

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.07.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.14036 of 2019
and W.M.P.Nos.14105 & 14106 of 2019

S.Saritha

...Petitioner

Vs

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

2.Morappur Panchayat Union School Teachers
Co-operative Thrift and Credit Society,
Rep.by its Secretary,
Morappur Post,
Harur Taluk,
Dharmapuri District.

3.R.Sambasivan

4.The Sub Registrar,
Morappur, Dharmapuri District

.... Respondents

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus calling for the records of the order of attachment passed by the 1st respondent dated 25.02.2019 quash the same and direct the 4th respondent to raise the attachment made in S.Nos.222/D, 222/3, 222/3B1, 222/3B1A, 224, 224/1B measuring 3.48 acres at R.Gobinathampatty Village, Harur Taluk, Dharmapuri District.

For petitioner : Mr.M.Paramasiva Doss

For R1 & R2 : Mr.L.P.Shanmugasundaram
Special Government Pleader

For R3 : No appearance

O R D E R

Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents 1 and 2.

2. The short point involved in this case is that the surcharge proceedings initiated against the husband of the petitioner, who is also arrayed as one of the respondent in this writ petition. The second respondent Co-operative Thrift and Credit Society has attached the property of the petitioner.

3. The contention of the petitioner is that her property is noway concerned with the affairs of the third respondent and her property cannot be attached and proceeded.

4. The learned Special Government Pleader for the respondents 1 and 2 would submit that as per the dictum of the Division Bench of this Court in identical situations in Balaraman and others Vs. Deputy Registrar, Co-operative Societies, the remedy available to the petitioner is to file an appeal before high powered Tribunal, which has the trappings of a civil Court. Bypassing the said Tribunal, writ petition cannot be filed. The relevant portion of the order passed by the Division Bench of this Court is extracted below:-

"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."

5. In this case, the remedy is available to the petitioner herein under Section 152(1) of the Tamil Nadu Co-operative Societies Act and not under Article 226 of the Constitution of India.

6. The petitioner herein is give liberty to approach the appellate authority under Section 152(1) of the said Act within 30 days from today. Till such time, the petitioner shall not create any encumbrance over the property. Similarly the respondent shall not take any coercive steps.

7. Accordingly, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

rpl

To

- 1.The Deputy Registrar of Co-operative Societies,
Dharmapuri Circle,
Dharmapuri.
2. The Secretary,
Morappur Panchayat Union School Teachers
Co-operative Thrift and Credit Society,
Morappur Post,
Harur Taluk,
Dharmapuri District.
3. The Sub Registrar,
Morappur, Dharmapuri District.

+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.60536

+1cc to Mr.J.Pradeep, Advocate SR.No.60801

+1cc to Government Pleader, High Court, Madras SR.No.60399

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GP(CO)
GMY(21/08/2019)

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