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W.P.No.31302 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**Writ Petition No.31302 of 2022
and WMP No.30736 of 2022**

Tmt.Vimalarani

.... Petitioner

-Vs-

- 1 The Deputy Registrar of
Co-operative Societies
Omalur Circle, Omalur
Salem District.
- 2 The secretary
S-1073 Gundukkal Primary Agricultural
Co-operative Credit Society
Kadayampatti & Post
Salem District.
- 3 The Sub-Registrar of Registration
Mecheri
Salem District.

.. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for records pertaining to the orders of conditional attachment passed by first respondent CEP No.2/2017-2018(2) dated 12/09/2017 u/s 167 of the Tamilnadu Co-operative



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Societies Act, 1983 and quash the same and consequently direct the third respondent to remove the encumbrance registered as Document No. 9 of 2017 relating to lands SF No.173/5A & 174/3C of Gundukkal Village, Kadayampatti Taluk Salem district

For Petitioner : Mr.S.Kamadevan

For Respondents : Mr.T.K.Saravanan
Government Advocate
for r1 & R3

Mr.K.Suresh
Government Advocate
Rep.by;
For Mr.S.Prabhakaran
Government Advocate

ORDER

The Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records relating to a conditional attachment order passed by the 1st respondent, Deputy Registrar of Co-operative Societies, Omalur in Salem District in CEP No.2/2017- 2018(2) dated 12/09/2017 under Section 167 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred as 'the Act') and quash the same and direct the 3rd respondent, Sub Registrar, Mechri in Salem District, to remove the encumbrance registered as Document No.9/2017,



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relating to the lands at SF.No.173/5A and 174/3C of Gundukkal Village, Kadayampatti Taluk, Salem District.

2.In the affidavit filed in support of the writ petition, it had been stated by the petitioner that her husband Rajagopal was the President of the 2nd respondent, Gundukkal Primary Agricultural Co-operative Credit Society at Kadayampatti in Salem District. It had been stated that owing to allegations of misappropriation of her husband, the properties, over which she claimed title at SF.No.173/5A and 174/3C measuring 5.96 acres at Gundukkal Village, Kadayampatti, Salem District had been attached by way of the impugned order dated 12.09.2017. The 1st respondent had taken advantage of Section 167 of the Act. Claiming that the said attachment was in violation of the procedures enunciated under the said provision, the writ petition has been filed.

3.A counter affidavit has been filed by the 1st respondent, wherein, it had been stated that the husband of the petitioner R.Rajagopal functioned as elected President of the 2nd respondent from May 2013 till 2018 and during that period it was revealed that there had been misappropriation to the tune of Rs.4.62 crores



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in manipulating jewel loan accounts. Along with the husband of the petitioner, the allegations had also been raised against the Secretary, Assistant Secretary, Senior Clerk, Clerk/Jewel Appraiser and also Clerk. It had been stated that in pursuance of those proceedings, the property of the petitioner had been attached under Section 167 of the Act. It had been stated that this particular property had actually been settled by the husband R.Rajagopal in favour of the petitioner by a registered settlement deed dated 06.02.2009. It had therefore been contended that a nexus existed between the misappropriated amount and the property settled in favour of the petitioner herein.

4.A counter affidavit had also been filed by the 2nd respondent, wherein, it had been stated that since the husband of the petitioner had failed to pay the amount of Rs.4,62,48,650/- the property had been attached. It had been stated that the settlement is only a sham document to avoid the property being brought on sale.

5.In the counter affidavit filed by the 1st respondent, a reference had also been made to a Full Bench Judgment of this Court in the case of ***K.Marappan***



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Vs. Deputy Registrar of Co-operative Societies, Namakkal reported in (2006)

4 CTC 689, wherein it had been stated that a writ petition would normally not be maintainable questioning the attachment of property under the provisions of the Act, particularly, when an alternate remedy is available.

6.To elicitate the issue, Section 167 of the Tamil Nadu Co-operative Societies Act, 1988, is extracted hereunder:

167. Qualifications of members of Co-operative Tribunal - The members of the Co-operative Tribunal shall be,-

- (a) a Judicial officer not below the rank of a subordinate Judge, or*
- (b) any officer of the Co-operative Department not below the rank of a Joint Registrar of Co-operative Societies, or*
- (c) any officer of the Law Department of the Secretariat not below the rank of a Deputy Secretary to Government.*

7.Rule 135 of the Tamil Nadu Co-operative Societies Rules 1988, is also extracted below:

135. Investigation of claims and objections to attachment of property.- (1) Where any claim is preferred to, or any objection is made to, the attachment of any property attached under these



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rules on the ground that such property is not liable to such attachment, the sale officer shall investigate the claim or objection and dispose of it on merits:

Provided that no such investigation shall be made when the sale office considers that the claim or objection is frivolous.

