

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 04.03.2024****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P.(MD)No.1355 of 2023 AND****W.M.P.(MD)No.1240 of 2023**

R.Ganesan

... Petitioner

Vs.

1. The Regional Deputy Registrar (Housing),
Samathu Palli Street, Kajamalai Post, Trichy.

2. The Secretary,
M.M.124, Karur Cooperative Housing Society,
Rajiv Gandhi Nagar, Vengamedu, Karur – 639 006.

3. The Sub Registrar(Joint I),
O/o.Sub Registrar, Collector Office Campus,
Thanthondrimalai, Karur – 639 005.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 1st respondent through proceedings in C.E.P.No. 1/2016-2017/ Na.Ka. No.532/2016/Sa.Pa dated 28.06.2016 and quash the same and consequently direct the 3rd respondent to delete the encumbrance made by the 1st respondent against the petitioner's property bearing Document No. 21/2016 on the file of the Sub Registrar (Joint I), O/o. Sub Registrar, Collector Office Campus, Thanthondrimalai, Karur 639 005.

For Petitioner : Mr.M.Sricharan Rangarajan,
Senior Counsel,
for Mr.C.M.Mari Chelliah Prabhu.

For R-1 & R-2 : Mr.M.Senthil Ayyanar,
Government Advocate.

For R-3 : Mr.C.Satheesh, Government Advocate.

**ORDER**

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Heard the learned Senior counsel appearing for the writ petitioner and the learned Government Advocate appearing for respondents 1 and 2 and the learned Government Advocate appearing for the third respondent.

2. The petitioner challenges the impugned order of attachment passed by the first respondent under Section 167 of the Tamil Nadu Cooperative Societies Act, 1983. The basic facts are beyond dispute. The petitioner's son Prabhu functioned as President of the second respondent Society during the period 2013-2018. Allegations were made regarding the functioning of the Society during that period. An enquiry under Section 81 of the Act was ordered. The enquiry officer has since submitted his enquiry report.

3. It is beyond dispute that the petitioner was nowhere arrayed as a delinquent. He was not concerned with the affairs of the second respondent Society. Only his son was the President during the aforesaid period. As rightly pointed out by the learned Senior counsel appearing for the petitioner, even the enquiry report under Section 81 of the Act does not indict even the petitioner's son in any manner.



4. I fail to understand as to how the attachment order under

Section 167 of the Act could have been made. Section 167(1) of the Act reads 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.”

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In this case, the surcharge proceedings have not been initiated till date.

There is nothing on record to show that the petitioner's property is in any way linked to the funds siphoned of during the aforesaid period. It is pointed out by the learned Senior counsel for the petitioner that the petitioner purchased four items of property during the years 2006, 2013 and 2014.

5. My attention is drawn to the decision reported in **2009 (6) CTC 765 (R.Karuppusamy V. The Regional Manager, Tamil Nadu Cooperative Marketing Federation, Coimbatore and Others).**

Paragraph No.23 of the said order reads as follows:

“23. Now, it is not in dispute that the lower Appellate Court came to the conclusion that Sec.90 proceedings were not properly conducted by the Deputy Registrar and the principles of natural justice were flouted. Therefore, the matter was remanded to the Deputy Registrar for fresh disposal. If that being so, I am of the considered view that by way of interim attachment, the property of the revision petitioner in C.R.P.No.721 of 2008 could not be attached and the same is to be released. Unless and until it is proved that the revision petitioner's property was acquired only by using the money siphoned of from the Federation, it is not possible to attach the property of the



revision petitioner in C.R.P.No.721 of 2008, the wife of the transport Contractor as the same is standing in her name and not in the name of her husband/the transport Contractor. Therefore, while upholding the attachment of the Deputy Registrar, attaching the property standing in the name of the revision petitioner in C.R.P.Nos.720 and 722 of 2008, I am setting aside the orders of the Deputy Registrar and the lower Appellate Court, in so far as the attaching the property of the wife/the revision petitioner in C.R.P.No.721 of 2008.”

Yet another decision on the point is ***V.Sundaram V. Registrar Cooperative Societies (2009 SCC OnLine Mad 61)***. Paragraph No.6 of the aforesaid decision reads 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 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.”

6. In this case, the requirements set out in Section 167 of the Act have not at all been fulfilled. There is nothing on record to connect the money siphoned of from the Society funds with the attached property. The impugned order is patently arbitrary, illegal and without jurisdiction. The order impugned in this writ petition is set aside. This writ petition stands allowed. I make it clear that the benefit of this order will enure in favour of the petitioner's properties alone. No costs. Consequently, connected miscellaneous petition is closed.

04.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN,J.

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