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W.P.(MD)NO.27680 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.07.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.27680 of 2023

A.Elamathiyan

... Petitioner

Vs.

1. The Circle Deputy Registrar of Co-operatives,
Paramakudi Circle,
Paramakudi,
Ramanathapuram District.

2. The Sub Registrar,
Paramakudi Sub-Registrar Office,
Paramakudi,
Ramanathapuram District.

3. The Sub Registrar,
Sivakasi Sub-Registrar Office,
Sivakasi,
Virudhunagar District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to remove the entries in the encumbrance register dated 18.11.2021 and 23.11.2021 respectively on the petitioner's properties in S.Nos.1431, 1432/1 and 1432 wherein the plot was divided out of which plot No.142 situated at Eenchar Village, Sivakasi Taluk, Virudhunagar District and in T.S.No.41/1C1C2 plot No.11 situated at Kaatu Paramakudi, Ramanathapuram District on the basis of the order passed by the first respondent dated 09.03.2023 within the time stipulated by this Court.



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For Petitioner : Mr.C.Jeganathan
For R-1 : Mr.S.Kameswaran,
Government Advocate.
For R-2 & R-3 : Mrs.D.Farjana Ghoushia,
Special Government Pleader.
* * *

ORDER

Heard the learned counsel on either side.

2. The petitioner wants the attachment effected in respect of his property to be raised. Entries had been made in the encumbrance register. The petitioner wants the same to be deleted. The respondents have filed counter affidavit and the learned Special Government Pleader took me through its contents and called upon this Court to dismiss the writ petition.

3. I carefully considered the rival contentions and went through the materials on record.

4. The writ petitioner was the Secretary of a co-operative society. Enquiry was ordered under Section 81 of the Tamil Nadu



Co-operative Societies Act, 1983. It was followed surcharge proceedings.

At that stage, the attachment of the petitioner's property was made under Section 167 of the Act.

5. The question that calls for consideration is whether the attachment should be allowed to remain. It is seen that the petitioner had been exonerated in the surcharge proceedings. Once the proceedings had ended in favour of the petitioner, the attachment can no longer remain. It appears that apart from the petitioner, there are few other cooperative society employees. They have been found guilty. Surcharge orders under Section 87 of the Act were issued against them. They have filed CMA before the Co-operative Tribunal. The learned Special Government Pleader informed the Court that in view of the pendency of the appeal, the petitioner's request could not be accepted.

6. I do not find any justification in this regard. Once surcharge proceedings had ended in favour of the petitioner, attachment has to go automatically. I would have hesitated to grant relief if the department had filed an appeal questioning the surcharge proceedings ended in favour of the petitioner. Such an appeal has not been filed by the department and



that surcharge order had become final. The petitioner is definitely entitled to the benefit of the same.

7. In this view of the matter, it is declared that the attachment made in respect of the petition mentioned property no longer holds good. Respondents 2 and 3 are directed to make an entry in the encumbrance register that the attachment made in respect of the petition mentioned property has since been set aside. This writ petition stands allowed on these terms. No costs.

08.07.2024

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

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Paramakudi,
Ramanathapuram District.
2. The Sub Registrar,
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6

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G.R.SWAMINATHAN,J.

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