



W.P. No. 4511 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

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

W.P. No. 4511 of 2024

and

W.M.P. Nos. 4874 and 4876 of 2024

S.Kalaimani

... Petitioner

-VS-

1. The Deputy Registrar of Co-operative Societies,
Tiruchengode Circle, Tiruchengode,
Namakkal District.
2. The General Manager,
No. 8994, Tiruchengode Co-operative Urban Bank,
Tiruchengode, Namakkal District.
3. The Sub-Registrar,
Tiruchengode,
Namakkal District.
4. The Sub Registrar,
Paramathi,
Namakkal District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned attachment order passed by the First Respondent in his proceedings CEP No. 5/2017-2018/SF(1) dated 23.04.2018 and quash the same.



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For Petitioner : Mr. C.Prakasam
For Respondents : Mr. P.Sathish,
Special Government Pleader (for R1)
Ms. D.Aishwarya (for R2)
Mr. U.Baranidhran,
Additional Government Pleader
(for R3 & R4)

ORDER

Heard Mr. C.Prakasam, Learned Counsel for the Petitioner and Mr. P.Sathish, Learned Special Government Pleader, who takes notice for the First Respondent, Ms. D.Aishwarya, Learned Counsel, who takes notice for the Second Respondent and Mr. U.Baranidharan, Learned Additional Government Pleader, who takes notice for the Third and Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed challenging the Orders in CEP No. 5/ 2017-2018/SF(1) dated 23.04.2018 passed by the First Respondent attaching the properties of the Petitioner and her deceased husband, viz., S.Annamalai, who was working as Manager of the Co-operative Bank of the Second Respondent pursuant to determination of liability against him in surcharge



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proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1987, in respect of that Co-operative Bank.

3. In this context, it must be noticed that aforesaid order of the First Respondent has been passed in the exercise of powers under Section 167 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short) against which the Petitioner is entitled to prefer appeal under Section 152 of the TNCS Act before the Special Tribunal for Co-operative Cases, which 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.

4. It would be beneficial here to refer to the decision of the Hon'ble Supreme Court of India in *Assistant Collector of Central Excise -vs- Dunlop India Limited* [(1985) 1 SCC 260] where the legal position relating to the exercise of discretionary powers under writ jurisdiction when an alternative remedy exists, has been precisely explained 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



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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.”

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***



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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 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.*



27.6. *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.”*

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.

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.



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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 Petition, viz., 20.02.2024, till the date on which the certified copy of this order is made ready by the Registry, shall be excluded. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 31.05.2024.

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To

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Namakkal District.
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P.D. AUDIKESAVALU, J.

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