



WEB COPY



W.P.No.22855 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.22855 of 2023
and W.M.P.Nos.22329 and 22330 of 2023

S.Sangeetha

... Petitioner

VS.

1.The Deputy Registrar of Cooperative Societies,
Coimbatore Circle, Coimbatore, Coimbatore District.

2.The President,
K.4303 Madukkarai Primary Agricultural Cooperative
Credit Society, Madukkarai & Taluk,
Coimbatore District.

3.M.Senthilkumar

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the entire records relating to the impugned conditional attachment order passed by the 1st respondent in his proceedings E.P.No.01/2023/Ni.Ma, dated 12.07.2023 and C.A.M/CEP.01/2023/Ni.Ma, dated 12.07.2023 and quash the same.

For Petitioner : Ms.R.Hemalatha

For R1 : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader



WEB COPY



W.P.No.22855 of 2023

For R2

: Mr.TNC.Kaushik
Additional Government Pleader

ORDER

The writ petition is filed challenging the order passed by the 1st respondent attaching the property of the petitioner on the ground that the 3rd respondent/husband of the petitioner caused loss to the 2nd respondent/Society.

2. Mr.R.U.Dinesh Rajkumar, learned Additional Government Pleader takes notice for 1st respondent and Mr.TNC.Kaushik, learned Additional Government Pleader takes notice for 2nd respondent.

3. The learned counsel appearing for the petitioner challenged the impugned order mainly on the ground that the property under attachment was purchased by the petitioner by way of registered Sale Deed dated 09.06.1999. However, the statutory inspection under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 ordered in the year 2017 revealed certain financial irregularities had been committed by 3rd respondent. Therefore, the period of alleged financial irregularities



W.P.No.22855 of 2023

committed by the 3rd respondent is altogether different from the date of purchase of the property by the petitioner in the year 1999. Therefore, there is nothing on record to suggest that the funds allegedly mis-appropriated by 3rd respondent would have been utilised for purchase of the property in the name of the petitioner.

4. Mr.R.U.Dinesh Rajkumar, learned Additional Government Pleader appearing for the 1st respondent by taking this Court to the counter affidavit filed by the 1st respondent submitted that the statutory inspection under Section 82 of the Tamil Nadu Cooperative Societies Act, 1983 was ordered by the 1st respondent in his Proceedings dated 16.06.2017, it was found that the 3rd respondent indulged in mis-appropriation of the funds of the 2nd respondent/Society. Since there was no immovable property in the name of the 3rd respondent, the 1st respondent proceeded to pass impugned attachment order attaching the property of the petitioner.

5. The learned Additional Government Pleader further submitted that 3rd respondent entered into the service of the 2nd respondent/Society in the year 1993 and the property was purchased in the name of the petitioner only



W.P.No.22855 of 2023

in the year 1999, therefore, there is every possibility to believe, the property would have been purchased utilising the mis-appropriated funds.

6. The learned Additional Government Pleader further submitted that against the order of attachment, the petitioner has got alternative remedy of filing an application before 1st respondent under Rule 135 of the Tamil Nadu Co-operative Societies Rules, 1988 for raising an attachment and without availing the alternative remedy, the petitioner is not entitled to approach this Court by invoking Article 226 of the Constitution of India.

7. The petitioner herein by producing the copy of the Sale Deed in her name dated 09.06.1999 would establish before this Court that the property under attachment was purchased in her name on 09.06.1999. Even according to the counter affidavit filed by the 1st respondent, Section 82 enquiry was ordered into the affairs of the 2nd respondent/Society only on 16.06.2017 by the 1st respondent. Therefore, the period of mis-appropriation and the date of purchase are different. Hence, there is nothing on record to come to a conclusion that the petitioner purchased the property in her name out of mis-appropriated funds provided by 3rd respondent.



W.P.No.22855 of 2023

WEB COPY

8. In this regard, it would be appropriate to refer to the judgment of the Division Bench of this Court in ***The Management, R.A.No.18, Thiruvengadapuram Primary Agricultural Cooperative Credit Society vs. S.Rathinam*** (W.A.(MD).No.1511 of 2018 dated 11.12.2018). The relevant observation of the Division Bench in the above said case law reads 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. However, it is open to the Registrar or the person authorised by him acting under Section 87 of the Act to initiate action to proceed against the property in accordance with law after establishing the fact the property of a close relative of the delinquent was in fact the property purchased out of money provided by the delinquent. In that view of the matter, we do not find any reason to interfere with the order passed by the learned Single Judge of this Court, allowing the Writ Petition.”



W.P.No.22855 of 2023

9. The law laid down by the Division Bench of this Court in the above mentioned case is squarely applicable to the facts of the present case.

In the case on hand, the property stands in the name of the wife of the employee of the Co-operative Society. The Section 82 enquiry was relating to the period 2017. However, the property was purchased in the year 1999. In such circumstances, there is nothing to suggest that the property of the petitioner was purchased out of the mis-appropriated funds. Therefore, the order of attachment passed by the 1st respondent cannot be sustained.

10. Even according to the counter affidavit filed by the 1st respondent, only Section 82 enquiry has been ordered into the affairs of the 2nd respondent/Society. Till date, no surcharge proceedings are initiated against 3rd respondent, either under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 or Arbitration Proceedings under Section 90 of the said Act. In such circumstances, the 1st respondent ought not to have invoked Section 167 of the Tamil Nadu Co-operative Societies Act, 1983 to attach the property of the petitioner.



W.P.No.22855 of 2023

11. Section 167 of the Tamil Nadu Co-operative Societies Act, 1983

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 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:

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.”

12. A perusal of the above provision would make it clear that initiation of proceedings under Sections 87, 90, 138 and 139 (2)(b) is a condition precedent for attachment of the property. In the case on hand, none of the said proceedings are initiated. Immediately after filing of the report of the Section 82 enquiry, the attachment order came to be passed by the 1st respondent. Therefore, the impugned order is liable to be set aside on that ground also. In view of the undisputed fact that the property was purchased by petitioner in the year 1999, well prior to the period of alleged mis-appropriation and absence of condition precedent for invoking Section



W.P.No.22855 of 2023

167 of the Tamil Nadu Co-operative Societies Act, 1983, the impugned order on the face of it unsustainable. Hence, petitioner need not be relegated to avail alternative remedy.

13. Accordingly, the impugned order is set aside and the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

08.09.2023

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dm

To

1. The Deputy Registrar of Cooperative Societies,
Coimbatore Circle, Coimbatore, Coimbatore District.
2. The President,
K.4303 Madukkarai Primary Agricultural Cooperative
Credit Society, Madukkarai & Taluk,
Coimbatore District.



WEB COPY



W.P.No.22855 of 2023

S.SOUNTHAR, J.

dm

W.P.No.22855 of 2023

08.09.2023