

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.2.2021

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.Nos.17538 of 2020,
27207 of 2017,
W.M.P.Nos.21731 of 2020
and
29137 of 2017

N.Nachammal Petitioner in both the Petitions

vs.

1. The Deputy Registrar of
Co-operative Societies,
Dharapuram Circle, Dharapuram,
Tiruppur District.
2. The President,
K-328, Chinna Kumarapalayam Primary
Agricultural Cooperative Credit Society,
Chinna Kumarapalayam, Kurichikottai Post,
Udumalpet, Taluk, Tiruppur District.

Respondents in both the Petitions

Writ Petition No.17538/2020 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 his proceedings C.E.P.No.234/2019-2020 in Award No.Na.Ka.890/2018/ Sa.Pa, dated 29.9.2020 and quash the same.

Writ Petition No.27207/2020 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 his proceedings C.E.P.No.75 of 2017-2018 / R.C.No.3763/2017/SF dated 10.10.2017 and quash the same.

For Petitioner : Mr.C.Prakasam

For R1 : Mr.D.Venkatachalam, AGP (P)
For R2 : Mr.L.P.Shanmugasundaram,
Special Government Pleader

COMMON ORDER

These writ petitions are filed by the wife of the Secretary to the Society Chinnakumarapalam Primary Cooperative Society.

2. The second respondent has ordered for a section 81 enquiry in the year 2017 alleging certain irregularities as against one Jaganathan, the husband of the petitioner and when that enquiry, was pending, the second respondent had proceeded to attach the property of the petitioner as against which, the petitioner had filed W.P.No.27207 of 2017 and pending that writ petition, the second respondent has proceeded with another section 81 enquiry and also ordered a Surcharge Proceedings and brought the property of the petitioner under auction by the impugned order dated 29.9.2020 and aggrieved over the same, W.P.No17538 of 2020 came to be filed.

3. Mr.C.Prakasam, learned counsel appearing for the petitioner submits that the petitioner is working as Accountant in a Private Company at Udumalpet, Thirupur District and her house purchased by herself alongwith her husband from a Finance Limited Company to the tune of Rs.14,00,000/- and she is also residing in the said house and for the malpractices alleged to have been committed by the Cashier in the Cooperative Society, an 81 enquiry was contemplated and the petitioner's property is also subjected for attachment. He further submits that now, the 81 enquiry is over but the respondents have unilaterally taken a decision to attach the property of the petitioner without any valid reasons.

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.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Deputy Registrar of
Co-operative Societies,
Dharapuram Circle, Dharapuram,
Tiruppur District.
2. The President,
K-328, Chinna Kumarapalayam Primary
Agricultural Cooperative Credit Society,
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Udumalpet, Taluk, Tiruppur District.

+1 cc to Spl Government Pleader Sr.No. 7882,7883

W.P.Nos.17538 of 2020 &
27207 of 2017

A.SK(26.02.2021)

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