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W.P. No. 12815 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

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

W.P. No. 12815 of 2020

and

W.M.P. No. 15836 of 2020

S.Santhi

... Petitioner

-VS-

1. The Assistant Director of Handlooms & Textiles,
R. No. 504-505, 3rd Floor,
Collectorate,
Palladam Road,
Tiruppur - 641604.
2. The Managing Director,
EH 197,
Uthukuli Powerloom Weavers Co-operative Production &
Sales Society Ltd.,
204, Kunnathur Road,
Uthukuli,
Tiruppur District.
PIN: 638752.

3. S.Subramaniam

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, forbearing the Respondents 1 & 2 herein from bringing the Petitioner's immovable property measuring an extent of 0.37.0 hectares in S.F. No. 52, R.S. No. 11/2B, situate at Velampalayam Village, Perundurai Taluk, Erode District for public auction for the dues of the Third Respondent herein.



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For Petitioner : Mr. K.Govi Ganesan
For Respondents : Mr. P.Sathish
Additional Government Pleader (for R1)
Mr. L.P.Shanmugasundaram (for R2)
Mr. N.Nithianandam (for R3)

ORDER

Heard Mr. K.Govi Ganesan, Learned Counsel for the Petitioner, Mr. P.Sathish, Learned Additional Government Pleader appearing for the First Respondent, Mr. L.P.Shanmugasundaram, Learned Counsel appearing for the Second Respondent and Mr. N.Nithianandam, Learned Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent by Proceedings No. 01/2020-2021 dated 28.05.2020 had attached the property situated at Velampalayam Village, Perundurai Taluk, Erode District belonging to the Third Respondent, who was functioning as President of the Co-operative Society of the Second Respondent pursuant to determination of liability against him in surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1987. It is the case of the



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Petitioner that the Third Respondent, who is her husband, has earlier transferred the attached property by sale-deed dated 25.10.2007 registered as Document No. 5196 of 2007 in the office of the Sub-Registrar, Kunnathur in her favour and consequently, the First and Second Respondents are sought to be restrained from bringing the attached property for recovery of the dues owed by the Third Respondent to the Second Respondent in this Writ Petition.

3. At this juncture, reference must be made to Rule 135 of the Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter referred to as 'the Rules' for short) which provides that where any claim or objection is made to the attachment of any property attached under those Rules on the ground that such property is not liable to any attachment, it shall be incumbent upon the Sale Officer to investigate the claim or objection and dispose of it on merits.

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, as extracted below:-



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"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 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], 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



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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] in the following words:-

“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*



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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 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.



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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.

In the result, 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., 08.09.2020, 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.

11.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 28.03.2024.

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To

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P.D. AUDIKESAVALU, J.

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