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W.P.Nos.27074, 34085 of 2018 & 25748 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.10.2024

PRONOUNCED ON : 29.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.27074, 34083 of 2018 & 25748 of 2024 and
W.M.P.Nos.39598, 31490, 31493 of 2018 & 28126 of 2024

W.P.No.27074 of 2018 :-

N.A.Tamil Selvi

... Petitioner

-Vs-

1. The Deputy Registrar of
Co-operative Societies,
Krishnagiri Region,
Krishnagiri – 635 001.

2. S.1063, Puliampatti Primary
Agriculture Co-operative Credit Society,
Puliampatti, Pochampalli Taluk,
Krishnagiri District.

3. The Joint Sub-Registrar-I,
District Registrar Office,
Dharmapuri.

4. S.Kandasamy

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order made in C.E.P.No.01/2017-2018/Sa.Pa.1 dated 20.02.2018 passed by the first respondent and the consequential



W.P.Nos.27074, 34085 of 2018 & 25748 of 2024

proceedings made in C.E.P.No.01/2017-2018/Sa.Pa.1 dated 20.02.2018, issued by the first respondent to the third respondent quash the same and consequently forbear the respondents from any manner interfering with the petitioner's possession and enjoyment of the property more particularly described in the petitioner schedule.

For Petitioner : Mr.S.Sathiaseelan
For Respondents
For R1 & R3 : Mr.M.Rajendran
For R2 : Mr.M.S.Palanisamy

W.P.No.34083 of 2018 :-

M/s.Selvi Construction,
Rep. by its Proprietrix,
N.A.Tamilselvi,
4B, First Cross Street,
TAMS Colony,
Dharmapuri – 636 701

... Petitioner

-Vs-

1. No.118, The Krishnagiri Urban
Co-operative Bank Ltd.,
Rep. by its President,
No.87/42, Nethaji Road, Oldpet,
Krishnagiri – 635 001.

2. No.118, The Krishnagiri Urban
Co-operative Bank Ltd.,
Rep. by its General Manager,
No.87/42, Nethaji Road, Oldpet,
Krishnagiri – 635 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to pay a sum of Rs.19,00,000/- bearing the due amount payable to the petitioner in terms of the order made in Na.Ka.No.1/2016 dated 30.11.2016 and the



W.P.Nos.27074, 34085 of 2018 & 25748 of 2024

extra work completed as per the estimation given by the petitioner with interest at the rate of 24% per annum from the date of handing over possession i.e., 15.02.2018 to till actual payment being made to the petitioner.

For Petitioner : Mr.S.Sathiaseelan
For Respondents : Mr.M.S.Palanisamy

W.P.No.25748 of 2024 :-

N.A.Tamil Selvi

... Petitioner

-Vs-

1. The Joint Registrar of
Co-operative Societies,
O/o. The Joint Registrar of
Cooperative Societies,
Krishnagiri,
Krishnagiri District.
 2. The Deputy Registrar of Co-operative Societies,
O/o.The Deputy Registrar of
Co-operative Societies,
Krishnagiri, Krishnagiri District.
 3. The Cooperative Sub Registrar
cum Sale Officer,
O/o.The Deputy Registrar of
Co-operative Societies,
District Collector's Office Campus.
Dharmapuri – 636 705.
 4. The Administrator,
S.1063, Puliampatti Primary
Agriculture Co-operative Credit Society,
Samndaptti Village,
Vadamangalam Post, Pochampalli Taluk,
Krishnagiri-635 123.
- ... 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 second



W.P.Nos.27074, 34085 of 2018 & 25748 of 2024

and third respondents pertaining to the impugned attachment notice dated 19.08.2024 (demanding the petitioner to pay the surcharge award amount Rs.2,30,78,255/- on behalf of her husband Mr.S.Kandasamy, the delinquent secretary of S.1063, Puliyampatti Primary Agriculture Co-operative Credit Society Limited before 06.09.2024, otherwise, the petitioner's sridhan and self-acquired properties detailed in the schedule to impugned third respondent's notice will be brought for auction sale) and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.S.Sathiaselvan
For Respondents
For R1 to R3 : Mr.M.Rajendran
For R4 : Mr.M.S.Palanisamy

COMMON ORDER

The writ petition in W.P.No.27074 of 2008 has been filed challenging the order passed by the first respondent dated 20.02.2018, thereby ordered attachment of property under Section 167(2) of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as “TNCS Act”). The writ petition in W.P.No.34083 of 2018 has been filed for direction, directing the respondents to pay a sum of Rs.19,00,000/- being the due amount payable to the petitioner in term of order dated 30.11.2016 for the completion of extra work with interest at the rate of 24% per annum. The writ petition in W.P.No.25748 of 2024 has been filed challenging the attachment notice dated 19.08.2024, thereby



W.P.Nos.27074, 34085 of 2018 & 25748 of 2024

demanded to pay the surcharge amount of Rs.2,30,78,255/-, on behalf of her husband.

