

W.P.No.10042 of 2009

Dr.ANITA SUMANTH, J.

The challenge in this matter is to an order of the Principal District Judge (Co-operative Tribunal) dated 28.01.2009. I have in a very similar circumstances in W.P.No.7244 of 2009 passed an order on 03.09.2021, reading as follows:

Heard Mr.J.Saravana Vel, learned counsel for the petitioner and Mr.S.Ravi, learned counsel for M/s.Gupta & Ravi (Law Firm) for R3 .

2.The order of the Principal District Judge, Vellore District, Vellore passed in CTA.No.1 of 2000 dated 08.09.2003 and the order of the Deputy Registrar of Co-operative Societies in ARC.No.204/96-97 dated 29.06.1998 are assailed before me in this writ petition.

3. Preliminary submissions have been made on the maintainability of this writ petition under Article 226 of the Constitution of India. My attention is drawn to a decision of a First Bench of this Court in the case of E.S.Sundara Mahalingam Vs. Special Tribunal for Co-operative Cases (District Judge), Tirunelveli and Others (2020 1 MLJ 438), wherein the identical issue in regard to maintainability of a writ appeal challenging an order of the learned Single Judge had been heard by the Bench. In that case, the learned Single Judge had dismissed the writ petition, however, on merits, not touching upon the aspect of maintainability.

4. When a writ appeal had been filed by the aggrieved party, the papers were returned by the Registry questioning the maintainability of the writ petition and the matter came up for maintainability before the Court. The issue was heard in extenso by the Bench and after consideration of various judgments, the Bench decided the issue as to whether a challenge to an order passed by a Special Tribunal, being a Tribunal within the meaning of Article 227 (one of the Constitution of India) would be maintainable under Article 226 or Article 227.

5.The conclusion is set out at paragraph-5, wherein the Bench states categorically that such a challenge would lie only before the learned Judge holding portfolio for matters falling under Article 227 of the Constitution of India. At paragraphs-5 and 6 it is stated as follows:

'5.Applying the ratio of the decisions referred to above, in the present case, there is no doubt that the order was passed by the Special Tribunal Chaired by the learned District Judge and therefore, a writ petition under Article 226 of the Constitution could not have been maintained. The writ petition has, however, been dismissed. Thus, had the writ petition been allowed, an appeal would have been preferred and we could have set aside the judgment

following the ratio as explained in the case of Vijayanand Puri v. Deorani Devi and Another (supra). But the fact remains that the decision that was under challenge before the learned Single Judge was admittedly that of a Tribunal. The jurisdiction of this Court therefore which could be exercised was under Article 227 of the Constitution and the petition could have been treated to be that under Article 227 only. But the aforesaid issue does not appear to have been dealt with by the learned Single Judge. Since we are of the opinion on the facts of this case that the writ petition filed under any caption whatsoever, was against the order of the Tribunal, it is the learned Single Judge who could and should have treated the petition under Article 227 of the Constitution of India.

6.Having said so, the present writ appeal against the jurisdiction exercised under Article 227 would not be maintainable. In the light of the above, we do hold that this appeal is not maintainable, but at the same time, we grant liberty to the appellant to move a Review Application before the learned Single Judge for considering the case in the light of what has been stated herein above.'

6.In light of the aforesaid, this writ petition filed in terms of Article 226, is not maintainable. However, by concurrence expressed by both Mr.J.Saravana Vel as well as Mr.S.Ravi, this matter be placed by the Registry before the appropriate portfolio Judge after obtaining appropriate orders from the Hon'ble The Chief Justice.

7.In line with the aforesaid discussion, let the process of numbering of the present writ petition as a Civil Revision Petition (CRP) take place expeditiously. The listing of the matter shall be subject to appropriate orders in this regard from the Hon'ble The Chief Justice.

2. Thus, the rationale of the aforesaid order is applicable on all fours to the present matter and the aforesaid directions are taken to be passed in this matter as well.

08.09.2021

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