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W.P.No.33683 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.33683 of 2022
and WMP.No.33146 of 2022

The Board of Management
Rep. by its President G.Sambandam
Kanchipuram Co-operative Housing Societies Ltd.,
Perunthalaivar Kamarajar Maligai
No.12-A/51, Chappani Pillaiyar Koil Street
Kanchipuram - 631 502 .. Petitioner

Vs.

1. The Registrar of Co-operative Housing Societies
Tamil Nadu Housing Federation
Vepery, Chennai - 600 007
2. The Joint Registrar of Co-operative Housing Societies
No.48, Ritherdon Road
Vepery, Chennai - 7
3. The Deputy Registrar of Co-operative Housing Societies
26-B, Alagesan Nagar
Chengalpattu Regional
Chengalpattu
4. The Secretary/Administrator
Kanchipuram Co-operative Housing Societies Ltd.,
Perunthalaivar Kamarajar Maligai
No.12-A/51, Chappani Pillaiyar Koil Street
Kanchipuram - 631 502 ... Respondents



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Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the first respondent impugned order dated 22.11.2022 vide Na.Ka.No.1600/2022/SaPa2 and to quash the same.

For Petitioner : Mr.M.Selvam

For Respondents : Mr.S.Ravi Kumar
Special Government Pleader for R1 to R3
Ms.C.Sangamithirai
Special Govt. Pleader for R4

ORDER

Captioned writ petition has been filed assailing an 'order dated 22.11.2022 bearing reference Na.Ka.No.1600/2022//SaPa2 made by the first respondent' [hereinafter 'impugned order' for the sake of convenience and clarity]. The impugned order pertains to 'Kanchipuram Co-operative Housing Societies Ltd.,' [hereinafter 'said Society' for the sake of convenience and clarity].

2. The impugned order has been made by the first respondent in exercise of powers under Section 88 of 'Tamil Nadu Cooperative Societies Act, 1983' [hereinafter 'said Act' for the sake of brevity, convenience and clarity].



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3. Notwithstanding very many averments in the writ affidavit, Mr.M.Selvam, learned counsel for writ petitioner predicates his argument on one sheet anchor submission and that submission is, first respondent is the Appellate Authority and he ought not to have made the impugned order.

4. The impugned order makes it clear that it is an order under Section 88 of said Act. On a perusal of Section 88 of said Act, two things are very clear. It does vest the first respondent with powers to make an order under Section 88 of said Act and it is imperative for the first respondent to give said Society an opportunity of making representation.

5. A careful perusal of the impugned order makes it clear that an opportunity has been given by sending a notice dated 11.05.2022 bearing Reference Na.Ka.No.1600/2022 and all the members have sent a common reply dated 11.06.2022, a further reply dated 06.06.2022 and the President has also sent one more further reply dated 15.06.2022. It is after giving an opportunity for making representation, the impugned order has been made by the first respondent.

6. This takes this Court to the argument of the learned counsel for writ petitioner that first respondent is the Appellate Authority and therefore, he ought not to have made the impugned order.



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7. To be noted, Mr.S.Ravi Kumar, learned Special Government Pleader accepted notice on behalf of Respondents 1 to 3 and Ms.C.Sangamithirai, learned Special Government Pleader accepted notice for fourth respondent.

8. Learned State counsel for fourth respondent drew the attention of this Court to Section 152 of said Act and submitted that an appeal remedy against the impugned order is available to the writ petitioner and in the case on hand, impugned order has been made under Section 88 of said Act by the first respondent (Registrar) and the appeal will lie to the Government. Learned counsel for writ petitioner submitted that it may be necessary to seek interlocutory orders as there is some imminence. This again does not find favour with this Court as there is an inbuilt mechanism under Section 152 of said Act for an appellant to seek an interlocutory orders before the Appellate Authority. This is ingrained in sub-section (6) of Section 152 of said Act. Therefore, the argument that urgent interim orders has compelled the writ petitioner to come to this Court on the teeth of alternate remedy does not find favour with this Court.



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9. In the light of the narrative thus far, it will be clear that captioned writ petition turns on a short point and therefore main writ petition itself is taken up with the consent of both sides.

