view that as submitted by the learned counsel appearing for the petitioner, the respondent has not established as to why no action was taken on the petitioner's husband at the relevant point of time. The fact remains that the petitioner's husband retired on 30.06.2008 and subsequently died on 17.11.2008, even 10 years after his retirement, no action was taken against the petitioner and the impugned order was issued against legal heirs only on 24.03.2010.

9. In the above circumstances, this Court is inclined to allow the writ petition. Accordingly, the present writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Registrar of Co-operative Societies,
Pollachi Circle,
Pollachi, Coimbatore District.

+1 cc to M/s., Advocate, S.R.No.65863

+1 cc to the Special Government Pleader, S.R.No.66306

W.P.No. 15210 of 2010

PVS (CO)
SSM(01/11/2019)