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W.P.No.21998 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.21998 of 2023

and

W.M.P.No.21365 of 2023

C.Vasuki

...Petitioner

Vs.

1.The Registrar of Cooperative Societies
170, Periyar EVR High Road
Kilpauk
Chennai 600 010.

2.The Joint Registrar of Co-operative Societies
O/o. Joint Registrar of Co-operative Societies
District Collector's Office Campus
Dharmapuri 636 705.

3.The Deputy Registrar of Co-operative Societies
O/o. Deputy Registrar of Co-operative Societies
District Collector's Office Campus
Dharmapuri 636 705.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for
issuance of a Writ of Certiorari, calling for the records of the third respondent



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in Tha.Va.8798/2022/Vi.A dated 14.07.2023 issued under the caption “Notice for Attachment Before Judgment under Section 167(1) of the Tamil Nadu Co-operative Societies Act, 1983” directing the petitioner to furnish security before the Sale Officer on 25.07.2023 and quash the same as illegal and non est in the eye of law for the non-compliance of mandatory requirements under Section 167(1) of the Tamil Nadu Co-operative Societies Act, 1983 and for violation of Article 14 of the Constitution of India.

For Petitioner : Mr.S.Sathiaseelan

For Respondents : Mr.J.Ravindran
Additional Advocate General-IX
Assisted by

Mrs.S.Anitha for R1 to R3
Special Government Pleader

ORDER

This Writ Petition is filed challenging the order passed by the third respondent under Section 167 of the Tamil Nadu Co-operative Societies Act, 1983, directing the petitioner to furnish security and in case of his failure to furnish security as directed to attach the property of the petitioner.



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2. The impugned order was challenged by the petitioner mainly on the ground that no surcharge proceedings or arbitration proceedings were initiated against the petitioner under Section 87 of the Tamil Nadu Co-operative Societies Act or Section 90 of the Tamil Nadu Co-operative Societies Act and therefore, the third respondent is not justified in invoking Section 167 of the said Act to attach the property of the petitioner.

3. The learned Additional Advocate General appearing for the respondents 1 to 3, on instructions, submitted that if any adverse report is filed against the petitioner from 81 enquiry, there is every possibility of initiating surcharge proceedings against the petitioner under Section 87 of the Co-operative Societies Act and therefore, if the petitioner is allowed to encumber the property before the initiation of surcharge proceedings, the third respondent society will be put irreparable loss.

4. Section 167 of the Tamil Nadu Co-operative Societies Act, reads thus:

“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



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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 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.”

5. A reading of the above provisions would suggest that the Competent Authority is entitled to invoke power under section 167 of the said Act and attach the property of any person only if any proceedings are initiated under Sections 87, 90, 138 or 139 sub-Section 2(b) of the Tamil Nadu Co-operative Societies Act, against that person. Admittedly, no such proceedings have been initiated and only 81 enquiry is ordered into the affairs of the third respondent society.

6. In view of the above, there is nothing adverse against the petitioner. In such circumstances, the third respondent is not justified in invoking power under Section 167 of the said Act and issuing the impugned show cause notice directing the petitioner to furnish security. In ***V.Sundaram Vs. The Deputy Registrar Co-operative Societies (Milk) Vellore Circle, Vellore District and another***, reported in ***2009 SCC Online Mad 61***. This



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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....”

7. I fully agree with the view expressed by this Court in the above mentioned case. Even in the case on hand above said condition precedent for invoking power under Section 167 of the Tamil Nadu Co-operative Societies Act, is not at all satisfied. Therefore, the impugned notice issued by the third respondent is liable to be set aside.



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8. Accordingly, this Writ Petition is allowed. No costs.

Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
dna

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