



W.P(MD)No.17515 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17515 of 2022

and

W.M.P.(MD)Nos.12734 & 12738 of 2022

B.C.Jeyakumar

... Petitioner

Vs.

1.The Joint Registrar of Cooperative Societies,
Sivagangai Region,
Sivagangai District.

2.The Deputy Registrar of Cooperative Societies,
Office of the Deputy Registrar of Cooperative Societies,
Ramnad.

3.The Managing Director,
Ramnad District Central Cooperative Bank,
Ramnad District.

4.The Sub Registrar,
Aruppukottai,
Palayampatti Village,
Virudhunagar District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings issued by the 2nd respondent vide No. Ni.Ma. 2/2017-18/Sa Pa dated 08.07.2022 and also order passed by the 2nd Respondent vide Ni.Ma. No. 2/2017-2018 (na ka) 2118/2017 Sa Pa



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dated 08.09.2017 and quash the same and consequently directing the respondents to remove the entry made in the Encumbrance Register in respect of house property of the petitioner comprised in S.No. 160/1A 1A 1A 1A situated at Palayampatti Village, Aruppakottai Taluk Sub Registration Office, Virudhunagar District of an extent of 1480 sq ft within a time stipulated by this Court.

For Petitioner : Mr.C.Jeganathan

For Respondents : Mr.M.Prakash
Additional Government Pleader for R1, R2 & R4
: Mr.D.Shanmugaraja Sethupathi for R3

ORDER

Heard both sides.

2. The petitioner challenges the impugned order of attachment made by the second respondent under Section 167(2) of the Tamil Nadu Co-operative Societies Act, 1983. Attachment order was made at the instance of the third respondent. It is not in dispute that the land in question was purchased in the name of the petitioner in the year 2013. The petitioner is not employed in the third respondent bank. The petitioner's wife alone is the employee. Surcharge order had been passed against the petitioner's wife and three others. The question that calls for consideration is whether the petition mentioned property



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could be attached towards enforcement of the surcharge order passed against his wife.

3. The issue is no longer *res integra*. If the property under attachment can be said to have been purchased out of the proceeds of the misappropriation, then notwithstanding the fact that the property is in the name of the third party, it can still be brought under attachment. But then, the Hon'ble Division Bench in W.A.(MD)No.1511 of 2018, dated 11.12.2018 held that the authority cannot presume that every property that stands in the name of the spouse of the delinquent against whom surcharge proceedings have been initiated as the property purchased out of the money provided by the delinquent so that the same could be attached as a property of the delinquent.

4. If the petitioner is not having any independent source of income, then, this Court can definitely draw some tentative inference against the petitioner. Likewise, if the respondents have placed some materials to link the construction of the house with the proceeds of crime, then I would have sustained the impugned attachment. The fact remains that the petitioner is a Government school teacher. I take judicial notice of the fact that the government teachers are paid fairly well. The petitioner has availed loan from



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LIC. The loan was paid out of the petitioner's salary account. I have already noted that the title deed is in the name of the petitioner in respect of the land. Cause of action for surcharge proceedings arose from 2014 onwards. The land was purchased in 2013 itself. The petitioner has also shown that construction was made by loan which was settled out of the petitioner's salary account.

5. In these circumstances, there is no justification for attaching the petition mentioned property. The learned counsel appearing for the third respondent of-course contended that the petitioner ought not to be allowed to straight away invoke the writ jurisdiction of this Court. The rule regarding non exhaustion of alternative remedy is only a rule of discretion and does not go to the jurisdiction of this Court to entertain the writ petition.

6. There is absolutely no material on record to show that the property in question is traceable to the proceeds of the crime or delinquency. In this view of the matter, the impugned order of attachment is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

15.12.2023

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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