



W.P(MD)No.15760 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15760 of 2021

and

W.M.P.(MD)Nos.12707 and 15370 of 2021

S.Revathi Muthukamatchi

... Petitioner

Vs.

1.The Joint Registrar of Cooperative Societies,
Sivagangai Region,
Sivagangai District.

2.The Deputy Registrar of Cooperative Societies,
Collectorate Complex,
Sivagangai Circle,
Sivagangai District.

3.The President,
NN 432, Sivagangai Agricultural Producers
Cooperative Marketing Society Ltd.,
Sivagangai,
Sivagangai District.

4.The Sub Registrar,
Karaikudi Joint II,
Sivagangai,
Sivagangai District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings issued by the 2nd respondent in C.E.P. No.2/2017-18 Ni Ka 2. Tha vaa No.88/2017-18 dated 15.11.2017 and quash the same and consequently directing the 4th respondent to remove the entry in the Encumbrance Register in respect of the house property of the petitioner situated in the survey number 316/4 (part), 316/6 (part), 316/7 (part) comprised in Plot No.16 of Rasi Nagar, Kalanivasal village, karaikudi Taluk, Sivagangai District.

For Petitioner : Mr.C.Jeganathan

For Respondents : Mr.M.Senthil Ayyanar,
Government Advocate.

ORDER

Heard the learned counsel on either side.

2.The petitioner challenges the impugned order whereby the petition mentioned property has been attached.

3.The learned Government Advocate for the respondents would contend that this writ petition is not maintainable because the petitioner is having an effective alternative remedy.



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4.It is well settled that the rule regarding non-exhaustion of alternative remedy is only a rule of discretion and does not go to the jurisdiction of the Court to entertain a writ petition. The petition mentioned property is standing in the name of the writ petitioner. It was never the property of her deceased husband. The petitioner's husband might have caused loss to the tune of Rs. 29,00,000/- and it is definitely open to the society concerned to initiate surcharge proceedings and take it to its logical conclusion. But the only question that calls for consideration is whether the petitioner's property can be attached. The Hon'ble Division Bench in W.A.(MD)No.1511 of 2018 dated 11.12.2018 held as follows:-

“As per the provision of the Tamil Nadu Co-Operative Societies Act and the Rules, this Court is of the view that the appellant cannot presume that every property stands in the name of the wife of delinquent against whom surcharge proceedings are initiated as the property purchased out of the money provided by the delinquent so that the same could be attached as a property of the delinquent.”

5. There is absolutely no material on record to show that the property in question is traceable to the proceeds of the crime or delinquency. In this view of the matter, the impugned order of attachment is quashed and the writ petition



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is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

11.08.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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