

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.3.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.7218 of 2013 & MP.NOS.1 TO 3 OF 2013

R.Yasodha

...Petitioner

Vs

1.The Deputy Registrar of Coop.
Societies, Tirupattur Circle,
Vellore District.

2.The Special Officer, C1363
Kalanthira Chettiappanur
Primary Agricultural Coop.Bank
Ltd., Chettiappanur, Vaniyambadi
Taluk, Vellore District.

3.The Principal District Judge-cum-
Tribunal for Cooperative Cases,
Vellore.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the conditional attachment order CEP No.224 of 2006 - 2007 dated 27.7.2007 of the 1st respondent made under Section 167 of the Tamil Nadu Cooperative Societies Act, 1983 along with the order dated 11.3.2013 of the 3rd respondent made in CTA No.10 of 2010, quash both the orders and consequently direct 1st and 2nd respondents to restore possession of the petitioner's properties free of all encumbrances.

For Petitioner : Mr.S.Venkataraman
For Respondent-1 : Mr.L.P.Shanmugasundaram
For Respondent-2 : Mr.R.Ramesh for
Mr.P.S.Shivashanmugasundaram

ORDER

I have heard the learned counsel for the parties.

2. The petitioner has impugned the order passed by the third respondent - Tribunal in CTA.No.10 of 2010 dated 11.3.2013.

3. The petitioner is the mother in law of one Mr.C.M.Raghunathan, who was working as a Secretary in the second respondent - cooperative society against whom, proceedings under Section 87(1) of the Tamil Nadu Cooperative Societies Act (the Act for brevity) were initiated and an order of surcharge was passed. Even much prior to the issuance of the order under Section 87(1) of the Act, the property standing in the name of the petitioner was attached soon after the completion of the enquiry under Section 81 of the Act.

4. Thereafter, the petitioner filed a writ petition in W.P.No.27805 of 2007 questioning the order of attachment dated 27.7.2007 passed by the first respondent. The said notice, which was impugned in the earlier writ petition, was pursuant to the proceedings initiated under Section 167 of the Act and the execution proceedings initiated against the petitioner's son in law and two other officers of the society. The said writ petition was entertained on 22.8.2007 and an order of interim stay was granted subject to the condition that the petitioner should not alienate or encumber the property in question.

5. Subsequently, the said writ petition was taken up for hearing during 2009 and a learned Single Judge of this Court found that against the impugned notice dated 27.7.2007 issued under Section 167 of the Act, an appeal lies under Section 152 of the Act. Further, taking into consideration the fact that the third respondent was entitled to go into all issues, the learned Single Judge was of the view that the said writ petition challenging a notice was not maintainable and ultimately dismissed the same vide order dated 11.12.2009. However, liberty was granted to the petitioner to approach the third respondent under Section 152 of the Act challenging the impugned notice.

6. In tune with the said observation made by the learned Single Judge of this Court in the said writ petition in the aforementioned order, the petitioner preferred an appeal before the third respondent under Section 152 of the Act. The Tribunal, though rightly framed the first question of law as to whether the order of attachment dated 27.7.2007 was liable to be set

aside or not, proceeded on the footing that in terms of Rule 135 of the Tamil Nadu Cooperative Societies Rules, 1988 and held that the appeal was not maintainable after a period of six months. In fact, no such point for consideration was framed by the Tribunal before deciding such an issue.

7. The Tribunal lost sight of the fact that the said writ petition was filed in the year 2007 i.e. within 30 days from the date, on which, the order of conditional attachment was passed on 27.7.2007. The said writ petition was entertained and an interim order was granted on 22.8.2007 and it was pending for nearly two years. It was only on 11.12.2009 the said writ petition was finally disposed of by holding that it was not maintainable and that the petitioner had to necessarily avail the remedy under Section 152 of the Act. The Tribunal was not justified in rejecting the petitioner's appeal on the ground of limitation when such was never the issue before the Tribunal. That apart, the limitation will start running only after the disposal of the said writ petition i.e. 11.12.2009 and after receiving the certified copy of that order.

8. In fact, the appeal was presented on 03.3.2010 i.e. well within the period of 60 days. The appeal was numbered as CTA.No.10 of 2010 and was ultimately dismissed after about three years by the impugned order. Thus, this Court is fully convinced that the impugned order cannot be sustained and the Tribunal misdirected itself in rejecting the appeal petition on the alleged ground of limitation.

9. For the above reasons, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the Tribunal to take up the appeal, hear and decide the same on merits after affording an opportunity to the petitioner as well as to the respondents. No costs. Consequently, the connected MPs are closed.

10. The learned counsel for the petitioner submits that though, in the earlier writ petition, there was an interim order operating, after the dismissal of the main writ petition, when the matter was pending before the Tribunal for nearly three years, the property was brought for auction and the second respondent society itself became the purchaser.

11. In the light of the orders now passed in this writ petition setting aside the order of the Tribunal and remanding the matter to the Tribunal for a fresh consideration, it goes without saying that any action initiated during the pendency of the appeal before the Tribunal shall abide by the fresh orders to be passed by the Tribunal. It is needless to state that the second respondent shall not encumber or alienate the property in

question and status quo with regard to the property in question shall be maintained. Further, the petitioner will be entitled to work out her remedy subject to the outcome of the appeal.

Sd/-
Assistant Registrar(CS-)

// True Copy//

Sub Assistant Registrar

RS

To

1. The Deputy Registrar of Cooperative Societies,
Tirupattur Circle,
Vellore District.
2. The Special Officer,
C1363 Kalanthira Chettiappanur Primary Agricultural
Cooperative Bank Ltd.,
Chettiappanur,Vaniyambadi Taluk,
Vellore District.
3. The Principal District Judge-cum-Tribunal for Cooperative
Cases,
Vellore.

+1cc to the Special Government Pleader(co-op)sr 24064
+1cc to Mr.S.Venkataraman, Advocate, sr 23598

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MP.Nos.1 to 3 of 2013

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