



W.P. No. 29311 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM

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

W.P. No. 29311 of 2023

and

W.M.P. Nos. 28936, 28937 and 34502 of 2023

D.Santhi

... Petitioner

-VS-

1. The Deputy Registrar of Co-operative Societies,
Vellore Circle,
Vellore District.
2. The Sale Officer/Co-operative Sub-Registrar,
Office of the Deputy Registrar of Co-operative Societies,
Vellore.
3. The Sub-Registrar,
Vellore,
Vellore District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the conditional attachment order passed by the First Respondent dated 18.06.2020 under Section 167 of the Tamil Nadu Co-operative Societies Act, 1983, quash the same and direct the Respondents to raise the order of attachment made in Survey No. 54/24 total measuring 516 ½ sq. ft. in Patta No. 1779.



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For Petitioner : Mr. L.P.Shanmugasundaram

For Respondents : Mr. S.Arumugam,
Government Advocate

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ORDER

Heard Mr. L.P.Shanmugasundaram, Learned Counsel for the Petitioner and Mr. S.Arumugam, Learned Government Advocate appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent by Order in CAM No. 240/2019-20 Sa.Pa. ARC. 123/2019-20 dated 18.06.2020 under Section 167 of the Tamil Nadu Co-operative Societies Act, 1987 (hereinafter referred to as 'the TNCS Act' for short) had attached properties of the one D.Umamaheswari, who was working as Manager in Vellore District Central Co-operative Bank pursuant to determination of liability against her in surcharge proceedings under Section 87 of the TNCS Act, in respect of that Co-operative Bank. According to the Petitioner, who is the mother of the said D.Umamaheswari, her property has been wrongfully attached for the liability of her daughter. In that backdrop, the Petitioner has filed this Writ Petition challenging the said order in this Writ Petition.



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3. In this context, it must be noticed that aforesaid order of the First Respondent has been passed in the exercise of powers under Section 167 of the TNCS Act against which the Petitioner is entitled to file claim petition under Rule 135 of the Tamil Nadu Co-operative Societies Rules, 1988, before the Second Respondent objecting to the attachment of her property on the ground that it is not liable to such attachment and it is incumbent upon the Second Respondent to investigate into that claim and dispose it on merits.

4. 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



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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 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], advertent to 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 the aggrieved person.*

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.*

27.4. *An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*



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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.*

27.6. *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ 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.

5. 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



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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.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 04.06.2024.

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To

1. The Deputy Registrar of Co-operative Societies,
Vellore Circle,
Vellore District.
2. The Sale Officer/Co-operative Sub-Registrar,
Office of the Deputy Registrar of Co-operative Societies,
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P.D. AUDIKESAVALU, J.

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