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W.P.No.15070 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.12.2025

PRONOUNCED ON : 22.01.2026

CORAM:

THE HONOURABLE MR. JUSTICE **V. LAKSHMINARAYANAN**

W.P.No.15070 of 2025 &  
WMP.No.16981 of 2025

B.Chennamoorthy

... Petitioner

Vs.

1.The Deputy Registrar of Cooperative Societies,  
Krishnagiri Circle,  
Krishnagiri District.

2.The Administrator,  
D.K.137, Krishnagiri District Primary  
Agricultural Cooperative Credit Society  
Employees' Cooperative Thrift and Credit Society Ltd.,  
Gandhi Nagar, 2<sup>nd</sup> Cross,  
Opp. To Amman Gas Agency,  
Krishnagiri District – 635 001.

3.The Sub Registrar,  
Dharmapuri West,  
S.V.Road, Dharmapuri District.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the first respondent in ARC.No.3 of 2024 dated 14.05.2024 and 23.05.2024 made under Section 167 r/w Rule 140 of the Tamil Nadu Cooperative Societies Act and Rules attaching the petitioner's immovable property in Survey no.304/1A1, Sub Division  
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No.304/1A1A1A1 covered under Sale Deed in Document No.4693 of 2023 dated 08.09.2023 and quash the same as illegal, without jurisdiction and against the principles of natural justice; since the impugned orders is made in violation of Section 144 of the Tamil Nadu Cooperative Societies Act and the division bench decision of this Court in W.A.(MD).No.1511 of 2018 Paragraphs 8 to 10 in the Management v. S.Rathinam dated 11.12.2018; consequently, direct the 3<sup>rd</sup> respondent to remove the encumbrance made in respect of petitioner's immovable property in Survey No.304/1A1, Sub Division No.304/1A1A1A1 covered under Sale Deed in Document No.4693 of 2023 dated 08.09.2023 on its file.

For Petitioner :Mr.S.Sathiaseelan

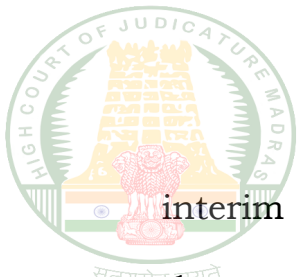
For Respondents :Mr.M.Muthusamy,  
Government Advocate

### **ORDER**

This court had entertained the writ petition and granted an interim order. The respondents filed a vacate stay petition. When the matter was listed before this Court, by consent of the counsel, the main writ petition itself was taken up for hearing.

2. I heard Mr.S.Sathiaseelan for the petitioner and Mr.M.Muthusamy, learned Government Advocate for the respondents.

3. The first respondent passed an order of interim attachment of the property of the petitioner on 14.05.2024. Subsequently, the



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interim attachment was made absolute on 23.05.2024. Challenging the same, the present writ petition.

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4. The case of the petitioner is that he had purchased the petition mentioned property from one S.Kavitha. The said Kavitha is the wife of one Rajendran, the Secretary (currently under suspension), of the second respondent Society. Kavitha had originally purchased the property by way of two registered sale deeds dated 22.04.2015 and 22.07.2016. On 08.09.2023, the petitioner purchased the said properties from Kavitha. The purchase of the property is evidenced by a sale deed bearing Document No.4693 of 2023.

5. Alleging misappropriation of funds by Mr.Rajendran, the second respondent presented a petition under Section 90 of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter referred to as the 'TNCS Act') read with Rule 107 of the Tamil Nadu Cooperative Societies Rules (hereinafter referred to as the 'TNCS Rules or TNCSR', as the case may be). This application was taken on file by the first respondent as ARC.No.3 of 2024. In the said ARC, the petitioner herein has been arrayed as the second respondent. While the ARC is pending consideration before the first respondent, fearing that the respondents in the ARC, might alienate their property, the second



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respondent took out an application invoking Section 167 of the TNCS

Act read with Rule 140 of the TNCS Rules of 1988.

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6. By the first of the impugned order dated 14.05.2024, the first respondent issued a notice to the respondents 1 to 5 therein, which included the writ petitioner, and passed an order of interim attachment. Since the security directed by this order had not been furnished, the first respondent made the provisional attachment absolute by the second impugned order dated 23.05.2024.

7. It is the plea of Mr.S.Sathiaseelan that, the orders are untenable and liable to be quashed. After narrating the facts, he submitted as follows:

(i) Prior to the initiation of proceedings under Section 90 of the TNCS Act, the Deputy Registrar of Co-operative Societies, Krishnagiri, had ordered an enquiry under Section 81 of the TNCS Act. This enquiry was based on a report submitted by the Co-operative Sub Registrar, Krishnagiri. The Co-operative Sub Registrar was appointed as the enquiry officer by an order dated 15.04.2024. The said appointment order was put to challenge in W.P.No.31589 of 2024. By an order dated 23.10.2024, this



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Court quashed the appointment order on the ground that the person, who conducted the preliminary enquiry, ought not to have been appointed as the enquiry officer under Section 81. The consequence of this is that, the proceedings of attachment have to fail.