2. The petitioner in all writ petitions are one and the subject matter involved in all the writ petitions are also one and the same. Therefore, this Court is inclined to pass a common order in all writ petitions.

3. The petitioner's husband was employed as Secretary in S.1063, Puliampatti Primary Agriculture Co-operative Credit Society (hereinafter referred to as “society”) since from the year 1990. The petitioner is a Class-1 State level PWD Contractor to do all sorts of government and government related work worth over and above Rs.75 lakhs. While being so, the the petitioner's husband was suspended from service of the society from 21.02.2018 for the allegation that he misappropriated the society's funds. Further, it was subsequently set aside on the ground of prolonged suspension in W.P.No.1023 of 2019 by an order dated 21.07.2023 and he was reinstated into served on 18.08.2024.

4. In the mean while, the petitioner was served with attachment



W.P.Nos.27074, 34085 of 2018 & 25748 of 2024

order dated 20.02.2018, which is challenged in W.P.No.27074 of 2018, in respect of the property which was purchased by her vide registered Sale deed dated 07.12.2000, by paying the entire sale consideration by her father. Thereafter enquiry was conducted under Section 84 of the TNCS Act. On submission of the enquiry report, the surcharge award was passed on 26.08.2022, as against the petitioner's husband and other delinquents. Aggrieved by the same, the petitioner's husband filed an appeal in C.M.A.(CS)No.6 of 2024 and it is pending on the file of the Co-operative Tribunal, Krishnagiri.

5. In pursuant to the surcharge award, the petitioner was serviced with attachment notice dated 19.08.2024, which is impugned in W.P.No.25748 of 2024, in respect of the three items of properties. In respect of the first item of the property in the impugned notice dated 19.08.2024, it was gifted by her father by paying the entire sale consideration in favour of the petitioner's vendor and the sale deed was executed in her favour vide document No.1862 of 2000 dated 07.12.2000. The second item of the property was purchased by the petitioner by the sale deed dated 23.01.2015 registered vide document No.1078 of 2015, out of her own earning. Insofar as the third item of the property, she has



W.P.Nos.27074, 34085 of 2018 & 25748 of 2024

no objection to proceed the said property for auction.

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6. The petitioner is being class-I registered contractor, the respondents in W.P.No.34083 of 2018 had awarded work order for construction of new building, as a successful highest bidder. As per the work order, the petitioner completed the entire construction work and handed over the building for the construction cost of Rs.1,39,90,000/-. As per the work order, the construction work should be completed within 180 days. While pending the construction, further work was also allotted to the tune of Rs.13,10,000/-. However, the petitioner was paid only a sum of Rs.1,34,00,000/- leaving behind balance amount of Rs.5,90,000/-

7. On inspection, some rectifications were notified and the same was also rectified and intimated to the respondents. Even then, the balance sum of Rs.5,90,000/- and for extra work to the tune of Rs.13,10,000/- in total a sum of Rs.19,00,000/- have not been paid to the petitioner. Due to the attachment order, the said amount was with held by the respondents.

8. Heard the learned counsel appearing on either side and



W.P.Nos.27074, 34085 of 2018 & 25748 of 2024

perused the materials placed before this Court.

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9. On perusal of the counter affidavit filed by the society and on the submission made by the learned counsel appearing for the respondents revealed that when the petitioner's husband was working as Secretary, in the society, various misfeasance and malfeasances into the affairs of the society from 01.04.2013 to 15.12.2017. Therefore, the enquiry was ordered under Section 81 of the TNCS Act. When the enquiry was pending, the petitioner and her husband were attempted to alienate the subject properties under the attachment order in favour of the third parties. Therefore, on the application submitted under Section 90 of the TNCS Act, the order has been passed on 20.02.2018, thereby attached the property belong to the petitioner under Section 167 of the TNCS Act, in respect of the property comprised in survey No.240 ad measuring 1260 sq.ft., situated at Velangoundampalayam, Dharmapuri District.

