



W.P. No. 10593 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 12.02.2024**

**CORAM**

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

**W.P. No.10593 of 2021**

**and**

**W.M.P. No.11204 of 2021**

K.R.Ramachandran

... Petitioner

-VS-

1. The Registrar of Co-Operative Societies,  
No.170, NV Natarajan Maaligai,  
Periyar EVR High Road,  
Poonamallee High Road,  
Kilpauk, Chennai 600 010.
2. The Deputy Registrar of Co-operative Society,  
Rathinasabapathy Puram HO  
Coimbatore Zone,  
Coimbatore 38.
3. The President,  
K.2069, Veerakeralam Thodakka Velanmai  
Co-operative Society,  
Veerakeralam Post,  
Coimbatore 641 007.
4. The Secretary,  
K.2069, Veerakeralam Thodakka Velanmai  
Co-operative Society,  
Veerakeralam Post,  
Coimbatore 641 007.

... Respondents



W.P. No. 10593 of 2021

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**Prayer:-** Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records of the 2<sup>nd</sup> respondent pertaining to his proceedings in Na.Ka.3562/2020/Ve1(1) dated 25.01.2021 and quash the same.

For Petitioner : Mr. K.S.Karthik Raja

For Respondents : Mr. P.Sathish,  
Additional Government Pleader  
(for R1, R2 and R4)

Mr. R.Naresh Kumar (for R3)

## ORDER

Heard Mr. K.S.Karthik Raja, Learned Counsel for the Petitioner, Mr. P.Sathish, Learned Additional Government Pleader for the First, Second and Fourth Respondents, and Mr. R.Naresh Kumar, Learned Counsel for the Third Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. It is borne out from the record that the Petitioner, who is a member of the co-operative society of the Third and Fourth Respondents, had on 28.09.2012



W.P. No. 10593 of 2021

obtained a loan of Rs. 5,00,000/- for house repair from it and had defaulted in its repayment, which led to arbitration proceedings taken against him under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short) in which the jurisdictional Registrar of Co-operative Societies had passed an award dated 21.06.2016. Long thereafter, the Petitioner had made a representation dated 21.08.2020 to the Second Respondent seeking extension of the benefit of waiver of agricultural loan under G.O. (Ms.) No. 59, Co-operation, Food and Consumer Protection Department dated 28.06.2016 issued by the Government of Tamil Nadu, but it was rejected by the Second Respondent by Proceedings in Na. Ka. No. 3562/2020/Ve1(1) dated 25.01.2021, which is assailed in this Writ Petition.

3. It is contended by Learned Counsel appearing for the Respondents that in the absence of any challenge to the award dated 21.06.2016 passed by the jurisdictional Registrar of Co-operative Societies, the Petitioner cannot claim any relief of waiver of the loan from the Fourth and Fifth Respondents.

4. In this context, it must be noticed that an order passed in a reference by the jurisdictional Registrar of Co-operative Societies in the exercise of powers



W.P. No. 10593 of 2021

under Section 90 of the TNCS Act could be appealed 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.

5. 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 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*



W.P. No. 10593 of 2021

WEB COPY

*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*



W.P. No. 10593 of 2021

*fundamental rights, but for any other purpose as well.*

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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.*

27.5. *When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or*



W.P. No. 10593 of 2021

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*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.

6. 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.



W.P. No. 10593 of 2021

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In view of the same, the Writ Petition is dismissed as withdrawn granting such liberty. It is made clear that for the purpose of reckoning limitation for availing the aforesaid remedy, the period from the date of filing of the Writ Petition, viz., 08.04.2021, till the date on which the certified copy of this order is made ready by the Registry, shall be excluded. Consequently, connected Miscellaneous Petition is closed. No costs.

12.02.2024

Index: Yes/No

NCC: Yes/No

**Note: (i) Issue order copy by 26.03.2024.**

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

gsa

To

1. The Registrar of Co-Operative Societies,  
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W.P. No. 10593 of 2021

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**W.P. No. 10593 of 2021**

**P.D. AUDIKESAVALU, J.**

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