



W.P. No. 30178 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

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

W.P. No. 30178 of 2023

and

W.M.P. Nos. 29787 and 29788 of 2023

V.Shanthi

... Petitioner

-VS-

1. The Deputy Registrar of Co-operative Societies,
Cheyyar Circle,
Tiruvannamalai.
 2. The Sale Officer,
Office of the Deputy Registrar of Co-operative Societies,
Cheyyar.
 3. The Sub-Registrar,
Peranamallur,
Tiruvannamalai 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 Second Respondent dated 15.11.2022 under Rule 126(2)(d) of the Tamil Nadu Co-operative Societies Act, 1983 and consequently Form 9 auction notice issued by the First Respondent in Nee-maa. No. 11/2021-2022 dated 30.08.2023 and quash the same and direct the Third Respondent to raise the order of attachment made in Survey No. 235 (0.13.0) and Survey No. 235/5(0.17.0) total measuring 0.37



cents dated 28.11.2022.

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For Petitioner : Mr. L.P.Shanmugasundaram
For Respondents : Mr. U.Baranidharan,
Additional Government Pleader

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ORDER

Heard Mr. L.P.Shanmugasundaram, Learned Counsel for the Petitioner and Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent by Order in Ni. Ma. No. 11/2021-2022/Sa.Pa dated 15.11.2023 had attached properties of one P.Venkataraman, who was working as Clerk in H.H.550, Mosavadi Primary Agricultural Co-operative Credit Society. According to the Petitioner, who is the wife of the said P.Venkataraman, the said property actually belongs to her, which has been wrongfully attached. In that backdrop, she has filed this Writ Petition challenging the said order in this Writ Petition.

3. In this context, it must be noticed that aforesaid order of the Second Respondent has been passed in the exercise of powers under Rule 126(2)(d) of the Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter referred to as



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'the TNCS Rules' for short) against which the Petitioner is entitled to file claim petition under Rule 135 of the TNCS Rules 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. Learned Counsel for the Petitioner has raised a contention that the Division Bench of the Court in the decision in ***Management, R.A. No. 18, Thiruvengadapuram Primary Agricultural – Cooperative Credit Society -vs- S.Rathinam*** (Order dated 11.12.2018 in W.A. (MD) No. 1511 of 2018) has held that despite the alternative remedy, Writ Petition could be entertained.

5. On the contrary, Learned Counsel appearing for the Respondents refer to another ruling of the Division Bench of the Court in ***Rajathilagam -vs- Deputy Registrar of Co-operative Societies, Ariyalur*** (Order dated 11.10.2023 in W.A. No. 2764 of 2023) upholding the decision of a Learned Judge of the Court dismissing the Writ Petition in W.P. No. 22387 of 2022 seeking the same relief with liberty to the challenge the attachment order by filing claim petition as provided under the Rules.



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6. 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 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



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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 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*



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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.

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



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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.

7. 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.

19.12.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 24.05.2024.

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To

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Tiruvannamalai.
2. The Sale Officer,
Office of the Deputy Registrar of Co-operative Societies,
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P.D. AUDIKESAVALU, J.

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