



WEB COPY



W.P.No.23140 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.23140 of 2021
and W.M.P.No.24408 of 2021

V.Sujatha

... Petitioner

-Vs-

1. The Deputy Registrar of
Co-operative Societies,
Dhamapuri Circle,
Dharmapuri.

2. T.T.25, Dharmapuri
Co-operative Press,
Rep. by its President,
No.84, Industrial Park,
Dharmapuri.

3. The Sale Officer,
Co-operative Sub Registrar/
Field Officer,
Nallampalli,
Dharmapuri District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the demand notice issued by the third respondent in E.P.No.14/2008-19 in thava.No.12352/2002 sa.pa.2 dated 01.10.2021, quash the same.



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For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.M.Rajendran
Additional Government Pleader

ORDER

This writ petition has been filed challenging the demand notice issued by the third respondent thereby demanded the petitioner to pay a sum of Rs.9,61,595.30.

2. The petitioner was settled with the property comprised in S.No.188, ad measuring 2.98.0 punjai hectares situated at Pallipatti Village, Morappur Taluk, Dharmapuri District, by her husband vide settlement deed dated 09.07.2014. While her father-in-law was alive and while he was working in the third respondent society, there was misappropriation of huge money for which, enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act. In pursuant to the enquiry report, surcharge proceeding was initiated and surcharge order was passed as against the father-in-law of the petitioner in the year, 2004. Subsequently, he died. Thereafter, the property settled in favour of the petitioner was attached in pursuant to the surcharge proceedings.



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3. Therefore, the petitioner filed writ petition before this Court in W.P.No.13492 of 2020 for directing directing the respondents to raise the order of attachment in respect of the subject property. This Court by an order dated 02.08.2021 allowed the writ petition and issued the following directions:-

“13.In view of the above discussion, there shall be a direction to the 2nd respondent to proceed further with the execution proceedings pending in Petition No.14/2008-2009 for recovery of the loss sustained by the Society. In the course of the execution proceedings, it will always be left open to the 2nd respondent Society to the attach any property that belonged to the deceased K.Viswanathan. If the subject property is also made a subject matter of attachment in the execution proceedings, sufficient opportunity shall be given to the petitioner to make her objections as against the attachment. This process shall be completed by the 1st and 2nd respondents, within a period of six weeks from the date of receipt of copy of this order. Since this Court has interfered with the ARC proceedings, the order of attachment shall be kept in abeyance till a final decision is arrived in the execution proceedings.”



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4. When the enquiry is pending before the execution Court in E.P.No.14/2008-09 for recovery of loss sustained by the society, on the file of the first respondent, once again the petitioner was issued with demand notice that too by mentioning the execution proceedings pending before the first respondent, without complying the order passed by this Court as extracted supra. Hence, the present writ petition.

5. The first respondent filed counter affidavit and the learned Additional Government Pleader appearing for the respondents submitted that surcharge proceeding was passed in the year 2004 and ordered to recovery a sum of Rs.9,61,595.30, with 21% interest from the petitioner's father-in-law. After receipt of the same, the petitioner's father-in-law colluded with family members and filed suit in O.S.No.4 of 2010 on the file of the Principal District Court, Dharmapuri and thereafter filed compromise petition and obtained compromise decree. After final decree, the subject property was allotted in favour of the petitioner's husband and thereafter the subject property was settled in favour of the petitioner.

6. Heard the learned counsel appearing on either side and



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perused the materials placed before this Court.

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7. It is seen that without following the directions issued by this Court, that too without conducting any enquiry after giving opportunity of hearing to the petitioner, if the subject property is under attachment to recover the amount, the petitioner was issued with demand notice. That apart, the subject property does not belong to the petitioner's father-in-law and the petitioner's husband derived the right from his grand father and thereafter settled the same in favour of the petitioner. Further, the petitioner's father-in-law died in the year 2013 itself, and thereafter the petitioner was wrongly issued demand notice.

8. In view of the above discussions, the order impugned in this writ petition cannot be sustained and liable to be quashed. Accordingly, the demand notice issued by the third respondent in E.P.No.14/2008-19 in thava.No.12352/2002 sa.pa.2 dated 01.10.2021, is hereby quashed. The respondents are directed to comply the order dated 02.08.2021 passed by this Court in W.P.No.13492 of 2020 and take appropriate action and pass order within a period of eight weeks from the date of receipt of a copy of this Order.



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Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

23.09.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

rts



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To

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