



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.33223 of 2019

and

W.M.P.Nos.33680 & 33683 of 2019

P.Tamilselvi

..Petitioner

Vs.

1. The Deputy Registrar of Cooperative Societies,
Kancheepuram Circle,
Kancheepuram,
Kancheepuram District.

2. The President,
G.1644, Walajapath Primary Agricultural
Cooperative Credit Society,
Walajapath,
Kancheepuram District.

..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for 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.2/2019-20/A5, dated 18.11.2019 and quash the same.

For Petitioner : Mr.C.Prakasam

For R1 : Mr.S.Prabhakaran
Government Advocate

For R2 : Mr.B.Haribabu

O R D E R

This Writ Petition is filed for issuance of Writ of Certiorari, to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings C.E.P.No.2/2019-20/A5, dated 18.11.2019 and quash the same.



2.The petitioner is wife of one Parimalam, who was working as Assistant Secretary in the 2nd respondent Society and he was also acting as Secretary in-charge of the said society. According to petitioner, the Board of Directors granted various loans to their men and made her husband liable for the said loans. Therefore, the 1st respondent has issued impugned notice under Section 167 of the Tamilnadu Cooperative Societies Act, 1983 to furnish security to the tune of Rs.37,12,229/- (Rupees Thirty Seven Lakhs Twelve Thousand Two Hundred and Twenty Nine Only). The properties were purchased by the Mother-in-Law of the petitioner in the name of husband of the petitioner. According to petitioner, she had borrowed money from the Bank and also out of her income as Assistant Accounts Officer in Tamil Nadu Electricity Board, she has constructed a house. The 1st respondent erroneously issued notice to furnish security and attachment before judgment of the property belonging to the petitioner and hence, the petitioner has come out with the present Writ Petition.

3.Mr.B.Haribabu, learned counsel appearing for the 2nd respondent filed counter affidavit on behalf of the 2nd respondent and contended that the husband of the petitioner misappropriated huge amount of Rs.37,12,229/- (Rupees Thirty Seven Lakhs Twelve Thousand Two Hundred and Twenty Nine Only). The 2nd respondent Society initiated disciplinary proceedings against the husband of the petitioner and he was suspended from the Society on 28.11.2018. Immediately, with ulterior motive, in order to avoid recovery proceedings, the petitioner's husband executed settlement deed dated 12.12.2018 in favour of the petitioner within two weeks of his suspension. The act of the petitioner's husband is to avoid attachment proceedings for recovery of misappropriated amounts of the 2nd respondent Society. The 2nd respondent collected details of the property and passed resolution. Based on the said resolution, the 1st respondent passed order of attachment. The said order of attachment is valid and legal. He further submitted that already the 1st respondent ordered Section 81 enquiry and based on the enquiry report, the 1st respondent will proceed to recover the misappropriated amounts and prayed for dismissal of the Writ Petition.

4.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

5.From the above materials, it is seen that according to 2nd respondent, the husband of the petitioner committed various irregularities and misappropriated funds of the Society to the tune of Rs.37,12,229/- (Rupees Thirty Seven Lakhs Twelve



Thousand Two Hundred and Twenty Nine Only). In order to realise the said amount, the 1st respondent, at the request of the 2nd respondent, issued impugned notice dated 18.11.2019, calling upon the petitioner and her husband to furnish security to the value of the alleged misappropriated amounts on the date of notice or subsequent period. After issuing such a notice, the 1st respondent ordered attachment before judgment of property on the same date without giving any opportunity to the petitioner to submit her explanation to the notice. The 1st respondent has attached the property on the same day and communicated the same to the concerned Sub-Registrar also on the same day and the entries were made in the encumbrance Register on the same day. The failure on the part of the 1st respondent to give an opportunity to the petitioner to submit her objection to the notice dated 18.11.2019 is in violation of principles of natural justice and vitiates the order of attachment effected on the same day of notice. The learned counsel appearing for the petitioner submitted that as per the order of the Joint Registrar dated 30.04.2021 in the review application filed by the petitioner under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983, a sum of Rs.6,59,351.37 fixed by the authorities of the Cooperative Society was paid by the husband of the petitioner. In view of violation of principles of natural justice, the impugned notice as well as attachment before judgment dated 18.11.2019 are liable to be set aside and hereby set aside. The petitioner is directed to submit her explanation to the notice dated 18.11.2019 within a period of two weeks from the date of receipt of a copy of this order. On receipt of said explanation, the 1st respondent is directed to consider the explanation taking into consideration the amounts paid by husband of the petitioner and pass orders on merits and in accordance with law.

6. With the above observations, the Writ Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

krk

To

1. The Deputy Registrar of Cooperative Societies,
Kancheepuram Circle, Kancheepuram,
Kancheepuram District.



2. The President,
G.1644, Walajapath Primary Agricultural
Cooperative Credit Society,
Walajapath,
Kancheepuram District.

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+1cc to Mr.B.Haribabu, Advocate, S.R.No.15670

+1cc to the Government Pleader, S.R.No.15918

W.P.No.33223 of 2019

RGN(CO)

RGA(31/03/2022)