

W.P(MD)Nos.1568 & 1583 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2025

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P(MD)Nos.1568 & 1583 of 2025

W.P(MD)No.1568 of 2025:

M/s.Kumarrss,
Represented by its Managing Partner,
Dr.R.Senthil Kumar

... Petitioner

Vs.

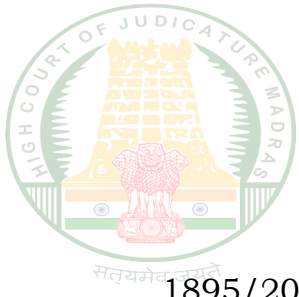
1.The Sub Registrar (Registration Department),
Woraiyur Sub Registrar's Office,
Woraiyur,
Tiruchirappalli-620 018.

2.The Regional Deputy Registrar (Housing),
Tiruchirappalli,
Khajamalai Colony,
Tiruchirappalli-620 023.

3.R.786, Tiruchirappalli Co-operative House
Construction Society,
Represented by its Sub Registrar of Co-operative
Societies,
Makkal Mandram, Thillai Nagar,
Tiruchirappalli-620 018.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus, calling for the
records relating to the impugned order passed by the second respondent,
dated 28.09.2017 in Koo.Ni.Ve.Ma.No.673/2017-2018, Na.Ka.No.



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1895/2017 Sa.Pa, and to quash the same as erroneous, illegal and consequently direct the first respondent to efface / delete the encumbrance attachment entry in vide Document No:112/2017, dated 28.09.2017, within a time frame and to pass any other order as this Court.

For Petitioner : Mr.R.Murali

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
Assisted by
Mr.N.Ramesh Arumugam
Government Advocate

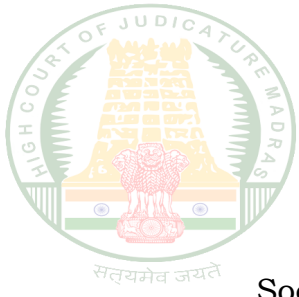
W.P(MD)No.1583 of 2025:

M/s.Eshcol Infra,
Represented by its Managing Partner,
Dr.AR.Ramanathan

... Petitioner

Vs.

- 1.The Sub Registrar (Registration Department),
Thillai Nagar Sub Registrar's Office,
Thillai Nagar,
Tiruchirappalli-620 018.
- 2.The Sub Registrar (Registration Department),
Woraiyur Sub Registrar's Office,
Woraiyur,
Tiruchirappalli-620 018.
- 3.The Regional Deputy Registrar (Housing),
Tiruchirappalli,
Khajamalai Colony,
Tiruchirappalli-620 023.
- 4.R.786, Tiruchirappalli Co-operative House
Construction Society,
Represented by its Sub Registrar of Co-operative



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Societies,
Makkal Mandram, Thillai Nagar,
Tiruchirappalli-620 018.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent, dated 28.09.2017 in Koo.Ni.Ve.Ma.No.674/2017-2018, Na.Ka.No. 1896/2017 Sa.Pa, and to quash the same as erroneous, illegal and consequently direct the second respondent to efface / delete the encumbrance attachment entry in vide Document No:113/2017, dated 28.09.2017, and the consequential proceeding of the first respondent made in RFL/Thillainagar/131/2024, dated 27.12.2024 and quash the same and consequently, direct the first respondent to register the sale deed, dated 27.12.2024 executed by the petitioner within a time frame and to pass any other orders as this Court.

For Petitioner : Mr.R.Murali

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
Assisted by
Mr.N.Ramesh Arumugam
Government Advocate

COMMON ORDER

These two writ petitions were placed before me pursuant to the order of the Administrative Judge, dated 07.02.2025.



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2. W.P(MD)No.1568 of 2025 seeks for the following relief:-

"Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent, dated 28.09.2017 in Koo.Ni.Ve.Ma.No.673/2017-2018, Na.Ka.No.1895/2017 Sa.Pa, and to quash the same as erroneous, illegal and consequently direct the first respondent to efface / delete the encumbrance attachment entry in vide Document No: 112/2017, dated 28.09.2017."

3. W.P(MD)No.1583 of 2025 seeks for the following relief:-

"Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent, dated 28.09.2017 in Koo.Ni.Ve.Ma.No.674/2017-2018, Na.Ka.No.1896/2017 Sa.Pa, and to quash the same as erroneous, illegal and consequently direct the second respondent to efface / delete the encumbrance attachment entry in vide Document No:113/2017, dated 28.09.2017, and the consequential proceeding of the first respondent made in RFL/Thillainagar/131/2024, dated 27.12.2024 and quash the same and consequently, direct the first respondent to register the sale deed, dated 27.12.2024 executed by the petitioner."



