



W.P. No. 29834 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 17.10.2023**

**CORAM**

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

**W.P. No. 29834 of 2023**

**and**

**W.M.P. No. 29440 of 2023**

S.Mallika

... Petitioner

-VS-

1. The Deputy Registrar of Co-operative Societies,  
O/o. the Deputy Registrar of Co-operative Societies,  
Omalur Circle,  
Cutchery Street,  
Omalur,  
Omalur – 636 455,  
Omalur Taluk,  
Salem District.
  2. The Sale Officer/Deputy Registrar,  
O/o. the Deputy Registrar of Co-operative Societies,  
Omalur Circle, S 777,  
Nangavalli PACCS Ltd.,  
Nangavalli (Post) 636 454,  
Mettur Taluk,  
Salem District.
  3. The Administrator,  
S 777, Nangavalli PACCS Ltd.,  
Nangavalli,  
Nangavalli (Post) 636 454,  
Mettur Taluk,  
Salem District.
- Respondents

...



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**Prayer:-** Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records with reference to Form No. 9 dated 12.09.2023 issued by the Second Respondent in respect of schedule property mentioned therein being the House bearing Plot No. 39, measuring to an extent of 1295 sq.ft., of land comprised in Survey No. 107/3, 107/4, 107/5, 107/6 and 107/7, Surapalli Village, Mettur Taluk, Salem District.

For Petitioner : Mr. S.Umapathy

For Respondents : Mr. U.Baranidharan,  
Additional Government Pleader for R1 & R2)

Mr. V.Ramesh (for R3)

## **ORDER**

Heard Mr. S.Umapathy, Learned Counsel for the Petitioner, Mr. U.Baranidharan, Learned Additional Government Pleader, who takes notice for the First and Second Respondents and Mr. V.Ramesh, Learned Counsel, who takes notice for the Third Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The husband of the Petitioner, viz., C.Selvaraj, was working as Secretary in the Co-operative Society of the Third Respondent and liability in surcharge



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proceedings had been determined against him under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. The Petitioner, who is the wife of the said C.Selvaraj, had purchased land to an extent of 1295 sq.ft. comprised in Survey Nos. 107/3, 107/4, 107/5, 107/6 and 107/7, Surapalli Village, Mettur Taluk, Salem District by sale deed dated 07.02.2011 registered as Document No. 359 of 2011 in the office of the Sub-Registrar, Omalur. The said property has been sought to be attached for recovery of the dues payable by the said C.Selvaraj in the surcharge proceedings. The Petitioner had earlier filed the Writ Petitions in W.P. Nos. 18128 and 20341 of 2020 and this Court by order dated 01.07.2021 relegated the Petitioner to avail the remedy under Rule 135 of the Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter referred to as 'the Rules' for short). As the objections raised by the Petitioner were not accepted under Rule 135(1) of the Rules, she had filed the suit in O.S. No. 121 of 2021 before the District Munsif Court at Mettur in terms of Rule 135(3) of the Rules, but the plaint in that suit has been rejected on 16.10.2023, necessitating the Petitioner to file this Writ Petition challenging the Auction Notice in Form No. 9 dated 12.09.2023 issued by the Second Respondent for sale of that property.

3. It must be noticed that as per Section 2(2) of the Code of Civil Procedure,



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1908, (hereinafter referred to as 'the CPC' for short), the term 'decree' includes the rejection of a plaint, and if aggrieved, the Petitioner could appeal under Section 96 of the CPC before the jurisdictional Appellate Court against the rejection of the plaint made under Rule 11 of Order VII of the CPC by the Trial Court as held by the Hon'ble Supreme Court of India in **Sayyed Ayaz Ali -vs- Prakash G.Goyal** [(2021) 7 SCC 456], and seek interim relief to restrain the auction sale of the property during the pendency of that appeal.

4. At this juncture, it must be highlighted 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*



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*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 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:-



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“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*



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*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 the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."*

5. The Petitioner has not been able to demonstrate from the facts of this case



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as to how she has been impeded from canvassing what is sought to be agitated in this Writ Petition in the appeal against decree in the suit, and the affidavit filed in support of the Writ Petition is also bereft of any details in that regard. Viewed from that perspective, this Court is not inclined to delve into the merits of the controversy involved in this case which touches upon disputed questions of fact for effectual and complete adjudication of the matter.

In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

17.10.2023

Index: Yes/No

NCC: Yes/No

**Note: Issue order copy by 24.05.2024.**

pal/vjt

To

1. The Deputy Registrar of Co-operative Societies,  
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2. The Sale Officer/Deputy Registrar,



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3. The Administrator,  
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**P.D. AUDIKESAVALU, J.**

pal/vjt

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