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W.P.No.25274 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

CORAM:

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

W.P.No.25274 of 2024
and W.M.P.No.27611 of 2024

S.Senthikumar

... Petitioner

-Vs-

1. The Deputy Registrar Of Co-Operative Societies,
Omalur Circle, Omalur,
Salem District.

2. The Administrator,
S.M.84, JSW Steel Employees Co-Operative
Thrift And Credit Society Ltd,
Pottaneri, Salem District.

3. The Sub Registrar,
Office Of The Mecheri Sub Registrar,
Salem District.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records from the first respondent in his impugned order in E.P.No.1/2024-2025 dated 06.05.2024 in so far as the properties of the petitioner father's namely Mr.Subramanaian and mother's Mrs.Indhurani to quash the same.

For Petitioner : Mr.A.M.Esakkiappan



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For R1 : Mr.M.Rajendran
Additional Government Pleader
For R2 : Mr.G.Velu
Additional Government Pleader
For R3 : Mr.S.Jayachandran
Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 06.05.2024 in E.P.No.1/2024-2025, thereby attached the properties of the petitioner's father and mother.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioner was appointed as Appraiser on 16.08.2010 in the second respondent Society. Thereafter, he was appointed as Computer Operator under consolidated pay. Thereafter, the petitioner was relieved from service on 22.05.2024. While being so, while he was working as Computer Operator, the first respondent passed an attachment order, thereby attached the property belongs to the petitioner's father and mother by invoking the provisions under Section 167 of the Tamil Nadu Co-operative Societies Act, 1983 in E.P.No.1/2024-2025.

4. The learned counsel for the petitioner would submit that without conducting any enquiry under Section 81 of the Tamil Nadu Co-operative



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Societies Act and without any order under Sections 87 or 90 of the Tamil Nadu Co-operative Societies Act, Section 167 of the Tamil Nadu Co-operative Societies Act cannot be invoked. In support of his contention, he relied upon the Judgment of this Court.

5. On instructions, the learned Additional Government Pleader appearing for the first and second respondents submitted that the petitioner and two others had misappropriated to the tune of Rs.10,58,63,157/- from the second Respondent Society. The enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was ordered and accordingly, now the enquiry is under progress to find out the detail and truthfulness of the irregularities done by the delinquents. In the meanwhile, in order to safeguard the deposit holders interest and for the interest of the members of the Society and also to prevent the accused persons from disposing their family members' immovable properties with the intent to defeat or delay the execution of any decision that may be passed on the recommendation of the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. Therefore, the first respondent has power to invoke the provisions under Section 167 of the Tamil Nadu Co-operative Societies Act and accordingly, attached the properties belong to the petitioner's father and mother.



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6. It is relevant to extract the provisions under Section 167(1) and 167(2) of the Tamil Nadu Co-operative Societies Act as follows:-

“167. Furnishing of security and attachment of property. —(1) Where the Registrar is satisfied on the application of a registered society in respect of a reference made to him under sub-section (1) of section 90 or on the application of a liquidator appointed under section 138 in respect of the proceedings of such liquidator for determining the contribution to be made by a person to the assets of the society under clause (b) of sub-section (2) of section 139 or on the application of the board or liquidator or any creditor to the society or otherwise in respect of any inquiry ordered into the conduct of any person under section 87 that any party to the reference or the person, as the case may be, is about to dispose of or remove from the local limits of the jurisdiction of the Registrar, the whole or any part of his property with intent to defeat or delay the execution of any decision that may be passed on the reference or of any order that may be passed against him by the liquidator or the Registrar, as the case may be, the Registrar may, by order, direct the party or the person, to furnish security in such sum and within such time as may be specified in such order and to produce and place at the disposal of the Registrar when required, the said property or such part thereof as may be sufficient for the execution of any decision or order aforesaid.

(2) The Registrar may also in the order made under sub-section (1), or by a separate order, direct the conditional attachment of the said property, or such part thereof and such attachment shall have the same effect as if it had been made by a competent civil court:”

7. Thus, it is clear that Section 167 of the Tamil Nadu Co-operative Societies Act may be invoked and attach the property of any person only if any



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proceedings are initiated under Sections 87, 90, 138 or 139 sub-section 2(b) of the Tamil Nadu Co-operative Societies Act.

8. In the case on hand, admittedly, there was no order to conduct enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act and no proceedings have been initiated under Sections 87, 90, 138 or 139 sub-section 2(b) of the Tamil Nadu Co-operative Societies Act.

9. It is also relevant to rely upon the Judgment of this Court reported in ***MANU/TN/0280/2009*** in the case of ***V.Sundaram Vs The Deputy Registrar Cooperative Societies (Milk) Vellore Circle and others***, wherein this Court held as follows:-

“.... 6. A plain reading of Section 167 of the Tamil Nadu Cooperative Societies Act would make it clear that an order of attachment before judgment under Section 167(1) of the Act or conditional attachment under Section 167(2) of the Act could be made only in cases where there is already a case pending on the file of the Deputy Registrar either under Section 87 or under Section 90 or under Section 130 or under Section 139 of the Tamil Nadu Cooperative Societies Act. Without satisfying the said condition precedent, it is not at all available for the Deputy Registrar to issue any order under Section 167 of the above said Act. Here, the proceeding Number itself is Cooperative Executive petition No.1/2008. It is contended that the petitioner has paid fees prescribed under the Tamil Nadu Cooperative Rules for Execution of a decree. I am at a loss to understand as to how an execution petition could be



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entertained by the Deputy Registrar when there is no award at all capable of being executed. In that view of the matter, I have to necessarily hold that the impugned order is without jurisdiction and therefore, the same is liable to be quashed.”

The above judgment is squarely applicable to the case on hand.

10. In view of the above, there is nothing adverse against the petitioner and the first respondent ought not to have invoked the power under Section 167 of the Tamil Nadu Co-operative Societies Act when there is no proceeding pending under Sections 87, 90, 138 or 139 sub-section 2(b) of the Tamil Nadu Co-operative Societies Act.

11. That apart, a perusal of records revealed that the properties which were attached by the first respondent belongs to the petitioner's parents which were purchased in the year 1993. Therefore, the said properties were not purchased from the claim proceeds.

12. Therefore, the order impugned in this writ petition cannot be sustained and is liable to be quashed. Accordingly, the impugned order in E.P.No.1/2024-2025 dated 06.05.2024 is hereby quashed. The respondents are at liberty to proceed as against the petitioner when initiation of proceedings under Sections 87, 90, 138 or 139 sub-section 2(b) of the Tamil Nadu Co-



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operative Societies Act.

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13. Accordingly, this writ petition stands allowed. Consequently, connected Miscellaneous petition is closed. No costs.

29.08.2024

Internet: Yes
Index : Yes/No
Neutral Citation: Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J,

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To

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Omalur Circle, Omalur,
Salem District.
2. The Administrator,



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