



W.P(MD)No.15866 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15866 of 2024

and

W.M.P.(MD)No.13793 of 2024

M.Vijayapandiyan

... Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
Tenkasi Zone,
Tenkasi District.

2.The Enquiry Officer,
Co-operative Sub Registrar (Criminal),
Tenkasi Deputy Registrar Office,
Tenkasi District.

3.The Secretary,
TN SPL 115 Nagaram Primary Agricultural
Co-operative Credit Society,
Thailavankottai,
Tenkasi.

4.The Sub Registrar,
Vasudevanallur,
Tenkasi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned notice in NI.MA.No.1/2024-25 dated 02.07.2024 on the file of the 1st respondent and quash the same as illegal.



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For Petitioner : Mr.K.Jeyamohan

For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader for R1 to R3

: Mr.B.Saravanan
Additional Government Pleader for R4

ORDER

Heard both sides.

2. The petitioner served the third respondent society as its president during 2018-2023. The stand of the third respondent is that loss was caused during the petitioner's tenure. At the instance of the special officer of the third respondent society, the first respondent issued show cause notice proposing action under Section 167 of the Tamil Nadu Co-operative Society Act, 1983. Challenging the same, this writ petition came to be filed.

3. This writ petition was filed on 09.07.2024. It was listed for admission on 16.07.2024. The petitioner's counsel raised certain jurisdictional issues. The learned Additional Government Pleader was called upon to obtain instructions. Today, when the matter was taken up for hearing, the learned counsel for the petitioner informed the Court that on 09.07.2024, the first



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respondent had passed the attachment order and the same was received on 16.07.2024. Instead of dismissing the writ petition as infructuous and calling upon the petitioner to file a fresh writ petition on the same cause of action, I am inclined to mold the relief and test the attachment order passed under Section 167 of the Act. Section 167 of the Act is 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:”



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4. A reading of the aforesaid provision indicates that for attachment order to be passed, there must be a condition precedent. There must be pendency of the arbitration proceedings under Section 90 of the Act, liquidation proceedings under Sections 138 & 139 of the Act or Surcharge proceedings under Section 87 of the Act. The petitioner categorically asserts that the condition precedent is wholly absent in this case. I called upon the learned Additional Government Pleader to clarify if there is any arbitration proceedings or surcharge proceedings pending against the petitioner. Answer is in the negative. It appears that the resolution was passed by the society requesting the first respondent / jurisdictional Deputy Registrar of Co-operative Society to attach the property. On the basis of such resolution, the impugned resolution came to be passed. The first respondent had acted illegally and without jurisdiction. The first respondent failed to satisfy herself that the condition precedent set out in Section 167 of the Act is present in this case. There is complete non-application of mind. The attachment order made by the first respondent on 09.07.2024 against the petitioner stands quashed. The outcome of this writ petition will not bar the respondents from taking action as per law.



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5. With this liberty to the respondents, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

18.07.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To

- 1.The Deputy Registrar of Co-operative Societies,
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Tenkasi District.
- 2.The Enquiry Officer,
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G.R.SWAMINATHAN, J.

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