

W.P.(MD).No.29571 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2025

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.29571 of 2024

and

W.M.P.(MD)Nos.24952 and 24953 of 2024

M.Rajalakshmi

... Petitioner

Vs.

- 1.The Registrar of Cooperative Societies
(Housing), Office of the Registrar of
Cooperative Societies,
No. 493, Tamil Nadu Housing Board,
Anna Salai,
Nandanam,
Chennai.
- 2.The Deputy Registrar of Cooperative
Societies (Housing),
Office of the Deputy Registrar of
Cooperative Societies,
Madurai Region, Baskar Complex,
Chinna Chokkikulam,
Madurai.
- 3.The Sub Registrar of Cooperative
Societies (Housing),
Office of the Sub Registrar of
Cooperative Societies (Housing),
Madurai.
- 4.The Sub Registrar,
Registration Department,
Thallakulam Sub Registrar,
Thallakulam, Madurai.

... Respondents



W.P.(MD).No.29571 of 2024

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Na.Ka.No. 1560/2018/VA, dated 31.10.2018, and consequently direct the 4th respondent to raise the attachment and remove the entry in encumbrance certificate No. 18/2018 dated 10.11.2018 and allow the petitioner to encumbrance of the property flat 40 and 40A in Sy. No. 197-1 situated in, Nallamani Nagar, K.Pudur, Thallakulam Village, Thallakulam, Madurai within a stipulated time by this Court.

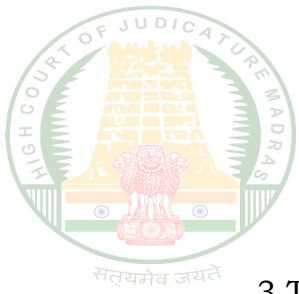
For Petitioner : Mr.A.Joseph Jerry

For Respondents : Mr.S.Kameswaran,
Government Advocate

ORDER

Heard the learned counsels on either sides and carefully perused the materials available on record.

2.Challenging the attachment order dated 04.10.2018 passed by the Deputy Registrar / second respondent attaching the property of the petitioner, this writ petition is filed.

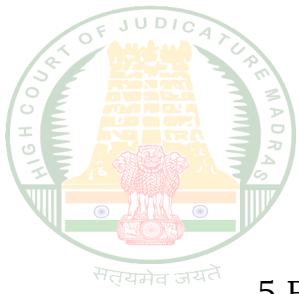


W.P.(MD).No.29571 of 2024

WEB COPY

3.The claim of the petitioner is that she married one Mohan, S/o. Chinnan. She purchased a land from one Velu Konar in the year 2008 vide sale deed bearing Document No.1597 of 2008 dated 09.04.2008 and the same is the flat bearing Nos.40 and 40 A situated in survey No.197-1 of Nallamani Nagar, K.Pudur, Thallakulam Taluk, Madurai district. The said property is the self acquired property of the petitioner. The petitioner's husband, Mohan served as the president of the 3rd respondent Society. A surcharge proceeding was initiated as against him and pursuant to the same, an attachment before judgment vide impugned order came to be passed by the 2nd respondent on 31.10.2018 and the petitioner on availing an encumbrance certificate for some other purpose pertaining to the said property, she came to know that her property is attached. Hence, challenging the same, this writ petition is filed.

4.The learned counsel for the petitioner insisted that for the surcharge proceedings initiated as against her husband, her absolute property should not be attached even if she is the wife of the said Mohan in a surcharge proceeding which is proceeded against him and pressed for setting aside the impugned order as far as the attachment of her property alone.



W.P.(MD).No.29571 of 2024

WEB COPY

5.Per contra, the learned Government Advocate Mr.S.Kameshwaran, appearing for the 2nd respondent based on the counter affidavit submitted that in the presence of an efficacious alternative remedy which is available for the petitioner under Rule 135 of the Tamil Nadu Cooperative Societies Rules, 1988, to ventilate her objection by filing an objection before the 2nd respondent, the petitioner ought not to have approached this Court by filing this writ petition. That apart, her husband had diverted huge funds of the 3rd respondent society causing a financial deficiency to a tune of Rs. 45,98,621.28/-. As a result of which, the entire business activity and administration of the 3rd respondent society has come to a serious halt, causing irreparable loss and injury to the 3rd respondent society and only on that background, a surcharge proceeding came to be initiated under Section 81 as against the petitioner's husband and as a part of the said proceedings, attachment before judgment was effected as far as the property of the petitioner as well as her husband is concerned and hence they both are equally liable for the losses suffered by the 3rd respondent and pressed for dismissal of the writ petition.

6.The matter in hand is no more *res integra*. This Court in a writ petition in W.P.No.22855 of 2023 dated 08.09.2023 has dealt with the case



W.P.(MD).No.29571 of 2024

WEB COPY

of a wife whose property was attached in relation to the surcharge proceedings as against her husband and this Court heavily came down against the respondent authorities and had set aside the impugned order therein and the relevant portion of the same is extracted as follows:

8. *In this regard, it would be appropriate to refer to the judgment of the Division Bench of this Court in The Management, R.A.No.18, Thiruvengadapuram Primary Agricultural Cooperative Credit Society vs. S.Rathinam (W.A.(MD).No.1511 of 2018 dated 11.12.2018). The relevant observation of the Division Bench in the above said case law reads as follows:-*

“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



WEB COPY



W.P.(MD).No.29571 of 2024

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.”

