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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.1107 of 2020

T.Panneerselvam .. Appellant

v.

1. Deputy Registrar of Cooperative Societies
   Mannargudi Circle, Mannargudi Post
   Tiruvarur District

2. The Special Officer
   T.816, Tiruthuraipoondi Agricultural
   Producers Cooperative Marketing
   Society Ltd.,
   Tiruthuraipoondi (Po) & (Tk) .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 03.02.2020 made in W.P.No.36740 of 2016.

For Appellant :: Mr.P.Anbarasan

For Respondents :: Mr.U.M.Ravichandran
Special Government Pleader for R1
Mr.L.P.Shanmugasundaram for R2

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JUDGMENT

(Judgment of the Court was made by D.KRISHNAKUMAR,J.)

The moot point that arises for consideration is whether, this intra-Court appeal at the instance of the appellant/writ petitioner is maintainable before this Court on the specific grounds raised by the appellant, as against the impugned order passed by the learned single Judge rendering a preliminary finding that the petition is entertained only under Article 227 and not under Article 226 of the Constitution of India, while testing the correctness of the order passed by the Special Tribunal for Cooperative Cases.

2. According to the appellant, since the order of the learned single Judge exercising jurisdiction under Article 227 of the Constitution of India has deprived the right of the appellant to file an intra-Court appeal before this Court, as his remedy is only to approach the Hon'ble Supreme Court, which is very expensive, the learned counsel, in a persuasive way, sought to entertain this intra-Court appeal filed by the appellant and to decide the

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same on merits.

3. Per contra, the learned Special Government Pleader appearing for the first respondent and the learned counsel appearing for the second respondent have strongly objected to the said plea by stating that the appellant has to workout his remedy only before the Hon'ble Supreme Court as against the order under Article 227 of the Constitution of India and this intra-Court appeal is not maintainable at all.

4. We have also perused the impugned order and the learned Judge, in paragraphs 11 & 12, has observed as follows:-

> "11. Further, the Hon'ble First Bench held that in the given circumstances, if the writ petition would be maintainable under Article 227 of the Constitution of India, then the writ appeal against the same under Letters Patent would not be entertained by a Division Bench. On this prima facie finding, the parties were given liberty to argue the matter. After referring to the decision of the Division Bench of the Patna High Court in the case

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of Vijayanand Puri vs. Deorani Devi and another, reported in 2019 SCC Online Patna 1808, whereunder the judgment of the Hon'ble Supreme Court in the case of Rupa Ashok Hurrah vs. Ashok Hurra, (2002) 4 SCC 388 and the view taken in Surya Dev Rai vs. Ram Chander Rai, (2003) 6 SCC 675, that was later on overruled in the decision of Radhey Shyam vs. Chhabi Nath, (2015) 5 SCC 423, it was held that the jurisdiction of this Court while testing the correctness of an order passed by a Special Tribunal chaired by a learned District Judge could be exercised under Article 227 and the petition could have been treated to be that under Article 227 only. Accordingly, in the said case, the writ appeal was held to be not maintainable.

12. In the light of the above decision, though all the writ petitions have been filed under Article 226 of the Constitution of India, they are entertained and are held to be petitions under Article 227 of the Constitution of India. The resultant position would be any one of the party who is aggrieved by this order cannot maintain an intra Court appeal before this Court. With this

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preliminary finding, the Court proceeds to examine the rival contentions."

5. In the light of the aforesaid preliminary finding rendered by the learned single Judge, we are fully convinced with the objection raised by the respondents that the writ appeal is not maintainable, in view of the fact that the impugned order has been passed exercising jurisdiction under Article 227 of the Constitution of India. Therefore, the remedy for the appellant is only to approach the Hon'ble Supreme Court, if so aggrieved, and he cannot maintain the writ appeal before this Court. In that view of the matter, the writ appeal stands dismissed as not maintainable. It is for the appellant to workout his remedy before the appropriate forum, if so advised. Consequently, C.M.P.No.13473 of 2020 is also dismissed. There shall be no order as to costs.

(D.K.K.,J.) (P.B.B,J.)

Index : yes 27.07.2023
Neutral citation : yes

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