



WEB COPY

WP No. 33333 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-12-2025

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.No.33333 of 2024 and

W.M.P.Nos.38320 of 2025 & 36120 of 2024

M.Malarvizhi

W/o.J.Samuvel, No.17/2, Krishnan Street,
Thandubazar, Arcot, Ranipet (dt) - 632 503.

..Petitioner(s)

Vs

1. The Deputy Registrar Of Co- Operative Societies,
Ranipet Circle.
2. The Administrator
V.V.2760, Arcot Panchayat Union Teachers
Cooperative Thrift and Credit Society, Arcot,
Ranipet (dt).
3. The Sub Registrar
Registration Department, Arcot, Ranipet (dt).

..Respondent(s)

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the conditional attachment order passed by the 1st respondent in RC 1741/2021/SF dated 14.10.2024 under Section 167 Tamil Nadu Co- Operative Societies Act, 1983 and quash the same and direct the respondents to raise the order of attachment made in on file of the 3rd respondent.

For Petitioner(s) : Mr. L.P. Shanmugasundaram

For Respondent(s): Mr.S.Ravikumar, SGP for R1 & R2

Mr.Stalin Abimanyu, AGP for R3



ORDER

This Writ Petition has been filed to call for the records of the conditional attachment order passed by the 1st respondent in RC 1741/2021/SF dated 14.10.2024 under Section 167 Tamil Nadu Co- Operative Societies Act, 1983 and quash the same and direct the respondents to raise the order of attachment passed by the 3rd respondent.

2. The petitioner's husband is one Mr.Samuvel. He was the President of the second respondent Society. Alleging that he had indulged in the acts of misfeasance and malfeasance, surcharge proceedings have been initiated against him. The claim in the surcharge proceedings is that Mr.Samuvel is liable to answer the second respondent Society to the tune of Rs.44,04,481/-. The surcharge proceedings is said to be pending as on today. Pending disposal of the surcharge proceedings, the impugned order has come to be passed. As per the impugned order, the property of the petitioner has been attached. Hence, this Writ Petition.

3. Heard Mr.L.P.Shanmugasundaram, learned counsel for the petitioner and Mr.S.Ravikumar, learned Special Government Pleader for R1 & R2 and Mr.Stalin Abimanyu, learned Additional Government Pleader for R3.

4. Mr.L.P.Shanmugasundaram states that the petitioner obtained the property from her mother, one, Tmt.Neshamani. The said Neshamani had purchased the property as early as on 26.06.1970 and had transferred the



property in favour of the petitioner on 25.11.2005 by way of registered settlement deed. The petitioner had in turn executed a mortgage in favour of one Tmt.Prema and had executed a sale deed as a security on 31.10.2007. She had re-purchased the property by way of a registered document on 02.09.2010.

5. Mr.L.P.Shanmugasundaram urges that the petitioner's husband Samuvel was the President of the second respondent Society between the year 2018 and 2020. In other words, his plea is that the petitioner had obtained the property, atleast a decade before, her husband was the President of the second respondent Society. He places reliance upon the judgment of a Division Bench of this Court in the Management, R.A.No.18 Vs. S.Rathinam and Others in W.A.(MD).No.1511 of 2018 dated 11.12.2018. He places particular emphasis on the finding of the Division Bench in Paragraph Nos. 8 and 9 of the said judgment which are extracted hereunder:

“8. As per the provisions of the Tamil Nadu Co-operative Societies Act and the Rules, this Court is of the view that the appellant cannot presume that every property stands in the name of the wife of delinquent against who surcharge proceedings are initiated as the property purchased out of the money provided by the delinquent so that the same could be attached as a property of the delinquent.

9. So long as the provision of Co-operative Societies Act or Rules framed therein do not contemplate a statutory



fiction or presumption in favour of the Society to proceed against the property of a stranger, this Court is of the view that the order impugned in the Writ Petition cannot be sustained. However, it is open to the Registrar or the person authorised by him acting under Section 87 of the Act to initiate action to proceed against the property in accordance with law after establishing the fact the property of a close relative of the delinquent was in fact the property purchased out of money provided by the delinquent. In that view of the matter, we do not find any reason to interfere with the order passed by the learned Single Judge of this Court, allowing the Writ Petition.”

6. Mr.S.Ravikumar, learned Special Government Pleader states that the amount which the petitioner utilized to construct the property was from and out of the sum, that had been malversed by her husband Samuvel and hence, the subject matter of the property can be attached for the liability of the second respondent Society. His argument is ably echoed by Mr.Stalin Abimanyu, learned Additional Government Pleader who appears for the third respondent.

7. I carefully considered the submissions of both sides and gone through the records.

8. The proceedings against the petitioner's husband is under Section 87 of the TNCS Act. The petitioner is a stranger / third party to the said proceedings. The issue whether a third party's property can be attached during the course of the proceedings under Section 87 has been settled by the Division Bench in



S.Rathinam's case cited supra. The Division Bench had held that the property belonging to a stranger cannot be attached during the course of the surcharge proceedings under Section 87. The Division Bench further pointed out that there is no presumption that the property purchased in the name of a relative of a delinquent office bearer of the Society, is from and out of the funds, malversed by him.

9. There is a stark distinction between a proceedings initiated under Section 87 and one under Section 90. In case of proceedings under Section 90, it is a reference where under the Society can prove that the purchase of the property, made in the name of a person, who is a party to such a reference, is from and out of the funds said to have been malversed by the delinquent office bearer. Section 90(1)(c) contemplates such a situation.

10. However, in so far as Section 87 is concerned, it should be preceded by an audit under Section 80 or by an enquiry under Section 81 or an investigation under Section 82 or the inspection of books under Section 83 or during the course of the winding up of the Society. In all the four categories set forth above, only if a person has been entrusted with the organization and management of the Society or if he is a servant or officer past or present of the Society, the Registrar can initiate proceedings against such person. There is no concept of a third party in a Section 87 proceedings.



11. Perusal of the counter shows that the respondents rely upon the relationship between Mr.Samuvel and the petitioner in order to conclude that the property purchased by the petitioner is from and out of the funds that have been allegedly malversed by Mr.Samuvel. Even otherwise, the chronology of events stares against the respondents.

12. The petitioner's mother had purchased the property in the year 1970. Perhaps, even before the petitioner was married to the said Samuvel. The petitioner's mother had settled the property in her favour in 2005. The petitioner in exercise of right of ownership, had also sold her property in favour of one Prema and had repurchased the property from Prema in the year 2010. Mr.Samuvel had assumed office only in the year 2018. Therefore, the purchase by the petitioner cannot be attributed to the alleged illegal earnings made by her husband.

13. In the light of the clear findings in S.Rathinam's case, this Court is constrained to interfere with the impugned order passed by the first respondent.

14. Accordingly, this Writ Petition stands allowed and the impugned order passed by the first respondent is quashed. Since the attachment is quashed, the third respondent is directed to remove the endorsement of attachment made by him in the Encumbrance Certificate. No costs. Consequently, connected miscellaneous petitions are closed.



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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

GSK



To

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V.LAKSHMINARAYANAN J.

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