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W.P.No.7528 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM :

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.7528 of 2023

and

W.M.P.Nos. 7628, 7630 & 7631 of 2023

A.Jayabharathi

.. Petitioner

VS

- 1.The Registrar of Cooperative Societies 170 Periyar EVR high Road
Kilpauk, Chennai 10
- 2.The Joint Registrar of Cooperative Societies
O/o. Joint Registrar of Cooperative Societies,
District Collector's office campus
Dharmapuri 636 705
- 3.The Deputy Registrar of Cooperative Societies
O/o. Deputy Registrar of Cooperative Societies
District collector's office campus
Dharmapuri 636 705
- 4.The Joint Registrar cum Managing Director
Dharmapuri district Central Co-op Bank Ltd.
10/H Nethaji Bye pass road,
Post Box No. 16, Dharmapuri 636 701
- 5.The Co-operative Sub Registrar
/ Inspection Committee
Section 81 Enquiry officer, K.K. 168 Narippalli
Primary Agricultural Cooperative Credit Society Ltd.
Narippalli, Dharmapuri.
- 6.The Branch Manager
Dharmapuri District Central Co-op Bank Ltd.
Harur Branch, Harur 636 903

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the 5th respondents letter addressed to the 6th respondent dated 30.08.2022, the consequential 4th respondents memorandum in Na.Ka.No. 5021/ 95 Development dated 16.02.2023 and the 6th respondents letter dated 16.02.2023 restraining the operation of petitioner's Locker No. 14 in Safe Deposit Vault No. 02 held with the 6th respondent and to quash all the above impugned letters of the 5th, 4th and 6th respondents as illegal and without jurisdiction and then direct the 4th and 6th respondents herein to permit the petitioner to operate the Locker No. 14 in Safe Deposit Vault No. 02 held with the 6th respondent's bank.

For Petitioner : Mr.S.Sathiaseelan

For Respondents : Mr.K.V.Sajeev Kumar
Special Government Pleader
for R1 to R3
Mr.G.Velu
Additional Government Pleader
for R4 to R6

ORDER

The petitioner is the daughter of one Arumugam, who was admittedly employed as a Clerk in K.K.168, Narippalli Primary Agricultural Cooperative Credit Society Ltd., Dharmapuri.

2. The said employee is facing an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 (in short, 'Act') premised on various complaints of malpractices committed by him. He was suspended from service on 20.08.2022. The enquiry is being conducted by the fifth respondent. For ease of reference, he is referred to as 'delinquent' hereinafter.



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3. Pending enquiry, R3 has passed an order under Section 167(2) of the Act attaching the bank locker of the petitioner in the sixth respondent / Bank (attachment in question). There was no notice issued to the petitioner prior to such attachment.

4. The provisions of Section 167 deal with furnishing of security and attachment of property and read as follows:

"(1) Where the Registrar is satisfied on the application of a registered society in respect of a reference made to him under sub-section (1) of section 90 or on the application of a liquidator appointed under section 138 in respect of the proceedings of such liquidator for determining the contribution to be made by a person to the assets of the society under clause (b) of sub-section (2) of section 139 or on the application of the board or liquidator or any creditor to the society or otherwise in respect of any inquiry ordered into the conduct of any person under section 87 that any party to the reference or the person, as the case may be, is about to dispose of or remove from the local limits of the jurisdiction of the Registrar, the whole or any part of his property with intent to defeat or delay the execution of any decision that may be passed on the reference or of any order that may be passed against him by the liquidator or the Registrar, as the case may be, the Registrar may, by order, direct the party or the person, to furnish security in such sum and within such time as may be specified in such order and to produce and place at the disposal of the Registrar when required, the said property or such part thereof as may be sufficient for the execution of any decision or



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order aforesaid.

(2) The Registrar may also in the order made under sub-section (1), or by a separate order, direct the conditional attachment of the said property, or such part thereof and such attachment shall have the same effect as if it had been made by a competent civil court: Provided that no order for conditional attachment shall be made under this sub-section unless the Registrar, for the reasons to be recorded in writing, is satisfied that the whole or any part of the property will be disposed of or removed with intent to defeat or delay the execution of any decision or order of the liquidator or the Registrar, as the case may be."

5. There are two grounds in which the proceedings have been challenged in the present case. According to her, the attachment is in itself is contrary to law in light of an order passed by this Court in W.A.(MD) No. 1511 of 2018 dated 11.12.2018. That decision, passed by a Division Bench of the Madurai Bench of this Court, has concluded that neither the provisions of the Act nor the connected Rules contemplate a situation where the Society could proceed against the property of a stranger in order to secure anticipated demand of surcharge.

6. Thus, no action under Section 167 can be taken in the hands of any third party to the proceedings, particularly a person who is not a member of the concerned society. In the present case,



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the daughter of the delinquent is neither a member herself in the society nor is it the case of the respondents that she is any way connected to the acts of omission and commission committed by her father. In light of this decision, the impugned proceedings are liable to be set aside.

7. That apart, it is incumbent upon the authorities to put the delinquent member to notice if at all an attachment of his assets is contemplated. Though the provisions of Section 167 do not specifically refer to issuance of notice, this position flows from the fundamental requirement of adherence to the principles of natural justice.

8. That apart, any action under Section 167 would have grave civil consequences on the party and even for this reason, it is incumbent upon the authorities to issue notice under Section 167 prior to effecting attachment. All the more in the present case, when the property that has been targeted is not even one belonging to the delinquent, but to a third party.

9. In light of the discussion as above, the impugned proceedings are found to be contrary to law and are set aside and a



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direction is issued to the official respondents to lift the attachment in question forthwith.

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10. Writ petition stands allowed. No costs. Connected miscellaneous petitions are closed.

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Index:Yes

Neutral Citation:Yes

ssm

To

- 1.The Registrar of Cooperative Societies 170 Periyar EVR high Road Kilpauk, Chennai 10.
- 2.The Joint Registrar of Cooperative Societies O/o. Joint Registrar of Cooperative Societies, District collector's office campus,Dharmapuri 636 705.
- 3.The Deputy Registrar of Cooperative Societies O/o. Deputy Registrar of Cooperative Societies District collector's office campus Dharmapuri 636 705.
- 4.The Joint Registrar cum Managing Director Dharmapuri District Central Co-op Bank Ltd. 10/H Nethaji Bye pass road, Post Box No. 16, Dharmapuri 636 701
- 5.The Co-operative Sub Registrar / Inspection Committee Section 81 Enquiry officer, K.K. 168 Narippalli Primary Agricultural Cooperative Credit Society Ltd. Narippalli, Dharmapuri.



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DR. ANITA SUMANTH,J.

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