



W.P. No. 35249 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM

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

W.P. No. 35249 of 2023

and

W.M.P. No. 35216 of 2023

P.R.Kaliyappa Kounder

... Petitioner

-VS-

1. The Deputy Registrar,
Deputy Registrar of Co-operative Societies,
No. 16, Kamarajar Road,
Pollachi,
Coimbatore – 642 002.

2. The Secretary,
Vadasithur Primary Agricultural Cooperative Credit Society,
Vadasithur Post,
Kinathukadavu Taluk,
Coimbatore District – 641 202.

... 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 impugned order passed by the First Respondent in his Proceedings in Na. Ka. 2636/2022/AB dated 13.04.2023 and quash the same and direct the Second Respondent herein to return the Petitioner's 6 ½ Sovereigns Jewels pledged in Jewel Loan No. JL 963 on the file of the Second Respondent and quash the same.



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For Petitioner : Mr. W.Camyles Gandhi
For Respondents : Mr. U.Baranidharan,
Additional Government Pleader (for R1)
Mr. K.Kishore (for R2)

ORDER

Heard Mr. W.Camyles Gandhi, Learned Counsel for the Petitioner, Mr. U.Baranidharan, Learned Additional Government Pleader, who takes notice for the First Respondent, and Mr. K.Kishore, Learned Counsel, who takes notice for the Second Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner that he had availed loan from the co-operative society of the Second Respondent for which he had pledged 6½ sovereigns of jewels as security and when he approached that co-operative society for closing that loan, it was informed that the then Secretary of that co-operative society has misappropriated its funds. In that backdrop, he had made a grievance petition dated 08.07.2022 to retrieve his jewels before the First Respondent, who by Proceedings No. Na. Ka. 2636/2022Abi dated 13.04.2023 informed the Petitioner that as the value of the jewels has been



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mentioned to be assessed as Rs. 15,200 in the records, the co-operative society of the Second Respondent was advised to pay compensation of Rs. 15,200/- to him, which is assailed in this Writ Petition.

3. In this context, it must be noticed that a reference under Section 90(1)(b) of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short) could be made to determine any dispute touching the business of a co-operative society arising between it and its members before the jurisdictional Registrar of Co-operative Societies, who 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. That apart, Section 153 of the TNCS Act empowers the jurisdictional Registrar of Co-operative Societies, on application, to call for an examine the record of any officer subordinate to him or of the Board or any officer of a co-operative society. Further, the matter evidently fall under the realm of disputed questions of fact, which cannot be effectively determined in the summary procedure followed under Article 226 of the Constitution.

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



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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 proceedings by one device or the other. The practice certainly needs to be strongly discouraged."



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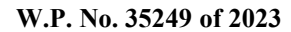
In **Nivedita Sharma -vs- Cellular Operators Association of India** [(2011) 14

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 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 vires of a legislation is challenged.

law.

rule of policy, convenience and discretion.

jurisdiction, such a view would not readily be interfered with."

what is sought to be agitated in this Writ Petition in the aforesaid remedies and



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there is no acceptable explanation from the Petitioner for not having availed the same.

5. When the said legal position was pointed out to Learned Counsel for the Petitioner, he seeks permission of the Court to withdraw the Writ Petition with liberty to resort to the aforesaid procedure. He has also made an endorsement to that effect in the court record.

In the result, the Writ Petition is dismissed as withdrawn granting such liberty. It is made that clear for the purpose of reckoning limitation for availing the aforesaid remedy, the period from the date of filing of the Writ Petitions, viz., 13.12.2023, till the date on which the certified copy of this order is made ready by the Registry, shall be excluded. Consequently, the connected Miscellaneous Petition is closed. No costs.

22.12.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 18.04.2024.

vjt



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To

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P.D. AUDIKESAVALU, J.

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