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W.P. No. 5782 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM

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

W.P. No. 5782 of 2024

and

W.M.P. No. 6538 of 2024

Govindarasan

... Petitioner

-VS-

1. The Deputy Registrar of Co-operative Credit Societies,
Ariyalur Circle,
Collectorate Office Campus,
Ariyalur District.
2. The District Registrar,
Registration Department,
Ariyalur District.
3. The Sub-Registrar,
Registration Department,
Udayarpalam,
Ariyalur District.
4. The Secretary,
TY.Spl.107, Thathanur,
Agricultural Cooperative Credit Society,
Thathanur,
Ariyalur District.

... 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 First Respondent in CEP. No. 01/2023-24 dated 07.02.2024



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issued under Section 167(1) of the Tamil Nadu Co-operative Societies Act, 1938 and quash the same as illegal and also direct the First Respondent not to pass any conditional order to attach the Petitioner's properties.

For Petitioner : Mr. J.P.Rajesh

For Respondents : Mr. J.Ravindran,
Additional Advocate General
assisted by Mr. M.S.Arasa Kumar
Government Advocate (for R1)

Mr. U.Baranidharan,
Additional Government Pleader
(for R2 to R4)

ORDER

Heard Mr. J.P.Rajesh, Learned Counsel for the Petitioner, Mr. J.Ravindran, Learned Additional Advocate General assisted by Mr. M.S.Arasa Kumar, Learned Government Advocate appearing for the First Respondent and Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the Second to 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 Notice in CEP No. 01/ 2023-24 dated 07.02.2024 issued by the First Respondent calling upon the



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Petitioner to furnish security for the sum of Rs. 39,94,315/-, failing which his immovable properties would be conditionally attached under Section 167 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the Act' for short).

3. In this context, it must be noticed that aforesaid order of the Third Respondent has been passed in the exercise of powers under Section 167(1) of the 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.

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 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



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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***



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.*



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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 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.

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 Petitions, viz., 28.02.2024, 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.

22.03.2024

Index: Yes/No

NCC: Yes/No

Note: (i) Issue order copy by 01.04.2024.

(ii) Registry is directed to return the impugned order under written acknowledgment after retaining a copy of the same for record.

vjt

To

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Ariyalur Circle,
Collectorate Office Campus,
Ariyalur District.
2. The District Registrar,
Registration Department,
Ariyalur District.



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