

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.4530 of 2019 &
W.M.P.No.5107 & 5108 of 2019

D.Jayashankar

Petitioner

Vs.

1.The Deputy Registrar of
Co-operative Societies,
Thiruvannamalai Circle,
Thiruvannamalai, Thiruvannamalai District.

2.The Secretary,
H.H.572, Thachampattu Primary
Agricultural Co-operative Credit Society Ltd.,
Thachampattu Village & Post - 606 811.
Thiruvannamalai Taluk & District. ... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Certiorari to call for the entire records relating to the impugned order passed by the first respondent in his proceedings CEP.01/2018-2019, dated 23.01.2019 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents: Ms.T.Girija
Government Advocate for R1

Mr.L.P.Shanmugasundaram
Special Government Pleader for R2

O R D E R

According to the petitioner, he was working as Secretary Incharge in the second respondent-Society and now working as Clerk (under suspension) in the said Society. The first respondent has passed the impugned proceedings dated 23.01.2019, whereby, the petitioner's property was attached without giving

any notice and without giving any opportunity. Challenging the said order, the Writ Petition has been filed.

2. The learned counsel for the petitioner seeks to quash the impugned order on the sole ground that the first respondent has not followed the procedure as contemplated under Section 167 of the Tamil Nadu Co-operative Societies Act, 1983 (In short, "the Act") as the petitioner has not been served notice to put-forth his objections.

3. The learned Special Government Pleader appearing for the respondents would submit that as against the order of conditional attachment, the petitioner has to file an appeal before the Appellate Authority. However, without exhausting such remedy, filing of Writ Petition before this Court is not maintainable and hence, prays for dismissal of the Writ Petition.

4. A perusal of the impugned order would disclose that in terms of Section 167 of the Act, no order has been passed calling upon the petitioner 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. In similar Writ Petitions in W.P.Nos.38843 & 38844 of 2015, this Court, by an order dated 10.12.2015, quashed the attachment proceedings mainly on the ground that the first respondent has not followed the procedure as contemplated under Section 167 of the Act. In fact, an identical issue was considered by me in W.P. No. 18853 of 2016, on 17.04.2019, and directed the Registrar of Co-operative Societies to make necessary arrangements to train the Deputy Registrars of Co-operative Societies, who are dealing with the disputes arising between the members and the Society, under Sections 87, 90 and 167 of the Tamil Nadu Co-operative Societies Act and the relevant paragraphs are extracted hereunder:-

"9. On perusal of the impugned attachment order passed by the first respondent, namely the Deputy Registrar, it is seen that he has passed an additional attachment order. The said order has been passed by the first respondent without following Section 167 of the Tamil Nadu Co-operative Societies Act. Sub-sections 1 & 2 therein have stipulated some procedures to be followed, before passing an additional attachment order. Aggrieved by the similar types of order passed by the Deputy Registrar under Section 167, several Writ Petitions have been filed. It shows that the concerned authority has not considered the relevant provisions of the Act and without having the

legal knowledge to decide the issue under Section 167 of the Act, such orders are passed. Therefore, the Registrar of Co-operative Societies shall make necessary arrangements to train the Deputy Registrars of Co-operative Societies, who are dealing with the disputes arising between the members and the Society, under Sections 87, 90 and 167 of the Tamil Nadu Co-operative Societies Act. It is also brought to the notice of this Court that during the earlier period, the Deputy Registrars were given training by legally eminent persons and as of now, there is no such training conducted by the Department for the Deputy Registrars of the Co-operative Societies, who are dealing with the aforesaid provisions of the Act. Hence, this is the right time for the Registrars to look into the matter and to issue appropriate instructions to the concerned authorities to conduct training for the Deputy Registrars, especially who deals with the disputes, with the assistance of legal experts.

10. Pursuant to the above opinion expressed by this Court, the Additional Registrar has produced a copy of the proceedings issued by the Registrar of Cooperative Societies, in Rc.No.24273/2017/PMCT3 dated 13.04.2017 regarding the training programme scheduled to be conducted for the Deputy Registrar of Cooperative Societies, with the assistance of legal experts."

Despite the above direction issued to the Registrar of Co-operative Societies, the first respondent is passing similar orders mechanically without following the procedures as contemplated under Section 167 of the Act. Such conduct / attitude of the Authorities concerned has to be viewed seriously. However, the learned Special Government Pleader has requested that in future, the respondent-Society shall pass orders adhering Section 167 of the Act. The said submission of the learned Special Government Pleader is recorded.

5. In view of the above, the impugned order dated 23.01.2019 is set aside and the matter is remitted back to the first respondent for fresh adjudication in accordance with Section 167 of the Act. It is made clear that in the interregnum, the petitioner shall not alienate or encumber or create third party rights in respect of the immovable properties. The first respondent shall make every endeavour to pass fresh orders in terms of the above said provisions, within a period of four weeks from the date of receipt of a copy of this order.

6. Accordingly, the Writ Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

r n s

To

- 1.The Deputy Registrar of
Co-operative Societies,
Thiruvannamalai Circle,
Thiruvannamalai,
Thiruvannamalai District.
- 2.The Secretary,
H.H.572, Thachampattu Primary
Agricultural Co-operative Credit Society Ltd.,
Thachampattu Village & Post - 606 811.
Thiruvannamalai Taluk & District.

+1cc to Mr.C.Prakasam, Advocate Sr.20891
+1cc to M/S.L.P.Shamugasundaram, Advocate Sr.20283
+1cc to the Government Pleader Sr.21513

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