



W.P(MD)No.14775 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2024

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.14775 of 2015

and

M.P.(MD)No.1 of 2015

The Deputy Registrar Of Co-Operative Societies,
O/o. the Deputy Registrar Of Co-Operative Societies,
Thoothukudi, Thoothukudi District.

... Petitioner

Vs

1. V. Latha

2. The Sale Officer/Co-Operative Sub Registrar,
Tirunelveli,
C/o. Tirunelveli District Central Cooperative Bank,
Tirunelveli 3.

3. P. Nallasivan

4. The Principal District Judge,
Thoothukudi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of CERTIORARI, after calling for the records pertaining to the order dated 24.08.2011 in C.M.A(C.S)No.20/2009 passed by the 4th Respondent, quash the same,



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award costs and thus render justice.

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For Petitioner : Mr.G.M.Xavier
For R1 : Mr.M.P.Senthil
For R2 : Mr.A.Baskaran
Additional Government Pleader

ORDER

The Deputy Registrar of the Co-Operative Societies, Thoothukudi, Thoothukudi District has filed this writ petition as against the order passed by the Principal District Court, Thoothukudi / Co-Operative Tribunal Thoothukudi in CMA (CS) No.20 of 2009 dated 24.08.2011. This CMA was filed by the 1st respondent herein as against the order of attachment passed by the 1st respondent in EP.No.63 of 2008 -2009 in SC.No.6 of 2005, dated 24.06.2009. The society has initiated surcharge proceedings as against the 3rd respondent P.Nallasivan, who is the husband of the 1st respondent in SC.No.6 of 2005 with regard to the misappropriation committed in E.E.444 Sawyerpuram Primary Agricultural Co-Operative Credit Society, Sawyerpuram.



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2.The 3rd respondent while serving as the Secretary of the said Society is said to have committed misappropriation of the society amount along with a Clerk and Board of Directors to the tune of Rs.18,74,255/- . An enquiry under Section 81 of the Tamil Nadu Co-Operative Societies Act was ordered in the year 2004 and based on the enquiry report, the Deputy Registrar of Co-Operative Society has conducted a surcharge proceedings as against the 3rd respondent, the Clerk and the Board of Directors under Sections 87 of the Act in SC.No.6 of 2005. The Deputy Registrar has also passed an order in the surcharge proceedings on 21.06.2006 fixing the liability for this misappropriation as against the 3rd respondent / Secretary of the society and the Clerk one Kannikumar and the Board of Director K.Laxmanan. This order was not challenged by the 3rd respondent. The society has filed an application to execute the order passed in SC.No.6 of 2005 and therefore, the order of attachment was passed in EP.No.63 of 2008-2009 in SC.No.6 of 2005 dated 24.06.2009, attaching the property of the 1st respondent Latha in TS.Nos.850 and 851, At Bharathiyar Street, Tirunelveli Town. This order of attachment appears to be passed without any notice to the 1st respondent Latha / the owner of the property. The property was attached only on the ground that the 1st respondent is the wife of the 3rd respondent, the then Secretary of



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the society, who was held responsible for the misappropriation of the society amount in SC.No.6 of 2005.

3.The case of the 1st respondent is that she was working as an Assistant in Saratha Arts and Science College, Tirunelveli during the relevant point of time and she had purchased the property in the year 2002 out of her own income and also by availing loan from LIC and also from the EPF. Considering this contention of the 1st respondent, the Tribunal by its order dated 24.08.2011 allowed the appeal filed by the 1st respondent. As against which this writ petition is filed by the Deputy Registrar of Co-Operative Societies.

4.The learned Counsel for the petitioner and the 2nd respondent submit that this subject property, which was attached by the writ petitioner as the property purchased by the 1st respondent / wife of the 3rd respondent the then Secretary from the misappropriated amount in the year 2002. The learned Counsel also submit that the alleged misappropriated amount in the society had taken place during the year 2002. Though the 1st respondent has purchased this property in the year 2002 in her name through misappropriated amount. The 1st respondent



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has not challenged the order of the Deputy Registrar passed in SC.No.6 of 2005 dated 24.06.2009 wherein the Deputy Registrar in the proceedings under Section 87 of Act, found that the 3rd respondent/husband of the 1st respondent has committed misappropriation and therefore, he was held responsible for the misappropriation amount of Rs.18,74,255/- along with clerk and board of directors.

