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W.P.No.4671 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.4671 of 2023

and

WMP.Nos.4673 & 4676 of 2023

M.Chitra

...Petitioner

Vs.

1.The Deputy Registrar of Cooperative Societies
Dharmapuri Circle
Dharmapuri.

2.The Sub Registrar
Harur
Dharmapuri District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the conditional attachment order passed by the first respondent dated 01.09.2022 under Section 167(2) Tamil Nadu Cooperative Societies Act, 1983 quash the same and consequently direct the respondents to raise the order of attachment made in Survey Nos.306/1C, 306 /3C and 306/5C measuring 1.62 hector at Sikkalur Village, Harur Taluk, Dharmapuri District.



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For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader

ORDER

The petitioner has come up with this Writ Petition challenging the conditional attachment order passed by the first respondent dated 01.09.2022 under Section 167(2) Tamil Nadu Cooperative Societies Act, 1983, in respect of the properties of the petitioner in S.Nos.306/1C, 306/3C and 306/5C measuring about 1.62 hector situated at Sikkalur Village, Harur Taluk, Dharmapuri District.

2. According to the petitioner, she is the absolute owner of the property in S.Nos.306/1C, 306/3C and 306/5C measuring about 1.62 hector situated at Sikkalur Village, Harur Taluk, Dharmapuri District. She purchased the said property from one Kavitha and Latha for a valuable consideration of Rs.8,49,000/- by a registered sale deed dated 09.06.2022. It is also stated by the petitioner that she has been in possession and enjoyment of the said property.



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3. It is the further case of the petitioner that when she got encumbrance certificate form Government website on 03.10.2022, it came to her knowledge that the first respondent had attached her property by invoking power under Section 167(2) of the Tamil Nadu Cooperative Societies Act. The impugned conditional attachment order passed by the first respondent was challenged by the petitioner mainly on the ground that the petitioner is not an employee or member of the said Cooperative Society and when no action is contemplated against the petitioner, the first respondent is not entitled to attach her property. It is the specific case of the petitioner that the first respondent has no power to attach the property of the strangers. It is also stated by the petitioner that she is a *bonafide* purchaser and therefore, without notice no proceedings can be initiated by the first respondent.

4. The first respondent filed a detailed counter resisting the Writ Petition mainly on the ground that during regular inspection certain financial irregularities were noticed in the Dharmapuri District, Central Cooperative Bank Limited and hence, the Registrar of the Cooperative Society constituted a committee. The said committee conducted inspection on 30.06.2022 and found certain financial irregularities. Therefore, the first respondent ordered



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statutory enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983. In the mean time, one Kannan, who is the Secretary of the Society and Ponniya, who is a Senior Clerk, were placed under suspension. The society filed an Arbitration claim for a sum of Rs.2,39,00,000/- under Section 90 of the Cooperative Societies Act against the said Kannan and Ponniya. The said society also submitted a representation on 30.08.2022 seeking conditional attachment of the immovable properties of Kannan and Ponniya under Section 167 of the said Act. Therefore, in order to safeguard the funds of the society and in public interest, the impugned conditional order of attachment was passed in respect of the properties of one Latha, who is the wife of the said Kannan and one Kavitha, who is the wife of the said Ponniya.

5. It is also stated that the vendors of the plaintiffs namely Kavitha and Latha purchased the property out of the illegally gotten money of the delinquent employees namely Kannan and Ponniya.

6. The learned counsel for the petitioner mainly assailed the order passed by the first respondent on the ground that the petitioner is a stranger and when certain proceedings were initiated under Section 90 of the said Act,



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against the employees of the Cooperative Society, it is not open to the first respondent to attach the properties of the stranger merely because the properties were purchased from the wives of the delinquent employees.

7. In the case on hand, the petitioner purchased the property which is under the attachment on 09.06.2022 from Kavitha wife of Ponniya and Latha wife of Kannan. As per the counter affidavit filed by the first respondent a committee was constituted to go into the irregularities in the Dharmapuri District, Central Cooperative Bank Limited on 26.08.2022 and thereafter, under Section 81, enquiry was ordered on 29.08.2022. The said society submitted an application before the first respondent on 30.08.2022 seeking conditional attachment of the immovable properties of Ponniya and Kannan. Therefore, it is clear from the averments found in the counter affidavit of the first respondent that the property was purchased by the petitioner from the wives of Kannan and Ponniya even prior to constitution of committee to go into the irregularities in the cooperative society concerned.

8. Based on the sale deed produced by the petitioner dated 09.06.2022, it is clear that the petitioner purchased the property before



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initiation of proceedings under Cooperative Societies Act. On the date of impugned conditional attachment order the property stood in the name of the petitioner, therefore, the first respondent in pursuance of its power under Section 167 of the Act cannot attach the properties of the stranger.

9. The Hon'ble Division Bench of this Court in the order passed in ***W.A.(MD).No.1511 of 2018*** almost in a similar circumstances when the conditional attachment order against the stranger was challenged, has observed as follows.

“9. So long as the provision of Co-operative Societies Act or Rules framed therein do not contemplate a statutory fiction or presumption in favour of the society to proceed against the property of a stranger, this Court is of the view that the order impugned in the Writ Petition cannot be sustained.”

10. Therefore, when it is clearly established that on the date of attachment order the property stood in the name of the petitioner, who is a third party stranger, the impugned order of the attachment cannot be sustained and accordingly, the same is quashed. It is needless to say that once the impugned order of conditional attachment order is quashed by this Court, the



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second respondent is expected to take note of the same and make necessary entry in his records.

11. With the above observations, this Writ Petition is allowed.

However, it is open to the first respondent to proceed against the properties of the delinquent employees in accordance with law. No costs. Consequently connected Miscellaneous Petitions are closed.

20.07.2023

Index : Yes
Internet : Yes
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes
dna



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S.SOUNTHAR, J.
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To

- 1.The Deputy Registrar of Cooperative Societies
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- 2.The Sub Registrar
Harur
Dharmapuri District.

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