10. Narrative thus far take this Court to alternate remedy. Alternate remedy rule is not an absolute rule. It is clearly a rule of discretion. It is not just a rule of discretion but it is a self-imposed restraint when it comes to a writ Court exercising jurisdiction *inter alia* under Article 226 of The Constitution of India. However, when it comes to matters pertaining to fiscal law, which in the considered view of this Court pertains to matters where public money is involved, the rigour of alternate remedy is very high. This principle has been repeatedly reiterated by Hon'ble Supreme Court in a long line of authorities starting from *Dunlop India* case [*Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and others* reported in (1985) 1 SCC 260], *Satyawati Tandon* case [*United Bank of India Vs. Satyawati Tandon and others* reported in (2010) 8 SCC 110], *Commercial Steel* case law authored by Hon'ble Justice Dr.Dhananjaya Y Chandrachud [*The Assistant Commissioner of State Tax Appellant(s) and Others Vs.M/s Commercial Steel Limited*], *K.C.Mathew* case [*Authorized Officer, State Bank of Travancore Vs. Mathew K.C.* reported in (2018) 3 SCC 85] and



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State of Maharashtra and Others Vs. Greatship (India) Limited reported in

2022 SCC OnLine SC 1262 rendered on 20.09.2022.

11. Relevant paragraphs in ***Dunlop India*** case is paragraph 3 and the same reads as follows:

'3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.'

(Underlining made by this Court to supply emphasis and highlight)

12. In ***K.C.Mathew*** case, relevant paragraph is paragraph 10 and the same reads as follows:

*'10. In **Satyawati Tondon** the High Court had restrained further proceedings under Section 13(4) of the Act.*



Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)

“43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for



passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

(underlining made by this Court to supply emphasis and highlight)

13. To be noted, in ***K.C. Mathew's*** case, the paragraph extracted and reproduced supra, ***Satyawati Tondon*** principle has been reiterated.

14. Relevant paragraphs in ***Commercial Steel*** case law authored by Hon'ble Justice Dr.Dhananjaya Y Chandrachud are Paragraphs 11 and 12 and the same read as follows:

'11 The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is: (i) a breach of fundamental rights; (ii) a violation of the principles of natural justice; (iii) an excess of jurisdiction; or (iv) a challenge to the vires of the statute or delegated legislation.

12 In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of



the conveyance. In this backdrop, it was CA 5121/2021 7 not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.'

15. Relevant paragraph in **Greatship** case law is Paragraph 16 and the same reads as follows:

'16. Now so far as the reliance placed upon the decisions of this Court by the learned Senior Advocate appearing on behalf of the respondent, referred to hereinabove, are concerned, the question is not about the maintainability of the writ petition under Article 226 of the Constitution, but the question is about the entertainability of the writ petition against the order of assessment by-passing the statutory remedy of appeal. There are serious disputes on facts as to whether the assessment order was passed on 20.03.2020 or 14.07.2020 (as alleged by the assessee). No valid reasons have been shown by the assessee to by-pass the statutory remedy of appeal. This Court has consistently taken the view that when there is an alternate remedy available, judicial prudence demands that the court refrains from exercising its jurisdiction under constitutional provisions.'

16. In the light of the narrative thus far this Court has no hesitation in



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holding that this is a fit case for relegating the writ petitioner to the alternate remedy of appeal under Section 152 of said Act. This is buttressed by the fact that the matter turns heavily on facts as allegations turn on embezzlement. It is made clear that this Court has not expressed any opinion or view on the merits of the matter.

17. The sum sequitur is, captioned writ petition fails and the same is dismissed. If the writ petitioner chooses to avail the alternate remedy under Section 152 of said Act, it is open to the Appellate Authority to deal with the matter on its own merits and in accordance with law untrammelled by any of the observations that have been made by Court which is for the limited purpose of disposal of captioned writ petition on the touchstone of rule of alternate remedy which as alluded to and delineated supra is not an absolute rule and is a rule of discretion / self imposed restraint. Consequently, captioned WMP is also dismissed. There shall be no order as to costs.

18. After the order was passed, Mr.M.Selvam, learned counsel for writ petitioner submitted that writ petitioner would avail alternate remedy by accepting this order and on that basis, learned counsel sought return of the



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original impugned order which has been filed with this writ petition. Registry is directed to return the original impugned order to one of the counsel on records under due acknowledgement forthwith.

15.12.2022

Index: yes/no

Note: Upload forthwith

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To

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