5.The learned Counsel for the 1st respondent submits that the 1st respondent during the relevant time was working as an Assistant in Saratha Arts and Science College, Tirunelveli and she has availed loan from LIC and EPF with which she has purchased this property and this subject property was purchased from her own source of income and not from the alleged misappropriated amount by the 3rd respondent in the society.

6.When this writ petition of the year 2015 was taken up for final hearing, a representation was made on behalf of the petitioner seeking adjournments and for production of documents. However, the petitioner has not filed documents. The learned Counsel has also referred the



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application filed by the petitioner for impleading the society as a party to this writ petition. The learned Counsel for the petitioner has also filed an additional typed set of papers enclosing the orders passed by this Court in WP(MD)No.6089 of 2015 dated 09.06.2015 and the documents pertaining to the sale deed dated 16.05.2002. The loan availed by the 1st respondent from LIC is on 16.09.2002 and the loan availed from EPF is on 25.02.2003.

7.This Court considered the rival submissions and perused the materials placed on record.

8.The writ petitioner has passed an order of attachment in EP.No. 63 of 2008-09 on the property standing in the name of the 1st respondent. The 1st respondent is the wife of the 3rd respondent and the 3rd respondent was the then Secretary of E.E.444 Sawyerpuram Primary Agricultural Co-Operative Credit Society, Sawyerpuram.. The 1st respondent Deputy Registrar has initiated proceedings under Section 87 of the Co-Operative Societies Act pursuant to the report filed under Section 81 of Act and during the enquiry it was found that a sum of Rs.35,000/-, Rs.5,000/- and Rs.40,000/- have been misappropriated by the Secretary along with



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others by creating bogus vouchers on 23.03.2002 and 30.03.2002 respectively. The 1st respondent is said to have purchased this property in the month of May 2002. The 1st respondent at the relevant point of time was working as an Assistant in a private college. The 1st respondent has also availed loan from LIC to the tune of Rs.2,20,000/- on 16.08.2002 and another loan from EPF on 25.02.2003. However these documents placed before this Court are not referred to in the order of Tribunal dated 24.08.2011. However the Tribunal arrived at a conclusion that the 1st respondent has purchased this property out of her own source of income. Admittedly the property was purchased in the month of May 2002. The 3rd respondent has misappropriated the amount from the society by creating bogus vouchers in the month of February and March 2002. It was also confirmed in the proceedings under Section 87 of the Act conducted by the Deputy Registrar in SC.No.6 of 2005, which was not challenged by the 3rd respondent and it became final. The proceedings for attachment has been made as against the 1st respondent based on the orders in SC.No.6 of 2005 without issuing notice to the 1st respondent.

9. Rule 135 of the Co-Operative Societies Rules, provides for investigation on the claims and objections to the attachment of property



and the same is extracted as under :

“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 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 Officer 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.”

10.In this case no opportunity was provided to the 1st respondent and an order investigation as required under Rule 135 of the Co-Operative Rules was not considered by the sale officer. Apart from that



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the Tribunal has also not marked those documents, which are relied on by the Tribunal in deciding the issue. Rule 135(3) enables the aggrieved party to institute a suit within a period of six months from the date of order to establish their rights. In this case an appeal under Section 152 of the Co-Operative Societies Act was filed and the 1st respondent has not placed any materials on the salary, which she has received at the relevant point of time. The 1st respondent has purchased the property in the month of May 2002 and she has availed loan in the month of August 2002 and February 2003 and all these things need to be investigated under Rule 135 of the Co-Operative Societies Rules.

11.The 1st respondent ought to have filed a suit and not an appeal under Section 152 of the Co-Operative Societies Act. Therefore, the impugned order is set aside with liberty to the petitioner to issue notice to the 1st respondent to provide opportunity and then pass orders whether the subject property is the property which has been purchased from the misappropriated amount, which is said to have been committed by her husband.



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12. Accordingly, this writ petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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

LR

To

The Sale Officer/Co-Operative Sub Registrar,
Tirunelveli,
C/o. Tirunelveli District Central Cooperative Bank,
Tirunelveli 3.



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