10. As per the report submitted by the enquiry officer dated 21.08.2019, the petitioner's husband and 13 other delinquents had misappropriated the fund of the society to the tune of Rs.2,30,78,255/-. Based on the enquiry report, the Deputy Registrar of Co-operative



W.P.Nos.27074, 34085 of 2018 & 25748 of 2024

Societies, Krishnagiri, proceeded with surcharge proceedings and passed a surcharge order dated 26.08.2022. It is under challenge before the Co-operativ Tribunal in C.MA.(CS)No.6 of 2024 and it is pending without any interim order. Therefore, the conditional attachment dated 20.02.2018, which is challenged in W.P.No.27074 of 2018 is become infructuous. In pursuant to the surcharge award, execution petition was filed in E.P.654 of 2018. In the said proceedings, the attachment notice was issued in respect of the properties stands in the name of the petitioner herein.

11. Admittedly, the property mentioned in the impugned notice in Sl.No.1 viz., the land ad measuring 1240 sq.ft., comprised in survey No.240, Ward No.8, Railway Line East Colony, Dharmapuri District, was purchased by the petitioner by the registered sale deed dated 07.12.2000. On perusal of the said sale deed revealed that the entire sale consideration was paid by her father in favour of her vendor. Therefore, the said property was not purchased from the crime proceeds of her husband. The petitioner's husband had misappropriated huge sum of money from the society during the year 2013 to 2017.



W.P.Nos.27074, 34085 of 2018 & 25748 of 2024

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12. Insofar as the second item of the property is concerned, admittedly the petitioner had purchased the said property on 23.01.2015 registered vide document No.1078 of 2015. It was purchased during the relevant period on which the petitioner's husband committed misappropriation to the tune of Rs. 2,30,78,255/-. Insofar as the third item of the property, the petitioner has no objection to proceed with as per the attachment notice. Therefore, this Court finds no infirmity or illegality in the attachment notice in respect of the property mentioned in Sl.Nos.2 & 3. As far as the property mentioned in Sl.No.1 is concerned, the attachment notice cannot be sustained and it is liable to be quashed. Accordingly, the impugned attachment notice dated 19.08.2024 is hereby quashed insofar as the property mentioned in Sl.No.1 alone. The respondents are directed to proceed further in accordance with law as against the properties mentioned in Sl.Nos.2 &3.

13. Insofar as the prayer sought for in W.P.No.34083 of 2018 is concerned, the work order was issued in favour of the petitioner on 30.11.2016 viz., when the petitioner's husband was working as secretary of the society. Therefore, the work order was issued under the influence



W.P.Nos.27074, 34085 of 2018 & 25748 of 2024

of her husband. Further as per the work order, certain works were not completed by the petitioner. Therefore, the petitioner was issued memo dated 13.03.2018, informing about the balance amount. Even after receipt of the said memo, the petitioner did not complete the balance work as indicated in the memo. That apart, no extra work was done by the petitioner and the respondents never directed to do extra work beyond the work order.

14. That apart, the petitioner also failed to prove that she was directed to do extra work beyond the work order. The petitioner did not even whisper about what kind of extra work ordered by the respondents and its value. Therefore, the respondents rightly withheld the remaining amount of Rs.5,90,000/- and the withheld amount is nothing to do with the attachment order passed as against the petitioner's property. Therefore, the direction sought for in W.P.No.34083 of 2018 cannot be considered and the writ petition is devoid of merits and liable to be dismissed.

15. Accordingly, the writ petition in W.P.No.27074 of 2018



W.P.Nos.27074, 34085 of 2018 & 25748 of 2024

stands dismissed as infructuous; the writ petition in W.P.No.25748 of 2024 stands partly allowed and the writ petition in W.P.No.34083 of 2018 stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

29.10.2024

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



W.P.Nos.27074, 34085 of 2018 & 25748 of 2024

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5. The General Manager,
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No.87/42, Nethaji Road, Oldpet,
Krishnagiri – 635 001.
6. The Joint Registrar of
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O/o. The Joint Registrar of
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Krishnagiri,
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W.P.Nos.27074, 34085 of 2018 & 25748 of 2024

G.K.ILANTHIRAIYAN. J.

rts

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Krishnagiri, Krishnagiri District.

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COMMON ORDER IN
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