



W.P.(MD) No. 18373 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No. 18373 of 2025
and
W.M.P.(MD) No.14098 of 2025**

S.Vivek Muthiah

... Petitioner

Vs

1. The Deputy Registrar of Cooperative Societies,
O/o.The Deputy Registrar of Cooperative Societies,
Madurai Circle, Palanganatham,
Madurai - 625 003.

2. A.2401 Othakadai Cooperative Urban Credit Society,
Rep. through its Secretary,
Melur Main Road, Y.Othakadai,
Madurai.

3. The Sub-Registrar No.I,
O/o.The Joint Sub-Registrar,
Madurai North, Y.Othakadai,
Madurai 625 102.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for
issuance of Writ of Certiorarified Mandamus to call for the records relating to the



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impugned communication vide Na.Ka.No. 415/2025/SaPa(1) dated 28.05.2025 issued by the second respondent and quash the same and consequently, direct the third respondent to remove/delete the encumbrance entry made in the encumbrance register *vide* document No. 4/2025, dated 30.05.2025 in respect of the Nanja Lands in Survey Nos.160/3, 163/1A2, 163/4, 163/5, 95/1A, 95/1B, 95/2A13, 95/2A14, 95/2A4, 97/1B1A, 97/1B1B, situated at Rajakoor Village, Madurai East Taluk, Madurai District.

For petitioner : Mr. D.Shanmugaraja Sethupathi

For respondents : Mr.D.Ghandhiraj
Special Government Pleader for R1 & R2
Mr.S.Kameswaran
Government Advocate for R3

ORDER

This Writ Petition is disposed of at the time of admission with the consent of the learned counsel for the petitioner, learned Special Government Pleader for the respondents 1 and 2 and learned Government Advocate for the third respondent.

2. The petitioner has challenged the impugned communication of the first respondent, dated 28.05.2025, bearing reference in Na.Ka.No.415/2025/SaPa(1)



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addressed to the third respondent to encumber the property mentioned therein, pursuant to an order passed against the petitioner's father Late.N.S.M.Sridharan, who suffered an adverse order under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 (*hereinafter referred to as 'the Act'*) on 23.05.2022. The relevant portion of the impugned order reads as under:

□ஏ 2401 ஒத்தக்கடை உட்டுறவு நகர கடன் சங்கத்தில் ஏற்பட்ட நிதிழப்பிற்காக மதுரை சரக துணைப்பதிவாளர் தண்டத்தீர்வை உத்தரவு த.துவ/05/2021-2022/சப நாள்:28.05.2023 படி ரூ.54,00,412/-க்கு பொறுப்பாக்கப்பட்டு ஆணை பிறப்பிக்கப்பட்டுள்ளது அதன்மீது சங்கத்தால் நிறைவேற்று மனு தாக்கல் செய்யப்பட்டுள்ளது தீர்ப்பு கடனாளியான திரு ஆசிரியத்தேவன் நிறைவேற்று மனுவானது நடவடிக்கையில் உள்ள போது தனது பெயரிலும் மற்றும் தனது குடும்ப உறுப்பினர் பெயரிலும் உள்ள சொத்துக்களை முழுவதுமாகவே அல்லது பகுதியாகவே உரிமை மாற்றம் அல்லது விற்பனை செய்து எல நடவடிக்கைகளை செயலிழக்க செய்ய வாய்ப்புள்ள காரணத்தால் இணையில் காணும் சொத்துக்கள் மீது உரிய வில்லங்க குறிப்பு ஏற்படுத்தி அதன் விபரத்தினை தெரிவிக்குமாறு கேட்டுக்கொள்கிறேன்.□

The date 28.05.2023 in the above extracted portion has been wrongly mentioned, which should be read as 23.05.2022.



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3. It appears that during the life time of the petitioner's father, who died on 24.07.2024, he had also filed C.M.A(CS)No.41 of 2022 against the Surcharge Order, dated 23.05.2022 before the learned Principal District Judge, Special Tribunal for Co-operative Cases, Madurai.

4. The specific contention of the petitioner is that, without following the safeguards prescribed under Section 143 of the Act read with Rules 116 and 126 of the Tamil Nadu Co-operative Societies Rules, 1988, the procedure has been given a go-by in the impugned communication.

5. It is submitted that only after attachments are made, an entry can be made in the register and there cannot be a direct entry being made in the third respondent's register in respect of the subject property.

6. That apart, it is submitted that since the petitioner's father died on 24.07.2024, an appropriate proceedings ought to have been initiated in the Execution Proceedings to implead the petitioner before such direction could have been given.



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7. The learned Special Government Pleader for the respondents 1 and 2, on the other hand, submits that the Execution Proceedings had also been initiated against the petitioner's father and the same was pending adjudication before the first respondent/Deputy Registrar after the Surcharge Order was passed on 23.05.2022.

8. Further, it is submitted that after the aforesaid proceedings was initiated, the petitioner's father died on 24.07.2024, and therefore, out of necessity, the impugned communication has been sent to the third respondent.