(2) Where the property to which the claim or objection relates has been advertised for sale, the sale officer may postpone the sale pending the investigation of the claim or objection. (3)

Where a claim or an objection is preferred, the party, against whom an order is made by the sale officer, may institute a suit within six months from the date of the order to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order made by the sale officer shall be conclusive.

(4) (a) Any deficiency of price which may happen on a resale held under sub-rule (16) of rule 121 or clause (k) or (n) of sub-rule (2) of rule 126 by reason of the purchaser's default and all expenses attending such resale shall be certified by the sale officer to the Registrar and shall at the instance of either the decree-holder or the judgment-debtor be recoverable from the defaulting purchaser under the provisions of these rules. The costs, if any, incidental to such recovery shall also be borne by the defaulting purchaser.

(b) Where the property may, on the second sale, fetch higher price than at the first sale, the defaulting purchaser at the first sale shall have no claim to the difference or increase.



8.The provision requires a direction to be issued to furnish security. If the security is not furnished then a finding has to be given that the property would be dealt with and removed from the jurisdiction Society and thereafter an order of attachment can be passed. Rule 135 provides that when any claim is preferred against attachment or sale, then the sales officer will have to make an enquiry examining the right of the claimant and if aggrieved by any order, a suit will have to be filed.

9.The petitioner herein had filed a suit in OS.No.157 of 2021, before the District Munsif Court at Omalur. But unfortunately the learned District Munsif without proper appreciation of the provision had proceeded to dismissed the suit by a judgment dated 01.11.2022, holding that the petitioner will have to approach this Court by way of filing a writ petition. That judgment is not based on record.

10.The learned counsel for the petitioner further placed reliance on the Division Bench of this Court in *WA(MD).No.1511 of 2018, The Management, Thiruvengadam Primary Agricultural Co-operative Credit Society .vs. S.Rathinam and Another*, judgment dated 11.12.2018, wherein the Division



Bench had observed as follows:

“5.It is the case of the appellant that the property originally was purchased out of the funds provided by the son-in-law of the first respondent. Though the property was purchased in the name of the first respondent's daughter, she was obtained only a Gift Deed from her daughter. The learned counsel further suggested that from the nature of transactions as indicated in the impugned order, the appellant can demonstrate before this Court that the appellant is not the real owner and that the property can be proceeded against for the amount that may be found due from the first respondent's son-in-law. The learned counsel for the appellant further submitted that the impugned order was passed under Section 167 of the Tamil Nadu Co-operative Societies Act and that therefore, the Writ petition filed without exhausting alternative remedy is not maintainable.

8.As per the provisions of the Tamil Nadu Co-operative Societies Act and the Rules, this Court is of the view that the appellant cannot presume that every property stands in the name of the wife of delinquent against whom surcharge proceedings are initiated as the property purchased out of the money provided by the delinquent so that the same could be attached as a property of the delinquent.

9.So long as the provision of Co-operative Societies Act or Rules framed therein do not contemplate a statutory fiction or presumption in favour of the Society to proceed against the property of a stranger, this Court is of the view that the order impugned in the Writ petition cannot be sustained. However, it is open to the



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Registrar or the person authorised by him acting under Section 87 of the Act to initiate action to proceed against the property in accordance with law after establishing the fact the property of a close relative of the delinquent was in fact the property purchased out of money provided by the delinquent. In that view of the matter, we do not find any reason to interfere with the order passed by the learned Single Judge of this Court, allowing the Writ Petition”.

11.It is thus seen that the Division Bench had not taken the issue for ever granted liberty to the appellant therein, to conduct proper enquiry and issue proceedings afresh.

12.I hold that the respondents are at liberty to proceed afresh by issuing notice to the petitioner herein calling upon the petitioner to explain how the property to explain how the property devolved out is her.

13.It is seen that the property had been settled by her husband. Therefore, the petitioner cannot claim that she had expended money from her own source for acquiring the property. At any rate subjective to satisfaction will have to be arrived by the respondents and thereafter they can proceed in manner



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stipulated under Section 81 of the Act. It is also to be noted that even if proceedings under Section 81 of the Act had been initiated, the procedure under Section 167 of the Act, has to be followed in letter and spirit.

14.The conditional order passed by the 1st respondent, Deputy Registrar of Co-operative Societies, Omalur in Salem District in CEP No.2/2017- 2018(2) dated 12/09/2017 under Section 167 of the Tamil Nadu Co-operative Societies Act, 1983, is set aside.

15.The 1st respondent is at liberty to proceed afresh in manner known to law.

16.Since liberty is granted to the 1st respondent to proceed further in manner known to law, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
NCS : Yes/No
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