

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.31062 of 2015
and M.P.Nos.1 & 2 of 2015

Smt. Leelavathi

...Petitioner

-vs-

1. 8994 The Thiruchengode Town Coop Urban Bank Ltd.,
Thiruchengode, Namakkal District, Rep. by its President.

2. The Deputy Registrar of Coop Societies,
Thiruchengode, Namakkal District.

3. M. Ravi Kumar

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the relating to the execution petition No. 03/2015-2016 dated 03.09.2015 of the 2nd respondent issued under Rules 121 to 126 of the Tamil Nadu Coop Societies Rules, 1988 by which the 2nd respondent has threatened to attach and sell in auction the immovable property shown in the annexure to the impugned notice, towards the liability of the 3rd respondent, for which property, the petitioner is the exclusive owner having acquired the said property as a Central Government Employee.

For Petitioner: Mr.S.Venkataraman

For Respondents: Mr.L.P. Shanmugasundaram
Special Govt. Pleader (Co.op) [R1]

Ms.T.Girija
Additional Govt. Pleader [R2]

R3 - No appearance

ORDER

Heard Mr. S. Venkataraman, learned counsel for petitioner, Mr.L.P.Shanmugasundaram, learned Special Government Pleader for 1st respondent and Ms.T.Girija, learned Additional Government Pleader for 2nd respondent.

2. With consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

3. This writ petition has been filed by one Tmt. Leelavathi W/o M.Ravikumar, who was erstwhile clerk-cum-cashier of the 1st respondent society. The impugned order is an order of attachment of an immovable property for recovery of the surcharge amount ordered to be recovered from the petitioner's husband, the 3rd respondent herein.

4. Mr.S.Venkataraman, learned counsel appearing for the petitioner would contend that 1st respondent is not able to show that whether the property was transferred in favour of the petitioner during the pendency of the proceedings or with an intent to defeat the award to be passed in favour of the society. Further it is contend that the petitioner is the registered owner of the property and without notice to the petitioner, the order of attachment could not have been passed.

5. Heard Ms.Girija, learned Additional Government Pleader for the respondents on the above submission.

6. A perusal of the impugned proceedings shows that it is a notice of attachment under the provisions of the Tamil Nadu Co-operative Societies Act and Rules framed therein. The person, who claims that the property attached is, his or her independent property and cannot be proceeded against for recovery of the surcharge amount payable by the 3rd respondent, is at liberty to approach the Deputy Registrar by filing documents and requesting for raising the order of attachment. However, the petitioner has not resorted to such a remedy. It is submitted by the learned counsel for petitioner that the notice was issued to the petitioner's husband and not to the petitioner. The reason for issuing notice to the 3rd respondent, the petitioner's husband and employee of the 1st respondent society is on the assumption that the property has been acquired by the petitioner from and out of the funds misappropriated by the 3rd respondent, while discharging the functions as Clerk-cum-Cashier of the 1st respondent society. However, this presumption is rebuttable for which the petitioner has to appear before the authority and produce sufficient documents to show that she had an independent source of income to purchase the property and she is the

exclusive and rightful owner of the property. Therefore, in the considered view of this Court a writ petition at this stage of the matter is premature.

7. In the light of the above, the writ petition is disposed of by directing the petitioner to file an application before the 2nd respondent for raising the order of attachment dated 03.09.2015 along with the said application, the petitioner shall enclose all documents in support of her claim that she is the exclusive owner of the property and her husband/3rd respondent has no legal right over the property and all other documents in support of her claim.

8. On such application being filed, the 2nd respondent after notice to the petitioner and the petitioner's husband, the 3rd respondent, shall take a decision in the matter and pass a speaking order on merits and in accordance with law within a period of six(6) weeks from the date on which the personal enquiry is concluded by the 2nd respondent. Till orders are passed, the order of attachment shall continue.

In the result, the writ petition is disposed of. No costs. Connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. 8994 The Thiruchengode Town Coop Urban Bank Ltd.,
Thiruchengode, Namakkal District, Rep. by its President.

2. The Deputy Registrar of Coop Societies,
Thiruchengode, Namakkal District.

+1 CC to Mr.S.Venkataraman, Advocate sr 7440.

+1 CC to Mr.L.P.Shanmugasundaram, Advocate sr 7596.

+1 CC to The Special Government Pleader sr 7637.

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NRL(CO)
SP(03/12/2020)