9. I have considered the arguments advanced by the learned counsel for the petitioner, the Special Government Pleader for the first and second respondents, and the learned Government Advocate for the third respondent. I have also perused the documents filed in support of the present Writ Petition, as well as the documents filed by the learned counsel for the respondents.



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10. There is no dispute that the petitioner's father, late Mr.N.S.M.Sridharan, who was the President of the second respondent society, and one Mr.Asiriyadevan, who was the Secretary, were proceeded against under Section 78 of the Tamil Nadu Co-operative Societies Act, 1983. An order came to be passed under Section 78 of the Act against both the above-named persons, Mr. N.S.M.Sridharan and Mr.Asiriyadevan.

11. Pursuant to the aforesaid order dated 23.05.2023, the second respondent has also issued initiated proceedings under Section 143 of the Tamil Nadu Co-operative Societies Act, 1983.

12. A reading of Section 143 of the Act makes it clear that the Registrar or any person subordinate to him empowered by the Registrar in this behalf may, subject to the rules and without prejudice to any other mode of recovery provided by or under the Act, recover

- (a) any sum due under a decree or an order of a Civil Court, a decision or an award of the Registrar or any person subordinate to, and empowered by, the Registrar or Arbitrator or Arbitrators or an order of the Registrar.
- (b) any sum due from a registered society or from an officer, former officer, member or past or deceased member of a registered



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- society as such to the Government including any costs awarded to the Government in any proceedings under this Act; or
- (c) any sum ordered to be paid towards the expenses of a general meeting of a registered society called under sub-section (4) of section 32 or sub-clause (ii) of clause (e) of sub-section (2) of section 81; or
 - (d) any sum awarded by way of costs under section 85 to a registered society including a financing bank; or
 - (e) any sum ordered under section 139 to be recovered as a contribution to the assets of a registered society or as costs of liquidation; or
 - (f) any sum ordered under section 87 to be repaid to a registered society or recovered as a contribution to its assets; or
 - (g) any amount due under a certificate granted by the Registrar under sub-section (1) of section 150,

together with the interest, if any, due on such sum and the costs of process by the attachment and sale or by the sale without attachment of the property of the person against whom such decree, decision, award, order or certificate, has been obtained or passed.

13. Thus, Section 143(b) of the Act makes it clear that the Registrar or any person subordinate to him empowered by the Registrar in this behalf may, subject to the rules and without prejudice to any other mode of recovery provided by or under this Act, recover any sum due from a registered society or from an officer, former officer, member or past or deceased member of a registered society as such to the Government including any costs awarded to the Government in any proceeding under this Act.



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14. As per section 143 (f), the Registrar or any person subordinate to him empowered by the Registrar in this behalf may, subject to the rules and without prejudice to any other mode of recovery provided by or under this Act, recover any sum ordered under section 87 to be repaid to a registered society or recovered as a contribution to its assets.

15. A reading of the Section 143 of the Act makes it clear that an attachment has to precede a sale. To give effect to Section 143, procedure has been prescribed under Rules 116 and 126 of the Tamil Nadu Co-operative Societies Rules, 1988. Since the petitioner's father has passed away, Rule 118 is also applicable. These Rules read as under:



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Rule 116	116. Application for execution of decree. (1) Every decree holder seeking recovery under section 143 of any sum due under a decree shall apply to the Registrar within whose jurisdiction the cause of action arose in Form No.41 which shall be signed by the decree holder. (2) Every decree holder shall deposit such sum towards the fees payable for the processes of execution as specified by the Registrar.
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Rule 118

118. Procedure to be followed where the judgment-debtor dies before full satisfaction of decree.-

- (1) Where a judgment-debtor dies before the decree has been fully satisfied, an application under sub-rule (1) of rule 116 may be made against the legal representative of the deceased judgment-debtor and there upon all the provisions of these rules shall, save as otherwise provided in this rule, apply as if such legal representative were the judgment-debtor.
- (2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased judgment-debtor which has come to his hands and has not been duly disposed of and for the purpose of ascertaining such liability, the Registrar executing the decree may, of his own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as he thinks fit.
- (3) Property in the hands of a son or other descendant who is liable under Hindu Law for the payment of the debt of a deceased ancestor in respect of which a decree has been passed, shall be deemed to be the property of the deceased which has come to the hands of the son or other descendant as his legal representative.



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Rule 126

126. Procedure in attachment and sale of immovable property. (1) Immovable property shall not be sold in execution of a decree unless such property has been previously attached:

Provided that where the decree has been obtained on the basis of a mortgage of such property, it shall not be necessary to attach it.

(2) In the attachment and sale or sale without attachment of immovable property, the following rules shall be observed:-

(a) The application presented under rule 116 shall contain a description of the immovable property to be proceeded against, sufficient for its identification and in case such property can be identified by boundaries or numbers in record of settlement or survey, the specification of such boundaries or numbers and the specification of the judgment-debtor's share or interest in such property to the best of the belief of the decree-holder and so far as he has been able to ascertain it.

