

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No. 9540 of 2020
and
WMP Nos.11651 and 11652 of 2020

K.Subramani

...Petitioner

Vs.

- 1 The Deputy Registrar of cooperative societies
Dharmapuri Circle
Dharmapuri.
- 2 The Cooperative Sub- Registrar/
Sale Officer, Field Officer
Pennagaram
Dharmapuri District.
- 3 The DD14 Dharmapuri District
Central Cooperative Bank Employees
Cooperative Thrift and Credit Society
Represented by its
Special officer
Dharmapuri.
- 4 The Sub- Registrar
Dharmapuri-636 701.

...Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent relating to the demand notice dated 06.03.2020 in E.P. No.1/ 2018-19 and the impugned order of attachment dated 18.06.2020 to quash and to issue consequential directions to the 1st respondent to desist from attaching properties of the petitioner in any manner for the alleged dues and this Hon'ble Court may further be pleased to lift the ban against the petitioner for alienating the immovable property in S.No.458/1 measuring 1401½ Sq.Ft. in A.Jettihalli Village, Dharmapuri Taluk and District.

For Petitioners	:	Mr.G.Punniyakotti
For Respondents 1 to 3	:	Mr.L.P.Shanmugasundaram Special Government Pleader

For Respondent-4

: Mr.T.M.Pappiah
Special Government Pleader

ORDER

This Writ Petition is filed challenging the demand notice issued by the second respondent dated 06.03.2020 and the order of attachment dated 18.06.2020.

2. The petitioner approached this Court by filing W.P.No.11893 of 2017 challenging the order of attachment passed by the first respondent dated 05.07.2016. This Court partly allowed the Writ Petition and the order is extracted hereunder:-

" The petitioner has filed this writ petition to issue a Writ of Certiorari calling for the records relating to the impugned order of attachment passed by the 1st respondent in his R.C.No.2573/2016 Sa.Pa.1 dated 05.07.2016 and quash the same.

2. By consent of both the parties, the main writ petition itself is taken up for final disposal.

3. According to the learned counsel for the petitioner, when the petitioner applied for Encumbrance Certificate in respect of his own property to the third respondent, the petitioner came to know that in Column No.1, the name of the second respondent has been entered on 05.07.2016. On enquiry, the third respondent informed that an order of attachment has been passed by the first respondent on 05.07.2016 against the petitioner's self acquired property. On requisition, the petitioner was provided with a copy of the attachment order dated 05.07.2016 by the third respondent on 21.04.2017. When the petitioner enquired the first respondent, it was informed that the petitioner's wife sanctioned loans to the members of the society in an irregular manner and failed to recover the same from the borrowers, thereby causing financial loss to the second respondent society and hence her husband's (petitioner herein) property has been attached under Section 167 of the Tamil Nadu Co-operative Societies Act 1983 towards her liability, when an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 is still pending against the petitioner's wife

4. According to the learned counsel for the petitioner, order of attachment has been passed by the first respondent, behind the back of the

petitioner, without any prior notice and without providing any opportunity to the petitioner. Therefore, the petitioner has filed this Writ Petition before this Court.

5. The learned Special Government Pleader would submit that the aforesaid attachment order passed by the first respondent is in accordance with law. Further, if the petitioner is aggrieved by the impugned order, he has a remedy to file an appeal before the appellate authority. Therefore, the Writ petition is not maintainable before this Court.

6. Heard, the learned counsel for the petitioner and the learned counsel for the respondents. Perused, the materials available on record.

7. In fact, an identical issue was considered by this Court in the case of E.Murugan and Others Vs. The Registrar of Co-operative Societies and Others (W.P.No.11143 to 11146 of 2015 dt 17.04.2015), wherein this Court accepted the contentions raised by petitioners therein and set aside the impugned proceedings. The operative portion of the said order reads as follows:-

"9. It is relevant to extract Section 167 as well as Rule 140 of the Co-Operative Societies Act.

