



W.P. No. 356 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2024

CORAM

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

W.P. No. 356 of 2024

and

W.M.P. No. 411 of 2024

S.Murugan

... Petitioner

-VS-

1. The Registrar of Co-operative Societies,
E.V.R. Periyar Salai,
Kilpauk,
Chennai – 600 010.
2. The Joint Registrar,
Co-Operative Societies,
Salem – 7.
3. The District Collector,
Salem District,
Salem.
4. KK-308, Pavalanthunur Lakshmi Primary Agricultural
Co-operative Society,
Rep. by the Secretary,
Tharamangalam,
Omalur Taluk,
Salem District.
5. M.Thangaraj
N.Gowri (Deceased)
6. Bharathi
7. R.Baskar

... Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India,

1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the second respondent in Na.Ka.9898/2016 Sa.Pa. Dated 15.09.2023 and quash the same and consequently directing the 2nd respondent to action against the 5 to 7 respondents and debit the amount of their salary or pension and pay to the petitioner.

For Petitioner : Mr. G.Pavendran

For Respondents : Mr. U.Baranidharan,
Additional Government Pleader
(for R1 to R3)

ORDER

Heard Mr. G.Pavendran, Learned Counsel for the Petitioner and Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the First to Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. Having regard to the nature of order proposed to be passed in the Writ Petition, which would not cause any prejudice to the Fourth to Seventh Respondents, notice to them is dispensed with.



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3. It is the case of the Petitioner that he had invested a sum of Rs. 15,00,000/- in Fixed Deposit with the Fourth Respondent, which is a co-operative society governed by the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short), but when he sought for its return, the entering of that transaction itself was denied in respect of which he had made a representation dated 10.07.2016 to the First to Third Respondents to take action against the Fourth to Seventh Respondents. As it did not evoke any response, he had filed the Writ Petition in W.P. No. 37214 of 2016 before this Court, which was disposed by order dated 16.06.2023 requiring the Second Respondent to examine the matter and pass appropriate orders thereon. In furtherance of the said order, the Second Respondent by Proceedings in Na. Ka. No. 9898/2016.Sa.Pa. dated 15.09.2023 rejected the claim of the Petitioner, which is assailed in this Writ Petition.

4. In this context, it must be noticed that aforesaid order of the Second Respondent has to be treated as having been passed in the exercise of powers under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short) against which the Petitioner is entitled to prefer appeal under Section 152 of the TNCS Act before the



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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 requires to be emphasized here 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:-

"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



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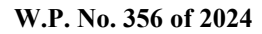
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matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or 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 pointed out 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] 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*



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*



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discretion.

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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. Hence, this Court is not inclined to delve into the merits of the controversy involved in the matter.

In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, connected Miscellaneous Petition is closed. No costs.

12.01.2024

Index: Yes/No

NCC: Yes/No

SJ

Note: (i) Issue order copy by 26.03.2024.

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

<https://www.mhc.tn.gov.in/judis>



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To

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P.D. AUDIKESAVALU, J.

SJ

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