(b)(i) The demand notice issued by the Registrar under rule 119 shall contain the name of the judgment-debtor, and the amount due including the expenses, if any, the time allowed for payment and in case of non-payment, the particulars of the properties to be attached and sold, or to be sold without attachment as the case may be.

(ii) After receiving the demand notice, the sale officer shall serve or cause to be served a copy of the demand notice upon the judgment-debtor or upon some adult member of his family at his usual place of residence or upon his authorised agent, or if such personal service is not possible, shall affix a copy thereof on some conspicuous part of his last known residence, or on some conspicuous part of the immovable property about to be attached and sold, or sold without attachment, as the case may be:



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16. Rule 116 of the aforesaid Rules prescribes the method for execution of a decree, which includes an order passed under Section 87 of the Tamil Nadu Co-Operative Societies Act, 1983. As per Rule 116 of the aforesaid Rules, a decree holder has to apply to the Registrar within whose jurisdiction the cause of action arose, in Form No. 41.

17. A copy of the execution petition has been filed before the first respondent. Since the petitioner's father died before full satisfaction of the decree dated 23.05.2022, the procedure under Rule 118 of the aforesaid Rules would also apply. Under such circumstances, an application under Rule 116(1) of the aforesaid Rules can also be initiated against the legal representatives of the judgment debtor, and all the provisions of the aforesaid Rules will apply as if such legal representatives were the judgment debtors.

18. The legal representative of a deceased is liable only to the extent of the property of the deceased judgment-debtor which was come to his hands and has not been duly disposed of and for ascertaining such liability, the Registrar



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executing the decree may, of his own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as he thinks fit.

19. As per Rule 118(3) of the aforesaid Rules, property in the hands of a son or other descendant who is liable under Hindu Law for the payment of the debt of a deceased ancestor in respect of which a decree has been passed, shall be deemed to be the property of the deceased which has come to the hands of the son or other descendant as his legal representative.

20. Although Rule 118 of the aforesaid Rules does not specifically provide for a situation where execution proceedings have already been initiated and, during the pendency of such proceedings, the judgment debtor dies, the legal representatives must be impleaded. A fair interpretation of the Rules would indicate that the name of the legal representative is required to be substituted by applying the principles under Order 22 Rule 4 of the Code of Civil Procedure.

21. As per Rule 126 of the aforesaid Rules, immovable property shall not be sold in execution of a decree unless such property has been previously



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attached. A reading of Rule 126(2)(c) of the aforesaid Rules makes it clear that if the judgment debtor fails to pay the amount specified in the demand notice referred to in Rule 126(2)(b)(i) of the aforesaid Rules within the time stipulated therein, the Sale Officer shall proceed to **attach and sell**, or **sell without attachment**, as the case may be, the immovable property mentioned in the application for execution, in the manner specified under the aforesaid Rules. The procedure for execution is further elaborated under Rule 126(2)(d) of the aforesaid Rules.

22. A reading of Section 143 of the Act read with Rules 116, 118, and 126 of the Tamil Nadu Co-operative Societies Rules, 1988, makes it clear that an order of attachment has to be passed by the first respondent. Only after such attachment is effected can an encumbrance be made in the Sub-Registrar's Office, namely, the third respondent herein. However, there is no impediment to sell without attachment as per Rule 126(2)(b)(i) of the aforesaid Rules.



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23. In this case, it appears that the first respondent is in a hurry, as the petitioner's father died during the interregnum during the course of the Execution Proceedings before the first respondent.

24. At this stage, the learned counsel for the petitioner submits that the petitioner will not alienate or encumber the property during pendency of C.M.A(CS)No.41 of 2024 before the learned Principal District Judge, Special Tribunal for Co-operative Cases, Madurai.

25. The learned counsel for the petitioner further submits that the petitioner will also take steps to implead himself to pursue the case as a legal representative of his father. Under these circumstances, the Tribunal shall pass a suitable orders impleading the petitioner as legal representative of the deceased N.S.M.Sridharan.

26. As far as the Official respondents 1 and 2 are concerned, it shall be their endeavor to takes steps to secure appropriate orders in terms Rules 116 and 126 of the Tamil Nadu Co-operative Societies Rules, 1988 r/w Section 143 of the Act within a period of two months from the date of receipt of a copy of this order.



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27. The rights of the petitioner to deal with the property will be subject to the final outcome of the attachment order to be passed. Pending such exercise, the impugned communication shall remain in force for a period of three months from today, to enable the respondents to secure an order of attachment under Section 142 of the Act read with the aforementioned Rules.

28. This Writ Petition is disposed of, with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No

07.07.2025

apd/jen

To

1. The Deputy Registrar of Cooperative Societies,
O/o. The Deputy Registrar of Cooperative Societies,
Madurai Circle, Palanganatham,
Madurai - 625 003.

2. A.2401 Othakadai Cooperative Urban Credit Society,
Rep. through its Secretary,
Melur Main Road, Y.Othakadai,
Madurai.

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3. The Sub-Registrar No.I,
O/o.The Joint Sub-Registrar,
Madurai North, Y.Othakadai,
Madurai 625 102.



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C.SARAVANAN, J.

apd

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