167. Furnishing of Security and attachment of property.-

(1) Where the Registrar is satisfied on the application of a registered society in respect of a reference made to him under sub-Section (1) of Section 90 or on the application of a liquidator appointed under Section 138 in respect of the proceedings of such liquidator for determining the contribution to be made by a person to the assets of the society under clause (b) of sub-section (2) of Section 139 or on the application of the board or liquidator or any creditor to the society or otherwise in respect of any inquiry ordered into the conduct of any person under Section 87 that any party to the reference or the person, as the case may be, is about to dispose of or remove from the local limits of the jurisdiction of the Registrar, the whole or

any part of his property with intent to defeat or delay the execution of any decision that may be passed on the reference or of any order that may be passed against him by the liquidator or the Registrar, as the case may be, the Registrar may, by order, direct the party or the person 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 or order aforesaid.

(2) The Registrar may also in the order made under subsection (1), or by a separate order, direct the conditional attachment of the said property, or such part thereof and such attachment shall have the same effect as if it had been made by a competent Civil Court:

Provided that no order for conditional attachment shall be made under this subsection unless the Registrar, for the reasons to be recorded in writing, is satisfied that the whole or any part of the property will be disposed of or removed with intent to defeat or delay the execution of any decision or order of the liquidator or the Registrar, as the case may be.

"Rule 140. Mode of making attachment before judgment:

(1) Attachment of property under Section 167 shall be made in the manner provided in the foregoing rules of this chapter.

(2) Where a claim is preferred to property attached under sub-rule (1) such claim shall be investigated in the manner and by the authority specified in the foregoing rules of this chapter.

(3) Where a direction is made for the attachment of any property under sub-rule (1), the Registrar shall order the attachment to be withdrawn.-

(a) when the party concerned furnishes the security required together with the security for the cost of the attachment; or

(b) When the Registrar makes an order under sub-section (1) of Section 167 that the party concerned need not repay or restore any money or property or contribute any sum to

the assets of the society by way of compensation; or

(c) when the dispute referred to in sub-section (1) of section 90 has been decided against the party at whose instance the attachment was made; or

(d) when the liquidator determines under clause (b) of sub-section (2) of section 139 that no contribution need be made by the party concerned.

(4) Attachment made under sub-rule(1) shall not affect the rights existing prior to the attachment of persons not parties to the proceedings in connection with which the attachment was made, not bar any person holding a decree against the person whose property is attached from applying for the sale of property under attachment in execution of such decree.

(5) Where property is under attachment by virtue of the provisions of this rule and a decree is subsequently passed against the person whose property is attached, it shall not be necessary upon an application for execution of such decree to apply for re-attachment of the property.

10. A perusal of the impugned order would disclose that in terms of Section 167 (1), no order has been passed calling upon the petitioners 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 or order aforesaid. Admittedly, the impugned order is dated 09.04.2015 and the petitioners were called upon to furnish security for the said sum on the very same date. According to the petitioners the notices were served on them by force on the very same date.

11. In the light of the said infirmity, it is not necessary for the writ petitioners to invoke the alternative remedy available as pointed by the learned counsel appearing for the respondents 1 to 5.

12. In the result, all the writ petitions are partly allowed and the impugned order dated 09.04.2015 is set aside and the matter is remitted back to the third respondent for fresh adjudication in accordance with Section 167 of the Tamil Nadu Co-Operative Societies Act r/w. Rule 140 of the Tamil Nadu Co-Operative Societies Rules. It is made clear that in the interregnum, the petitioners shall not alienate or encumber or create third party rights in respect of the immovable properties. The third respondent shall make every endeavour to pass fresh orders in terms of the above said provisions within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed. "

The legal issue involved in this Writ petition is covered by the aforesaid decision of this Court.

8. In the result, the writ petition is partly allowed and the impugned Order of attachment dated 05.07.2016 passed by the first respondent in Rc.No.2573 of 2016 which was received by the petitioner through Sub-Registrar on 21.04.2017 is set aside and the matter is remanded back to the first respondent for fresh adjudication in accordance with Section 167 of the Tamil Nadu Cooperative Societies Act read with Rule 140 of the Tamil Nadu Cooperative Societies Rules. It is made clear that till the order is passed by the first respondent, the petitioner shall not alienate or encumber or create third party right in respect of the immovable properties. The first respondent is directed to pass fresh orders in terms of the above provisions within a period of twelve weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petitions are closed. No costs."

