



WEB COPY



W.P. No. 4851 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM

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

W.P. No. 4851 of 2024

and

W.M.P. Nos. 5294 and 5297 of 2024

M.S.Shanmugam

... Petitioner

-VS-

1. The Deputy Registrar of Cooperative Societies,
Coimbatore Circle, Coimbatore,
Coimbatore District.

2. The Administrator,
No. 7250 Kariyagoundanur Primary Agricultural
Cooperative Credit Society,
Karyagoundanur, Vadakkalur Post,
Annur – 641 653,
Coimbatore 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 order passed by the First Respondent in his Execution Petition No. 109/2008/SF3 dated 15.09.2022 and quash the same.

For Petitioner

: Mr. C.Prakasam

For Respondents

: Mr. A.M.Ayyadurai (for R1)

Mr. K.Tamilvendan (for R2)



W.P. No. 4851 of 2024

WEB COPY

ORDER

Heard Mr. C.Prakasam, Learned Counsel for the Petitioner, Mr. A.M.Ayyadurai, Learned Government Advocate, who takes notice for the First Respondent and Mr. K.Tamilvendan, Learned Counsel, who takes notice for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed challenging the Certificate of Sale of the property belonging to the Petitioner issued by the First Respondent under Rule 129(3) of the Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter referred to as 'the TNCS Rules' for short), in proceedings under Section 143(f) of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short) for recovery of sums ordered to be re-paid by the Petitioner to the Second Respondent under Section 87 of the TNCS Act, 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.



W.P. No. 4851 of 2024

WEB COPY

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], 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*



WEB COPY

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.

27.5. 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



W.P. No. 4851 of 2024

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 this Writ Petition in the aforesaid statutory remedy and there is no acceptable explanation from the Petitioner for not having availed it.

4. 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 Petition, viz., 21.02.2024, till the date on which the certified copy of this order is made ready by the Registry, shall be excluded. Consequently, the connected Miscellaneous Petition is closed. No costs.

01.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.05.2024.



W.P. No. 4851 of 2024

kv
WEB COPY

To

1. The Deputy Registrar of Cooperative Societies,
Coimbatore Circle, Coimbatore,
Coimbatore District.
2. The Administrator,
No. 7250 Kariyagoundanur Primary Agricultural
Cooperative Credit Society,
Kariyagoundanur, Vadakkalur Post,
Annur – 641 653,
Coimbatore District.



WEB COPY



W.P. No. 4851 of 2024

P.D. AUDIKESAVALU, J.

kv

W.P. No. 4851 of 2024

01.03.2024