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W.A.Nos.1867 of 2021 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

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THE HONOURABLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.A.Nos.1867 and 1917 of 2021

P.Shanmugam

.. Appellant in W.A.No.1867/21

Tmt.K.Maheswari

.. Appellant in W.A.No.1917/21

Versus

1.The Deputy Registrar of Cooperative Societies,
Omalur circle,
Omalur, Salem District.

2.The Sale Officer,
O/o. The Deputy Registrar of Cooperative societies,
Omalur circle,
Omalur, Salem District.

.. Respondents 1 and 2 in both appeals

3.The President,
S.777, Nangavalli Primary Agricultural
Cooperative Credit Society Limited,
Nangavalli and Post,
Salem – 636 454.

.. 3rd respondents in W.A.No.1867/21

4.The Administrator,
S.777, Nangavalli Primary Agricultural
Cooperative Credit Society Limited,
Nangavalli and Post,
Salem – 636 454.

.. 3rd respondents in W.A.No.1917/21

5.The Sub-Registrar of Registration,
Jalakandapuram – 636 501.
Salem District.

.. 4th respondents in both appeals



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Common Prayer: Writ Appeals have been filed under Clause 15 of Letters Patent against the order passed by the learned Single Judge in W.P.Nos.12580 and 18492 of 2020, dated 01.07.2021 respectively.

For Appellants : Mr.S.Kamadevan
For R1, R2 & R4 : Mrs.R.Anitha, Spl.GP

COMMON JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Acting Chief Justice)

These writ appeals are directed against the impugned orders passed by the learned Single Judge in W.P.No.12580 of 2020, dated 01.07.2021 and W.P.No.18492 of 2020, dated 01.07.2021.

2. Since the issues involved in both writ appeals are one and the same, they are disposed of by this common order. For better appreciation, facts involved in W.A.No.1867 of 2021 are stated below:-

The writ petitioner was one of the elected Board of Directors of the third respondent society and while he was functioning as President of the third respondent society, a notice dated 13.07.2017 was issued calling for an explanation as to why surcharge proceeding should not be initiated. Thereafter, the first respondent, without complying with the statutory procedures as adumbrated under the Tamil Nadu Cooperative Societies Act, 1983 (in short “the Act”), passed the surcharge award dated 09.07.2018 under Section 87 of the Act against the writ petitioner and other employees of the society including the writ petitioner in



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W.A.No.1917 of 2021. Aggrieved by the same, he filed an appeal in C.M.A.No.28 of 2019 before the Principal District Judge, Salem, and the same is pending now. It is further averred that pending the said appeal, the respondents have passed an order of attachment under Section 167 of the Act on 07.11.2016 and subsequently, the Sale Officer, Office of the Deputy Registrar of Cooperative Societies, Omalur, Salem/second respondent herein issued auction notice dated 28.08.2020. Challenging the same, the writ petitioners filed W.P.Nos.12580 and 18492 of 2020, whereby, learned Single Judge, by order dated 01.07.2021, while disposing of the said writ petitions, gave liberty to challenge the impugned orders in the manner known to law as he has a remedy before the Sale Officer under Section 135 of the Tamil Nadu Cooperative Societies Rules, 1988. Aggrieved by the same, they have filed the present writ appeals.

3. Mr.S.Kamadevan, learned counsel for the appellants, submitted that after the enquiry under Section 81 was initiated on 01.11.2016, a final report was filed on 09.05.2017 and thereafter, based on the said report, surcharge proceedings were initiated on 13.07.2017 and subsequently, award also has been passed on 09.07.2018 against the writ petitioners. It is further contended that the first respondent passed an order of conditional attachment dated 07.11.2016 without giving any notice or opportunity of personal hearing to the writ petitioners, therefore, as the impugned order of attachment has been passed without giving any notice, the same is liable to be held as violation of principles of natural justice. Besides, mandatory procedures adumbrated under Section 167 of the Act also were given a go-by, for, under Section 167 of the Act, on the application of a registered society, when the



inquiry ordered under Section 87 is pending and if there is any apprehension that any party is about to dispose of or remove from the local limit 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, the Registrar by passing an order direct the party or the person to furnish security initially. In the event of failure to furnish the surety, the order of attachment order could be passed. But, in the present case, no notice is issued to furnish the security and no statutory procedures have been followed as adumbrated under the Act. Thus, the impugned order passed by the learned Single Judge directing the parties to avail the alternative remedy is liable to be interfered with, he pleaded.

4. Mrs.R.Anitha, learned Special Government Pleader, appearing for the respondents 1, 2 and 4, fairly stated that since the mandatory conditions adumbrated under Section 167 of the Act, namely, giving notice to the appellants, have not been followed, in view the fact that the award under Section 87 of the Act has been passed on 09.07.2018, now, the authorities have to follow the further condition mentioned under Section 143 of the Act by giving notice and providing an opportunity of personal hearing to the parties concerned.

5. Therefore, recording the above said submission of the learned Special Government Pleader, the writ petitioners are directed to file an application under Section 143 of the Act within a period of two weeks from the date of receipt of a copy of this order. On receipt of such application, the authority concerned is directed to consider the same after affording an



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opportunity of personal hearing to the parties and pass orders in accordance with Section 143 of the Act, within a period of three months thereafter. It is made clear that in the interregnum, the writ petitioners shall not alienate or encumber or create third party rights in respect of the immovable properties. With these directions, the writ appeals are allowed and the impugned orders passed by the learned Single Judge are set aside. No Costs.

(T.R., ACJ.) (D.K.K., J.)
27.10.2022

rkm

Index:yes/no

Speaking/non-speaking

To

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