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4. These writ petitions relate to the property situated in Town Survey No.6, Block No.26, Ward No.E (New Ward No.Y), Anna Nagar, Tennur Village Tiruchirappalli Town. The extent covered in W.P(MD)No.1568 of 2025 is 3640 square feet and the extent covered in W.P(MD)No.1583 of 2025 is 6800 square feet.

5. It is not in dispute that the fourth respondent R.786, Tiruchirappalli Co-operative House Construction Society was the owner of the property [Hereinafter referred to as 'Housing Society']. The Housing Society had on its role as a member one Thirusangu, son of Munusamy. The Housing Society executed two sale deeds in favour of the said Thirusangu on 09.12.2016 and 14.12.2016. The documents were registered as document No.7360 of 2016 and 7582 of 2016. Within three months of purchase, the said Thirusangu sold the property in favour of the petitioner in W.P(MD)Nos. 1568 & 1583 of 2025 under document No.2272 of 2017 on 22.03.2017. Similarly, the said Thirusangu sold the property in favour of the writ petitioner in W.P(MD)No.1583 of 2025 on 28.04.2017.

6. Subsequent to the purchase, the revenue records were also mutated in favour of the purchasers and the petitioner in W.P(MD)Nos.1568 & 1583 of 2025 also obtained the loan by a mortgage on 26.07.2017. Nearly,



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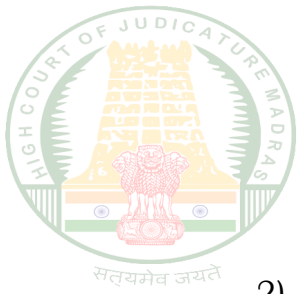
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six months after the sale in favour of the petitioners, the Deputy Registrar, Thiruchirappalli invoking Section 167(2) of the Tamil Nadu Co-operative Societies Act of 1983 attached the properties. The petitioners were not put on notice of the attachment. The petitioners came to know about the attachment only when they attempted to alienate the property in favour of third parties. They presented a document for alienation and the Sub Registrar informed them that he cannot register the document on account of the fact, there is subsisting attachment. He invoked the provisions of Section 22B(3) of the Registration Act of 1908. Challenging the same, the present writ petitions.

7. I heard Mr.R.Murali for the petitioner and Mr.Veera Kathiravan, the learned Additional Advocate General for Mr.N.Ramesh Arumugam.

8. Mr.R.Murali pointing out to the list of dates set forth above pleaded that on the date of attachment, the property had been transferred from Thirusangu in favour of the writ petitioner and therefore, Section 167 of the Co-operative Societies Act would not have been invoked. Referring to the said section, he points out that Section 167 can be invoked on the following conditions:

1) When a proceeding is pending under Section 19(1).



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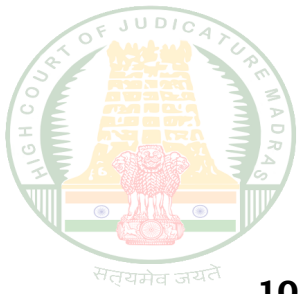
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2) When a liquidator has taken out an application under Section 139(2)b.

3) When proceedings are pending under Section 87 of the Co-operative Societies Act and when any party to such reference is attempting to alienate or dispose of the properties to the detriment of the society.

He states none of those proceedings have taken place and therefore, the petitioner is entitled for the relief sought for.

9. Per contra, Mr.Veera Kathiravan urges that the writ petitioners have challenged the proceedings of the year 2017 in the year 2025 and therefore, the writ is hit by laches. Secondly, he urges that the rejection of the document by the Sub Registrar invoking Section 22(B)3 cannot be found fault with. Thirdly, that the alienations made in favour of Thirusangu were in utter violation of the order passed by the Government in G.O(D)No.224 Housing and Urban Development Department, dated 27.11.2009 and matters are pending before this Court in W.P(MD)No.8524 of 2017, W.P(MD)No.12771 of 2017, W.P(MD)No.15435 of 2017 and W.P(MD)No. 12440 of 2020 and therefore, these writ petitions should await the result of boards proceeding further.

