

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.3.2021

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THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.No.5374 of 2021
and
W.M.P.No.5967 of 2021

K.Ashokkumar

: Petitioner

vs.

1. The Deputy Registrar of Coop.Societies,
Mayiladuthurai Circle,
Mayiladuthurai,
Mayiladuthurai District.
2. The Managing Director/Deputy Registrar,
Mayiladuthurai Consumer's Co-operative
Wholesale Stores Ltd., T.917,
No.5B Narayana Pillai Street,
Mayiladuthurai 609 001.
Mayiladuthurai District.

: Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the entire records relating to the impugned order passed by the 1st respondent in Form 6 dated Nil.4.2019 signed on 26.6.2019 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.Bala Ramesh, Special Govt. Pleader
assisted by Mr.G.B.Rajesh, Govt. Advocate

ORDER

This writ petition is filed as against the impugned notice issued by the 1st respondent in form No.6 signed on 26.6.2019 wherein this petitioner's property has been attached pursuant to a Section 81 enquiry.

2. The case of the petitioner is that he is an Ex-Serviceman retired from Military Service in the year 2017 and he purchased a property in his name situated in Old S.No.89/8, New S.No.89/8A-1 of an extent of 2000 sqft with a small building at

Raja Nagar, Parasalur, Sembanarkoil, Tharangambadi Taluk, Nagapattinam and the said property is now sought to be attached in Form No.6 on the allegations as against his wife Mahalakshmi.

3. The petitioner's wife Mahalakshmi, who was working in the second respondent co-operative Wholesale Store is facing some allegations for misappropriation along with the President and Deputy Registrar of the Society and a Section 81 enquiry was conducted as against the petitioner's wife Mahalakshmi and others and after enquiry, surcharge proceedings also has been initiated.

4. The case of the second respondent is that the petitioner's wife Mahalakshmi misappropriated along with others during the period from 1.4.2011 to 27.1.2014 to an extent of Rs.40,95,832/-.

5. Mr.Bala Ramesh, learned Special Government Pleader assisted by Mr.G.B.Rajesh. learned Government Advocate appearing for the respondents would submit that the petitioner claimed to have purchased the property in the year 2006 and the building has been constructed in the said land only during the relevant period viz., from 2011 to 2014 from the funds which have been misappropriated from the Society. He also pointed out the earlier orders passed by this court in W.P.No.17538 of 2020, in a similar case, following the orders of a Division Bench of this court.

6. The relevant portion of the order in the above writ petition is as under:-

"4. Mr.D.Venkatachalam, learned Additional Government Pleader, who takes notice for the respondent submits that these writ petitions cannot be entertained in view of the decision in wherein a Division Bench of this court in **E.KALAIVANI V. COOPERATIVE SOCIETY (2019 SCC ONLINE MADRAS 8436)** has decided the similar issue as under:-

"6. In our considered view, the learned Single Judge rightly directed the appellant to approach the Sale Officer and file a petition under Rule 135(2) of the Tamil Nadu Cooperative Societies Rules, 1985 by making a claim or objection by holding that without doing so, the appellant could not have approached the Writ Court. Ultimately, the said writ petition was dismissed.

... ..

12. Accordingly, the above writ appeal is dismissed with a direction to the appellant to file petition/objection under Rule 135 of the said Rules within two weeks from the date of receipt of a copy of this judgment. On receipt of the petition/objection, the second respondent shall consider the same, peruse the documents and pass a speaking order on merits and in accordance with law. Till such orders are passed, the property in question shall not be brought for auction. However, the order of attachment shall continue. This order will not cover the other properties, which have been attached and which appear to stand in the name of the appellant's husband - M.Elango, Secretary of the said cooperative society, who is presently under suspension. No costs. Consequently, the connected CMPs are dismissed."

5. With regard to the writ petition filed against the order of attachment is concerned, the learned counsel for the second respondent, co-operative society would submit that as against the order of attachment, the petitioner is having a right of appeal before the Co-operative Tribunal as per Section 152 of the Act and therefore, she can very well file an Appeal. In this regard, the learned counsel for the respondent has also relied upon the judgment of Division Bench of this court reported in **A.BALARAMAN & 3 OTHERS v. THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES, CHYYAR AND 2 OTHERS (2009-1-LW 681)** wherein it has been held as under:-

"7. In view of the well-settled legal principle, it is not possible for this Court to take a different view and go against the order passed by the learned Judge of the writ court. We do not find any error in the judgment of the learned Judge of the writ Court. We make it clear that it is open to the petitioners to file an appeal before the Appellate Tribunal. Since, the Tribunal also has power to consider the prayer for interim protection; it is open to the petitioners to ask for such protection. However, we do not say anything on the merits of the

case of the petitioners. We also make it clear that if the Appellate Authority is approached within ten days from the receipt of a copy of this order, the Appellate Authority shall entertain the appeal on file without insisting on the question of limitation since the matter was kept pending in this Court. With these observations, the writ appeal is disposed of. We have not decided anything on merit. All questions are kept open. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs. "

6. In view of the above specific stand taken by the respondents that appeal remedy is available for the petitioner, both the writ petitions are disposed of making it clear that the petitioner can very well work out her remedy before the Appellate Authority/Sale Officer within a period of one week from the date of receipt of copy of this order and on such approach, the appeal/objection shall be taken up immediately by the Appellate Authority/Sale Officer, without insisting on the question of limitation and dispose of the same within a period of four weeks from the date of filing of such Appeal/Objections. No costs. The connected Miscellaneous Petitions are closed."

7. The decision cited supra squarely applies to the facts and circumstances of the present case. Therefore, this writ petition is disposed of on the same terms, with a liberty to the petitioner can very well work out his remedy before the Appellate Authority/Sale Officer within a period of one week from the date of receipt of copy of this order and on such approach, the appeal/objection shall be taken up immediately by the Appellate Authority/Sale Officer, without insisting on the question of limitation and dispose of the same within a period of four weeks from the date of filing of such Appeal/Objections. No costs. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

SSK

To

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Mayiladuthurai District.

+1cc to Mr.R.Balaramesh, Advocate, S.R.No.16642

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W.M.P.No.5967 of 2021

PM(CO)
TE(17/04/2021)



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