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W.P.No.21143 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P.No.21143 of 2023
and
W.M.P.No.20534 of 2023

R.Arivazhagan

...Petitioner

Vs.

- 1.The Joint Registrar of Co-operative Societies
Nagapattinam Zone
Nagapattinam.
- 2.The Deputy Registrar of Co-operative Societies
(Full Additional Charge)
Nagapattinam Circular
Nagapattinam.
- 3.The Sub-Registrar of Co-operative Societies
Inspection Officer under Section 82
Thalanayar
Vedaraniyam Taluk
Nagapattinam District.
- 4.The Secretary
Aymoor Primary Agriculture Co-operative Credit Society Limited
-ZC73
Aymoor Village
Thirukkuvalai Taluk
Nagapattinam District.



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5.The Sub-Registrar
Thirukkuvalai Sub-Register Office
Thirukkuvalai Taluk
Nagapattinam District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the entire records in relation to the impugned notice dated 27.06.2023 issued by the second respondent in Form No.6 in Ni.Ve.Ma.No.03/2023-2024 to furnish security before attachment and the impugned Conditional Attachment Order dated 27.06.2023 issued by the second respondent under Section 167 of the Tamil Nadu Cooperative Societies Act, 1983 in CEP.No.3/2023-2024 and to quash the same.

For Petitioner : Mr.S.Senthil

For Respondents : Mr.C.Selvaraj for R1 to R3
Additional Government Pleader

Mr.G.Nanmaran for R4 & R5
Special Government Pleader

ORDER

This Writ Petition is filed challenging the order passed by the second respondent issuing notice to the petitioner to furnish security to the



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of Rs.45 lakhs and also an order attaching the immovable properties of the petitioner by invoking Section 167 of the Tamil Nadu Co-operative Societies Act.

2. The impugned order is challenged by the petitioner mainly on the ground that no proceedings were initiated against the petitioner either under Section 87 of the Co-operative Societies Act or Section 90 of the Co-operative Societies Act, for attaching the properties of the petitioner.

3. The learned counsel for the petitioner also submitted that the notice to furnish security was issued to the petitioner on 27.06.2023 and on the very same day, the impugned order attaching the properties of the petitioner was also passed and the same is not in accordance with Section 167 of the Tamil Nadu Co-operative Societies Act.

4. Mr.C.Selvaraj, learned Additional Government Pleader appearing for the respondents 1 to 3 and Mr.G.Nanmaran, learned Special Government Pleader appearing for the respondents 4 & 5 by taking this Court to the counter affidavit of the second respondent submitted that during



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inspection certain irregularities were found in the affairs of the fourth respondent society and therefore, 82 enquiry was ordered by the second respondent on 30.01.2023 and the said enquiry is under progress.

5. It is further submitted by the learned Additional Government Pleader appearing for the respondents 1 to 3 that the interim report of the Investigation Officer revealed that there was misappropriation of funds to the tune of Rs.45 lakhs by the petitioner and other staff members of the society and therefore, it is likely the petitioner may alienate the immovable properties so as to escape from the clutches of law. In order to prevent such alienation, the second respondent was constrained to invoke Section 167 of the Tamil Nadu Co-operative Societies Act, for attachment of the immovable properties of the petitioner.

6. Section 167 of the Tamil Nadu Co-operative Societies Act, reads as follows:

“167. Furnishing of security and attachment of property: (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*



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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 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:



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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.”

7. A careful reading of the above mentioned provision would suggest that the order under Section 167 of the Act can be passed only in cases where a proceedings is initiated under Section 87, 90, 138 or 139 sub-Section 2(b) of the Tamil Nadu Co-operative Societies Act.

8. In is the case on hand, admittedly only 82 enquiry is ordered by the second respondent and the same is under progress. No surcharge proceedings is initiated against the petitioner either under Section 87 of the Co-operative Societies Act or Section 90 of the Co-operative Societies Act. In such circumstances, a condition precedent for invoking Section 167 of the Act is not at all satisfied. In this regard, it would be appropriate to refer the judgment of this Court in ***V.Sundaram Vs. The Deputy Registrar Co-operative Societies (Milk) Vellore Circle, Vellore District and another,***



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reported in **2009 SCC Online Mad 61**. This Court while considering the scope of the power under Section 167 of the said Act, has observed as follows:

“....6. A plain reading of Section 167 of the Tamil Nadu Co-operative Societies Act would make it clear that an order of attachment before judgment under Section 167(1) of the Act or conditional attachment under Section 167(2) of the Act could be made only in cases where there is already a case pending on the file of the Deputy Registrar either under Section 87 or under Section 90 or under Section 139 of the Tamil Nadu Co-operative Societies Act. Without satisfying the said condition precedent, it is not all available for the Deputy Registrar to issue any order under Section 67 of the above said Act....”

9. In view of the fact that the condition for invoking Section 167 of the Tamil Nadu Co-operative Societies Act is not satisfied, the impugned order passed by the second respondent by invoking Section 167 of the Tamil Nadu Co-operative Societies Act is not sustainable. Accordingly, the impugned order is set aside and this Writ Petition is allowed.



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10. The allowing of this Writ Petition will not preclude the second respondent from initiating fresh proceedings and pass orders under Section 167 of the Tamil Nadu Co-operative Societies Act in case subsequent to filing of report by the Enquiry Officer, the second respondent choose to proceed against the petitioner either under Section 87 of the Co-operative Societies Act or under Section 90 of the Co-operative Societies Act. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
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Neutral Citation Case : Yes/No
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