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W.P. No. 29296 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 29296 of 2023

and

W.M.P. No. 28917 and 28918 of 2023

R.Thirumugam

... Petitioner

-VS-

1. The Joint Registrar of Co-operative Societies
Salem Region, Salem-636001.
2. The Deputy Registrar of Co-operative Societies/
Attur Region, Attur, Salem District.
3. The Administrator
S.1210, Thumbal Primary Agricultural
Cooperative Credit Society Ltd.
Thumbal Post, Pethanaikanpalayam Taluk
Salem District-636114.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari to call for the records relating to the impugned surcharge award dated 19.08.2023 vide proceedings in Na.Ka.No.933/2023/Sa.Pa. issued under Section 87 of the Tamil Nadu Co-operative Society Act, 1983, on the file of the Second Respondent and quash the same as being illegal, arbitrary and unconstitutional.



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For Petitioner : Mr. R.Bala Ramesh
For Mr. Suryaprakash
For Respondents : Mr. U.Bharanidaran
Additional Government Pleader (RR1 & 2)
Mr. S.Jayachandran (for R3)

ORDER

Heard Mr. R.Bala Ramesh, Learned Counsel for Mr. Suryaprakash, Learned Counsel for the Petitioner, Mr. U.Bharanidaran, Learned Additional Government Pleader appearing for the First and Second Respondents, and Mr. S.Jayachandran, Learned Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner has filed this Writ Petition challenging the Order No. Na. Ka. 933/2023 Saba dated 19.08.2023 passed by the Second Respondent in surcharge proceedings fastening liability on him as then Secretary (Incharge) of the Co-operative Society of the Third Respondent in the exercise of powers under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short), against which the Petitioner is entitled to prefer appeal under Section 152 of the TNCS Act before



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the Special Tribunal for Co-operative Cases, which has also been empowered to condone delay in filing the same after the prescribed period of limitation has expired, if sufficient cause is made out.

3. It must, at once, be emphasized that the Hon'ble Supreme Court of India in *Assistant Collector of Central Excise -vs- Dunlop India Limited* [(1985) 1 SCC 260] has precisely explained the legal position relating to the exercise of discretionary powers under writ jurisdiction when an alternative remedy exists, in the following words:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of



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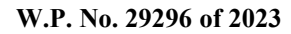
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the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.”

In ***Nivedita Sharma -vs- Cellular Operators Association of India*** [(2011) 14 SCC 337], adverting to the the previous decisions with regard to the rule of self-restraint when an alternative remedy is available to the aggrieved person, the Hon'ble Supreme Court of India has emphasized that when a statutory forum is created by law for redressal of grievance, a Writ Petition should not be ordinarily entertained ignoring that statutory dispensation. Further, the law has been restated by the Hon'ble Supreme Court of India in ***Radha Krishan Industries -vs- State of Himachal Pradesh*** [(2021) 6 SCC 771] as extracted below:-

“27.1. *The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*

27.2. *The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to*



27.3. *Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*

27.5. *When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*

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petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

In such circumstances, the Petitioner has not been impeded from canvassing what is sought to be agitated in the Writ Petition in the aforesaid statutory remedy and there is no acceptable explanation from the Petitioner for not having availed it.

4. In the light of the said legal position, this Court is not inclined to delve into the merits of the controversy involved touching upon disputed questions of fact for effectual and complete adjudication of the matter by entertaining the Writ Petition in the exercise of its discretionary powers following summary procedure under Article 226 of the Constitution.

In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

29.11.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.05.2024.



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To

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P.D. AUDIKESAVALU, J.

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