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W.P.Nos.1951, 1953, 1955, 1957, 1959, 1964, 1965, 1966 of 2024 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.1951, 1953, 1955, 1957, 1959, 1964, 1965, 1966 of 2024 and
W.M.P.Nos.2060, 2068, 2073, 2075, 2076, 2077,
2082, 2083, 2085 of 2024

W.P.No.1951 of 2024

K.Natarajan

... Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
Tiruchengode Zone,
Tiruchengode Taluk,
Namakkal District.

2.The Enquiry Officer,
The Co-operative Sub-Registrar / Field Officer,
Elachipalayam,
Tiruchengode Taluk,
Namakkal District.

3.The Secretary,
S.234, Kokkalai Primary Agriculture
Co-operative Credit Society Limited,
Tiruchengode Taluk,
Namakkal District.

4.The Sub-Registrar,
Tiruchengode,
Tiruchengode Taluk,
Namakkal District.

... Respondents



W.P.Nos.1951, 1953, 1955, 1957, 1959, 1964, 1965, 1966 of 2024 of 2024

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the entire records in relation to the impugned notice dated 11.01.2024 issued by the first respondent in Ni.Pa.No.01/2023(2) under Section 167 of the Tamil Nadu Co-operative Societies Act, 1983 and to quash the same.

For Petitioner : Mr.D.Vairamoorthy

For Respondents : Mr.S.Nanmaran, SGP for RR1,2 & 4
Mr.S.Balamurugan, GA for R3

COMMON ORDER

These Writ Petitions have been filed seeking issuance of a Writ of Certiorari, to call for the entire records in relation to the impugned notice dated 11.01.2024 issued by the first respondent in Ni.Pa.No.01/2023(2) under Section 167 of the Tamil Nadu Co-operative Societies Act, 1983 and to quash the same.

2. Heard Mr.D.Vairamoorthy, learned counsel for the petitioners in all Writ Petitions, Mr.S.Nanmaran, learned Special Government Pleader for the respondents 1,2 & 4 in all Writ Petitions and Mr.S.Balamurugan, learned Government Advocate for the third respondent in W.P.Nos.1951, 1964, 1965 & 1966 of 2024 and Mr.S.J.Mohammed Sathik, learned Government Advocate for the third respondent in W.P.Nos.1953, 1955,



W.P.Nos.1951, 1953, 1955, 1957, 1959, 1964, 1965, 1966 of 2024 of 2024

1957 & 1959 of 2024.

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3. The petitioners who are the erstwhile President, Vice President and the administrative committee members of the third respondent Co-operative Society have filed these Writ Petitions seeking the relief of quashing the order dated 11.01.2024, made for attachment under Section 167 of the Tamil Nadu Cooperative Societies Act.

4. The learned counsel for the petitioners submitted that on 04.01.2024 the petitioners have been given with notice under Section 81 of the Act for enquiry and in pursuant to that the appropriate authority has to initiate surcharge proceedings and only after passing the surcharge award, the order for attaching the properties of the petitioners should be passed.

5. The learned Special Government Pleader appearing for the respondents 1, 2 and 4 submitted that the order itself is a conditional order and it was proceeded to furnish notice to the petitioners to furnish security for the claim amount of Rs.78,64,509/-. According to the



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respondents, the claim is under Section 90 of the Co-operative Societies Act.

6. The learned counsel for the petitioners has cited a judgment of the Hon'ble Supreme Court held in the case of ***V.Sundaram Vs. The Deputy Registrar, Co-operative Societies (Milk) Vellore Circle, Vellore District and Another, reported in 2009 SCC Online Mad 61***, wherein, it is held as under:

"6. A plain reading of [Section 167](#) of the Tamil Nadu Cooperative Societies Act would make it clear that an order of attachment before judgment under [Section 167\(1\)](#) of the Act or conditional attachment under [Section 167\(2\)](#) of the Act could be made only in cases where there is already a case pending on the file of the Deputy Registrar either under [Section 87](#) or under [Section 90](#) or under [Section 130](#) or under [Section 139](#) of the Tamil nadu [Cooperative Societies Act](#). Without satisfying the said condition precedent, it is not at all available for the Deputy Registrar to issue any order under [Section 167](#) of the above said Act. Here, the proceeding Number itself is Cooperative Executive petition No.1/2008. It is contended that the petitioner has



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paid fees prescribed under the Tamil Nadu Cooperative Rules for Execution of a decree. I am at a loss to understand as to how an execution petition could be entertained by the Deputy Registrar when there is no award at all capable of being executed. In that view of the matter, I have to necessarily hold that the impugned order is without jurisdiction and therefore, the same is liable to be quashed."

7. It is stated in the said Judgment that the order of attachment under Section 167 of the Act could be made only the case is pending on the file of the Deputy Registrar under Sections 87, 90, 130 and 139 of the Tamil Nadu Cooperative Societies Act. But on facts, the above case is different from the case in hand. Unless the award is passed after completion of Section 87 proceedings subsequent to Section 81 notice, if any order of attachment is made, it can only be a pre-matured order.

8. The learned counsel for the petitioners further submitted that the award has not been passed either under Section 87 or 90, the petitioners are not able to file any appeal or revision before the appropriate authority and hence, they have chosen to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.



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9. The impugned order of attachment before award has been passed under Section 167 even before completion of enquiry under Section 87 of the Act and it is *per se* incorrect. However, the petitioners against whom Section 87 proceedings are going to be commenced should give an undertaking before the appropriate authority that the petition mentioned properties will not be alienated until the completion of Section 87 or 90 proceedings.

10. With these observations, these Writ Petitions are disposed and the impugned notice dated 11.01.2024 issued by the first respondent in Ni.Pa.No.01/2023(2) is quashed. The petitioners are directed to give an undertaking before the appropriate authority that the petition mentioned properties will not be alienated until the completion of Section 87 or 90 proceedings, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such undertaking, the respondents are directed to pass an order of raising the attachment within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed.



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Index : Yes /No
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Speaking / Non-speaking
Neutral Citation : Yes / No
gsk



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R.N.MANJULA, J.

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To

1.The Deputy Registrar of Co-operative Societies,
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