3. When this matter came up for admission on 22.07.2020, this Court passed the following order:-

"Mr.L.P.Shanmugasundaram, learned Special Government Pleader takes notice on behalf of the respondents 1 and 2.

2. Mr.T.M.Pappiah, takes notice for the fourth respondent.

3. The learned Special Government Pleader is directed to take instructions from the respondents as to whether the directions given by this Court in W.P.No.11893 of 2017 was complied with and any order was passed before issuing any notice under Form-6 to the petitioner.

4. Post this case under the caption for orders on 29.07.2020. There shall be an order of status quo till then."

4. Mr.L.P.Shanmugasundaram, learned Special Government submitted that the present impugned order under challenge in this Writ Petition has been passed without following the directions issued by this Court in W.P.No.11893 of 2017 and therefore requested this Court to remit the matter to the file of the first respondent.

5. In view of the submissions made by the learned Special Government Pleader, the demand notice dated 06.03.2020 issued by the second respondent and the impugned order of attachment dated 18.06.2020 issued by the first respondent are quashed. The first respondent is directed to adjudicate as per the direction issued by this Court in W.P.No.11893 of 2017 and pass fresh orders in terms of this reasoned order, within a period of eight weeks from the date of receipt of a copy of this order.

6. This Writ Petition is accordingly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1 The Deputy Registrar of cooperative societies
Dharmapuri Circle
Dharmapuri.

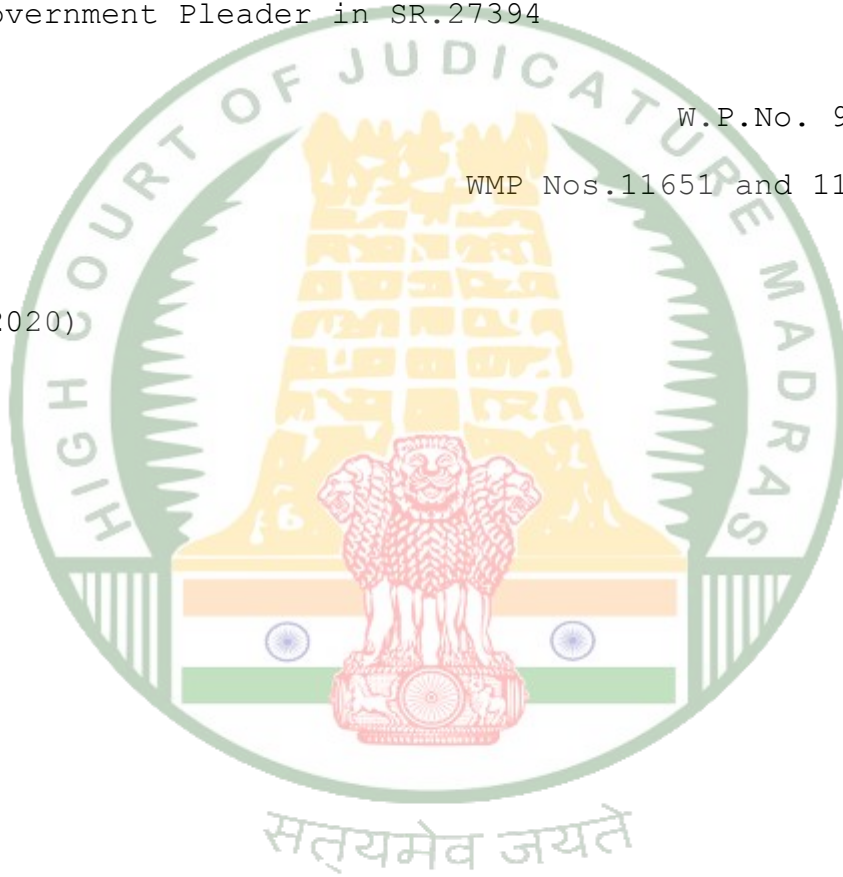
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- 4 The Sub- Registrar
Dharmapuri-636 701.

+lcc to Mr.L.P.Shanmugasundaram, Advocate in SR.27306
+lcc to Special Government Pleader(Co-op)
+lcc to Government Pleader in SR.27394

W.P.No. 9540 of 2020
and
WMP Nos.11651 and 11652 of 2020

SVI (CO)
RV(17/09/2020)



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