9. The law laid down by the Division Bench of this Court in the above mentioned case is squarely applicable to the facts of the present case. In the case on hand, the property stands in the name of the wife of the employee of the Co-operative Society. The Section 82 enquiry was relating to the period 2017. However, the property was purchased in the year 1999. In such circumstances, there is nothing to suggest that the property of the petitioner was purchased out of the mis-appropriated funds. Therefore, the order of attachment passed by the 1st respondent cannot be sustained.

11. Section 167 of the Tamil Nadu Co-operative Societies Act, 1983 reads as follows:-

“167. Furnishing of security and attachment of property.- (1) Where the Registrar is satisfied on the application of a registered society in respect of a reference made to him under sub-section (1) of section 90 or on the application of a liquidator appointed under section 138 in respect



WEB COPY



W.P.(MD).No.29571 of 2024

of the proceedings of such liquidator for determining the contribution to be made by a person to the assets of the society under clause (b) of sub-section (2) of section 139 or on the application of the board or liquidator or any creditor to the society or otherwise in respect of any inquiry ordered into the conduct of any person under section 87 that any party to the reference or the person, as the case may be, is about to dispose of or remove from the local limits of the jurisdiction of the Registrar, the whole or any part of his property with intent to defeat or delay the execution of any decision that may be passed on the reference or of any order that may be passed against him by the liquidator or the Registrar, as the case may be, the Registrar may, by order, direct the party or the person, to furnish security in such sum and within such time as may be specified in such order and to produce and place at the disposal of the Registrar when required, the said property or such part thereof as may be sufficient for the execution of any decision or order aforesaid.



W.P.(MD).No.29571 of 2024

WEB COPY

(2) The Registrar may also in the order made under subsection (1), or by a separate order, direct the conditional attachment of the said property, or such part thereof and such attachment shall have the same effect as if it had been made by a competent Civil Court:

Provided that no order for conditional attachment shall be made under this sub-section unless the Registrar, for the reasons to be recorded in writing, is satisfied that the whole or any part of the property will be disposed of or removed with intent to defeat or delay the execution of any decision or order of the liquidator or the Registrar, as the case may be.”

12. A perusal of the above provision would make it clear that initiation of proceedings under Sections 87, 90, 138 and 139 (2)(b) is a condition precedent for attachment of the property. In the case on hand, none of the said proceedings are initiated. Immediately after filing of the report of the Section 82 enquiry, the attachment order came to be passed by the 1st respondent. Therefore, the impugned



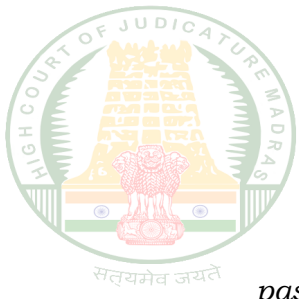
W.P.(MD).No.29571 of 2024

WEB COPY

order is liable to be set aside on that ground also. In view of the undisputed fact that the property was purchased by petitioner in the year 1999, well prior to the period of alleged mis-appropriation and absence of condition precedent for invoking Section 167 of the Tamil Nadu Co-operative Societies Act, 1983, the impugned order on the face of it unsustainable. Hence, petitioner need not be relegated to avail alternative remedy.

7.The Hon'ble Division Bench of this Court in Writ Appeal in W.A. (MD)No.1511 of 2018 dated 11.12.2018 has dealt with a similar case and the operative portion of the same is extracted as follows:

“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



W.P.(MD).No.29571 of 2024

WEB COPY

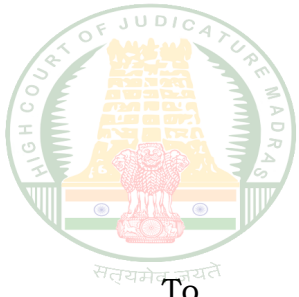
*passed by the learned Single Judge of this Court, allowing the Writ
Petition.”*

8.Fully fortified by the mandates of the orders / judgments extracted supra, I am of the considered view that the second respondent ought not to have attached the property of the petitioner in a surcharge proceeding which has been initiated as against her husband. In view of the same, the impugned attachment order is quashed as far as the portion pertaining to the attachment of the petitioner alone.

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

28.01.2025

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



W.P.(MD).No.29571 of 2024

To
WEB COPY

- 1.The Registrar of Cooperative Societies
(Housing), Office of the Registrar of
Cooperative Societies,
No. 493, Tamil Nadu Housing Board,
Anna Salai,
Nandanam,
Chennai.
- 2.The Deputy Registrar of Cooperative
Societies (Housing),
Office of the Deputy Registrar of
Cooperative Societies,
Madurai Region, Baskar Complex,
Chinna Chokkikulam,
Madurai.
- 3.The Sub Registrar of Cooperative
Societies (Housing),
Office of the Sub Registrar of
Cooperative Societies (Housing),
Madurai.
- 4.The Sub Registrar,
Registration Department,
Thallakulam Sub Registrar,
Thallakulam, Madurai.



WEB COPY



W.P.(MD).No.29571 of 2024

L.VICTORIA GOWRI, J.

Sml

W.P.(MD).No.29571 of 2024

28.01.2025