



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.NO.860 OF 2022

G.Selvi

.. Appellant

Vs

1. Deputy Registrar of Co-operative Societies,
Mathuranthagam Division,
No.50, Hospital Road,
Kancheepuram - 603 306.
 2. The Management,
Villivakkam Primary Agriculture Co-operative Credit Society,
Mariyamman Kovil Street,
Villivakkam Village, Chunammedu Post,
Cheyyur Taluk,
Kancheepuram - 603 401.
 3. Sub-Registrar,
Office of the SRO Seiyur,
Registration Department,
Mathuranthagam Taluk,
Chengalpet District.
- .. Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 28.01.2022 in W.P.No.1195 of 2022.

Prayer in W.P.No.1195 of 2022:

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 29.10.2020 in Ref.No.Na.ka.No.1729/2020/A3 passed by the First respondent in surcharge proceedings and quash the impugned order and to issue directing to the First and third respondent to raise the attachment made in pursuant to the impugned order and consequently remove the entries of attachment in the Records of the third respondent.



WEB COPY

For the Appellant : Mr.R.Manickavel

For the Respondents : Mr.P.Muthukumar
State Government Pleader
for respondent Nos.1 to 3

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The writ appeal has been filed to challenge the judgment dated 28.1.2022 mainly on the ground that the Registrar has passed an order for attachment of the property pending appeal preferred by the appellant against the surcharge order.

2. It is submitted that during the pendency of the appeal, the Registrar was not having authority to pass the order of attachment of the property. A reference to Sections 143 and 167 of the Tamil Nadu Co-operative Societies Act, 1983 [for brevity, "the Act of 1983"] has been given. It is to challenge the competence of the Registrar to pass order for attachment of the property. Rather, according to the writ appellant, the Registrar should have taken steps by filing an execution petition.

3. We have considered the submission made by learned counsel for the appellant and find that Section 143 of the Act of 1983 does not envisage attachment of the property by way of an execution petition by the Registrar. Rather, the Registrar has been given power for attachment of the property to recover certain amounts and even for sale of property, for which the provision does not provide it to be by filing an execution petition.

4. Learned counsel for the appellant then shifted to Section 167 of the Act of 1983 despite a specific provision under Section 143 of the Act of 1983 giving power to the Registrar to attach the property and even sell the property to recover the due amount.

5. In the instant case, surcharge order was passed against the appellant. Though an appeal against the said order was maintained under Section 152 of the Act of 1983, no interim order was granted therein and, accordingly, the Registrar was within his competence to pass an order of attachment to recover the amount.

6. So far as Section 167 of the Act is concerned, that would



operate on an application given by a registered society in reference to sub-section (1) to Section 90; or on an application of the liquidator appointed under Section 138 of the Act; and in reference to other provisions also.

WEB COPY

7. In the case on hand, the relevant provision would be Section 87 of the Act of 1983, because it was by virtue of the power conferred under the said provision an order was passed against the appellant. In order to ensure that there is no delay in execution of the said order for any reason, the power was given to the Registrar to secure the property by way of attachment.

8. Sections 143 and 167 of the Act of 1983 are quoted hereunder for ready reference:

"143. Power of the Registrar to recover certain sums by attachment and sale of property. - The Registrar or any person subordinate to him empowered by Registrar in this behalf may, subject to the rules and without prejudice to any other mode of recovery provided by or under this Act, recover -

(a) any sum due under a decree or an order of a Civil Court, a decision or an award of the Registrar or any person subordinate to and empowered by the Registrar or arbitrator or arbitrators or an order of the Registrar.

Explanation. - For the purpose of this clause, "Registrar" and "arbitrator" shall also include the Registrar of the State having reciprocal arrangements with the State of Tamil Nadu and any arbitrator appointed by such Registrar; or

(b) any sum due from a registered society or from an officer, former officer, member or past or deceased member of a registered society as such to the Government including any costs awarded to the Government in any proceedings under this Act; or

(c) any sum ordered to be paid towards the expenses of a general meeting of a registered society called under sub-section (4) of section 32 or sub-clause (ii) of clause (e) of sub section (2) of section 81; or

(d) any sum awarded by way of costs under section 85 to a registered society including a financing bank; or



WEB COPY

(e) any sum ordered under section 139 to be recovered as a contribution to the assets of a registered society or as costs of liquidation; or

(f) any sum ordered under section 87 to be repaid to a registered society or recovered as contribution to its assets; or

(g) any amount due under a certificate granted by the Registrar under sub-section (1) of section 150,

together with the interest, if any, due on such sum and the costs of process by the attachment and sale or by the sale without attachment of the property of the person against whom such decree, decision, award, order or certificate, has been obtained or passed."

"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 sub-section (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:

WEB COPY

Provided that no order for conditional attachment shall be made under this sub-section 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."

9. Sub-section (2) of Section 167 of the Act of 1983 authorises the Registrar to pass a conditional order of attachment of property and it will have the same effect as if it had been passed by the competent civil court. The order of attachment has been passed giving reasons and the appellant despite having a statutory remedy of appeal against the said order under Section 152 of the Act of 1983, preferred the writ petition. Therefore, it was dismissed with liberty to the appellant to approach the Principal District Court (Special Co-operative Tribunal) for redressal of the grievance in the manner known to law. We do not find any error in the judgment under challenge warranting interference.

For the reasons aforesaid, the writ appeal is dismissed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sasi

To

1. The Deputy Registrar of Co-operative Societies,
Mathuranthagam Division,
No.50, Hospital Road,
Kancheepuram - 603 306.



2. The Management,
Villivakkam Primary Agriculture Co-operative Credit Society,
Mariyamman Kovil Street,
Villivakkam Village, Chunammedu Post,
Cheyyur Taluk,
Kancheepuram - 603 401.

3. The Sub-Registrar,
Office of the SRO Seiyur,
Registration Department,
Mathuranthagam Taluk,
Chengalpet District.

+1cc to Mr.R.Manickavel, Advocate, S.R.No.26919

W.A.No.860 of 2022

EV (CO)
PM/28/04/2022