



W.P.No.33618 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATE: 13.12.2022

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.33618 of 2022
and WMP.No.33075 of 2022

1. R.Gandhimathi
2. R.Vijayakumar

.. Petitioner

Vs.

1. The Deputy Registrar
of Co-operative Societies/Arbitrator
Market Road, Indian Bank Building
Pollachi, Coimbatore.
2. The Special Officer,
No.4511-V.Kallipalayam Primary
Agricultural Co-operative Bank,
V.Kallipalayam Post,
Palladam via
Tirupur Taluk – Tirupur.
3. The Deputy Registrar of Co-operative Societies,
O/o. Deputy Registrar of Co-operative Societies,
Tirupur Region, Tirupur.
4. Sale Officer,
V.Kallipalayam Primary Agricultural
Co-operative Credit Society,
Pongalur Locality, Tirupur.

... 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 from the respondents with regard to the impugned auction notice dated 07.12.2022 issued by the 4th respondent and quash the same.

For Petitioners : Ms.Geetha Rani

For Respondents : Mr.S.Ravi Kumar
Special Government Pleader

ORDER

Captioned writ petition pertains to a Co-operative Society which goes by the name 'No.4511 V.Kallipalayam Primary Agricultural Co-operative Credit Society' [hereinafter 'said Society' for the sake of convenience and clarity] and the matter arises under the 'Tamil Nadu Cooperative Societies Act, 1983' [hereinafter 'said Act' for the sake of brevity, convenience and clarity].

2. Ms.Geetha Rani, learned counsel for writ petitioners is before this Court.

3. The two writ petitioners are siblings being children of one Late G.Ranganathan and Santhamani, who were working as Secretary and Senior Clerk in said Society. Surcharge proceedings under Section 87 of said Act was initiated against the writ petitioners' parents for charges of causing wrongful loss to said Society, when they were working in the said Society.



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This surcharge proceedings culminated in an award dated 28.04.2003 directing the petitioners' parents and others to pay a sum of Rs.22,03,291/- along with 18% interest per annum. Petitioners' parents challenged the aforementioned award under Section 152 of said Act and the appeal is admittedly pending on the file of learned District and Sessions Judge, Tiruppur. It is submitted that pending appeal, writ petitioners' father died on 15.06.2015. Petitioners impleaded themselves as appellants and they are pursuing this appeal.

4. In the *interregnum*, petitioners filed a suit in O.S.No.139 of 2015 on the file of District Munsif's Court, Palladam with prayers seeking declaration that auction notice qua property sought to be auctioned pursuant to surcharge proceedings / award is null and void, permanent injunction qua possession and costs. Admittedly, this suit came to be dismissed for default on 06.04.2017. It is averred that application for restoration has been filed and the same is pending but as of today, the suit stands dismissed.

5. Mr.S.Ravi Kumar, learned Special Government Pleader accepted notice on behalf of all the four respondents.

6. Learned counsel for writ petitioners contended that if the auction proceeds irreversible legal injury will be caused to the petitioners. Learned counsel submitted that auction is scheduled to be held at 11.00.a.m today.



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7. When the matter was mentioned at half past ten, learned Standing counsel was requested to instruct the Sale Officer. Learned State counsel submits that Sale officer /4th respondent has been informed about the fact that the writ petition is scheduled to be taken up by this Court in the Admission Board and the matter is on hold. Learned State counsel points out that the appeal is pending and there is a provision under Section 152 of the said Act enabling the appellants to seek interlocutory orders pending decision on the appeal. Learned State counsel draws the attention of this Court to sub-section (6) of Section 152 of said act, which reads as follows:

'152. Appeals-

(1)....

(2)....

(3)....

(4)....

(5)

(6) The Appellate Authority may pass such interlocutory order pending the decision on the appeal as the appellate authority may deem fit.'

8. This Court carefully considered the submission of both sides and considering the narrow compass on which the matter on hand turns, the main writ petition is taken up with the consent of both sides.



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9. After hearing both sides and perusing the case file placed before this Court, this Court is not inclined to interfere or accede to writ petitioner's prayer and this Court is of the view that the prayer of the writ petitioners assailing the auction notice deserves to be negatived. The reasons are as follows:

a) the petitioners have already availed alternate remedy under Section 152 of said Act as petitioners have come on record in place of their late father who died pending appeal and are actively pursuing the appeal. Sub-section (6) of Section 152 of said Act provides for the appellants seeking suitable interim orders before the Appellate Authority. In this view of the matter, pending appeal (alternate remedy) writ petitioners have come to this Court in the eleventh hour nay 59th minute of eleventh hour to stall the auction proceedings;

b) it is re-auction proceedings and interference with auction proceedings will only derail the entire exercise;

c) Writ petitioners have filed a suit in O.S.No.139 of 2015 on the file of District Munsif Court, Palladam and the same has been



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dismissed for default on 06.04.2017. To be noted, the suit has been filed with a prayer *inter alia* for declaring auction notice as null and void;

d) Alternate remedy is no doubt not an absolute Rule and it is a Rule of discretion. However, when it comes to fiscal statutes and statutes with larger public interest as in the case on hand, the rigour is very high. This principle has been reiterated by Hon'ble Supreme Court repeatedly 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 ***State of Maharashtra and Others Vs. Greatship (India) Limited*** reported in 2022 SCC OnLine SC 1262 rendered on 20.09.2022.



10. 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)

11. 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)

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

13. 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.'

14. 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.'

15. In the case on hand, the writ petitioners could not even be relegated to alternate remedy as the writ petitioners have already resorted to



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alternate remedy but without moving the Appellate Authority for interim orders, writ petitioners have rushed to this Court at the eleventh hour.

16. A perusal of the impugned auction notice brings to light that the auction was scheduled to be held on 07.12.2022 and it has been adjourned to 13.12.2022. Interference at this stage will tantamount to putting spokes in the proceedings.

17. As already alluded to supra, this Court is not inclined to interfere and this Court is of the view that the prayer in the writ petition deserves to be negatived.

18. Sequitur of discussion and dispositive reasoning thus far is captioned writ petition fails and the same is dismissed. Consequently, captioned WMP is also dismissed. In this case, this Court refrains itself from imposing costs. As a further sequitur, it is made clear that it is open to respondents, more particularly fourth respondent to proceed with the auction forthwith and the State counsel shall now inform the fourth respondent suitably.

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