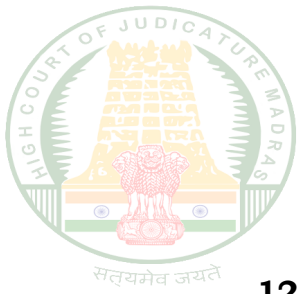


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10. I have carefully considered the submissions of both sides and I gone through the records.

11. As issue of laches has been raised first, I will have to deal with that issue first. Laches and acquiescence arise, when a person who has been informed of the proceedings stands by and does not take any action. It applies when a person whose right has been infringed, does not approach the Court immediately but stands by and watches proceedings go by. Admittedly, in the facts of the present case, the petitioners were not put on notice of the order of the attachment passed by the Regional Deputy Registrar, Housing, Tiruchirappalli on 28.09.2017. Both the petitioners came to be aware of the proceedings only when they approach the Sub Registrar, eight years thereafter, for the purpose of alienating the property. When the petitioners have not been put on notice at all, I cannot presume that the petitioners were aware of the proceedings and still kept quiet. Though tantalizing, I am not inclined to accept the submission of laches as no records have been produced by the respondents to show that the petitioners were aware of the attachment and still kept quiet. Consequently, the submission on laches stands rejected.

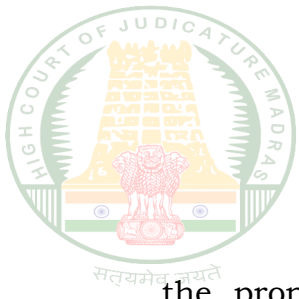


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12. It is not in dispute that the power to attach a property under the Co-operative Societies Act is granted under Section 167. Under Section 167, the Registrar is entitled to attach a property only on the circumstances specified above. Further, the attachment order should be of the person, who is a party to the reference or liable to pay contribution in terms of Section 139(2)b or is subjected to an enquiry under Section 87. This implies that the person, who is covered by any of the three aforesaid circumstances, should be the owner of the property on the date of attachment.

13. The dates are not in dispute. Thirusangu, who is a member of the Society had purchased the property by way of two sale deeds on 09.12.2016 and 14.12.2016. Therefore, title should transfer from the fourth respondent Housing Society in favour of Thirusangu on those two dates. On 22.03.2017 and 28.04.2017, Thirusangu had transferred whatever right, title and interest he had over the property in favour of the respective writ petitioners. On the execution of the sale, the property was no more available in the hands of Thirusangu for the purpose of attachment. Hence, Section 167 cannot be invoked as against the petitioners.

14. The fact that Government regulation have been violated is a good ground to be held against Mr.Thirusangu or the person, who had alienated



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the property, but the same cannot be used in order to beat the writ petitioners, who have paid valid consideration for the purchase of the property.

15. It is too well settled, but I will recall for the purpose of this case, where an Act has to be performed in a particular manner. It has to be performed that manner and no other manner. As the property was not the property of Thirusangu on the date of attachment, and as the petitioners have moved this Court immediately on being aware of the same, I am constrained to interfere with the impugned proceedings.

16. At this stage, the learned Additional Advocate General brought to my notice that a sum of Rs.33,32,200/- remains unpaid by Thirusangu in favour of the fourth respondent Housing Society. Though the learned Additional Advocate General did not expand on the said submission, I have to take note of the Transfer of Property Act. Where a sale is executed by a vendor in favour of a purchaser and there is a shortfall in sale consideration, the vendor will be entitled to an unpaid vendor's charge. This is in terms of Section 55 of the Transfer of Property Act. I am dealing with a situation of Housing Society on one hand and private party on the other. I am not confined by the four corners of the Code of Civil Procedure as in the



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case of an application under Order 21, Rule 58 of CPC. Interests of both the parties have to be balanced. Consequently, I issue the following orders:

- "1) The impugned orders in both the writ petitions are quashed.
- 2) The order of attachment passed by the Regional Deputy Registrar Housing, Tiruchirappalli, 2023 will not bind the properties of their writ petitioners subject to the condition found under clause 3.
- 3) Each of the petitioners will deposit a sum of Rs.16,66,100/- with the Housing Society on or before **30.06.2025**.
- 4) On such deposit, the Sub Registrar is directed to entertain any document that may be presented by the petitioners for the purpose of registration."

17. These writ petitions stand ordered with the above terms. There shall be no order as to costs.

30.04.2025

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



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V.LAKSHMINARAYANAN, J.

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