(ii) His second submission being that the proceedings initiated under Section 90 of the TNCS Act is barred by limitation as would be evident from a perusal of Section 90(9)(a)(ii) of the TNCS Act. Referring me to a paragraph 11 of I.A.No.1 of 2024 in ARC.No.3 of 2024, he states that, on the face of the petition, it becomes clear that it is barred by Section 90 of the Act. In furtherance of this submission, he points out that a reference to a Full Bench is pending in W.A.No.1522 of 2009 etc. batch, with respect to the question whether the limitation would commence from the date of misappropriation or whether it should be deemed to commence only after it comes to the knowledge of the Co-operative Society.

(iii) Placing reliance upon judgment of the Division Bench of this court in ***The Management, R.A.No.18, Thiruvengadapuram Primary Agriculture Cooperative Credit Society v. S. Rathinam*** in W.A. (MD) No. 1511 of



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2018 dated 11.12.2018, he pleads that attachment proceedings cannot be initiated against a non member or a stranger to the co-operative society. According to him, the petitioner's vendor, Kavitha, herself is a non member, and therefore, no proceedings could have been initiated even against her and, consequently, no proceedings have been initiated against the petitioner.

(iv) Referring to Section 144 of the TNCS Act along with Rule 135 of TNCSR, he points out that there is a statutory impediment to proceed against a third party and, since attachment proceedings had been initiated against the petitioner, who is a stranger to the society, this court should apply the aforesaid judgment and allow the writ petition.

8. In addition to the order, referring the issue to the Full Bench and the order in the writ appeal referred to above, Mr.S.Sathiaseelan placed reliance upon the following judgments:

(i) ***Kattabettu Industrial Co-operative Tea Factory Limited v. V. Radhakrishnan, (1999) 1 LW 725;***

(ii) ***Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664;***



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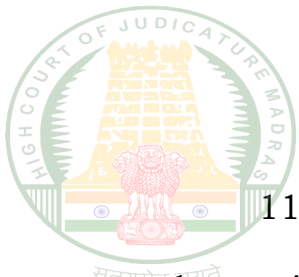
(iii) ***Bharathidasan University v. All-India Council for***

***Technical Education, (2001) 8 SCC 676;*** and

(iv) ***Union of India v. S. Srinivasan, (2012) 7 SCC 683.***

9. Mr.M.Muthusamy submits that the writ petition is not maintainable, since the issue is covered by the Full Bench of this court in ***K. Marappan v. Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal, (2006) 4 CTC 689.*** According to him, no writ petition is maintainable against a cooperative society and therefore on this short ground, the writ petition must be dismissed.

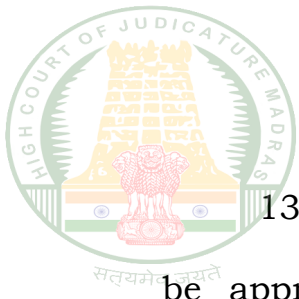
10. In the alternative, Mr.M.Muthusamy submits that the petitioner has an effective alternate remedy under Rule 135 of the TNCS Rules and in addition, he can prefer an appeal under Section 152 of the TNCS Act to the statutory Tribunal, namely, the Principal District Court, Dharmapuri. On the merits, he pleads that the writ petitioner is a close relative of Mr. Rajendran, the Secretary, who is now under suspension. He urges that it came to the notice that, in order to escape the clutches of law, Mr.Rajendran diverted the amount misappropriated by him, into the name of his wife, Kavitha and that Kavitha had, in turn, sold the property to her relative, namely, the writ petitioner, B. Chennamoorthy, and Mr. Karthick.



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11. Mr.M.Muthusamy adds, when the society came to know that the petitioner and others are going to alienate the property, they moved an application for conditional attachment under Section 167 of the TNCS Act before the first respondent. The first respondent was convinced with the averments made in the petition and directed them to furnish security. This order was served on the petitioner on 15.5.2024 through RPAD and, since the petitioner did not furnish security, the authority made the conditional order of attachment absolute.

12. On the first plea, Mr.M.Muthusamy points out that, after the appointment of Ms.Kalpana was set aside by this Court in W.P.No.31589 of 2024 by order dated 23.10.2024, by an order dated 27.12.2024, the Deputy Registrar, Krishnagiri Circle, had appointed one Mr.S.Arunkumar as the enquiry officer under Section 81 of the TNCS Act. He pleads that, out of the ill-gotten wealth, Mr.Rajendran had purchased the property in the name of his wife and that, the said property is answerable to the claim of the society. He further pleads that, there is no violation of Section 167 of the TNCS Act, nor is there any illegality committed by the first respondent as he had not furnished security to the claim of the society. Hence, he seeks dismissal of the writ petition.



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13. Since the plea of alternate remedy has been raised, it would be appropriate to address the said issue at the threshold and thereafter, proceed further. The Five-Judges Bench in **K.Marappan's** case cited supra held that a writ petition is not maintainable against a cooperative society as such societies do not answer the description of 'State' or 'instrumentality of State' under Article 12 of the Constitution of India. This is because, the regulatory power exercised by the Registrar is not so deep or pervasive as to include a society under the TNCS within the scope of a 'State instrumentality'. Exception was created that in case statutory public duty is imposed upon the society and it fails to perform the same, a writ petition would be maintainable. On the facts of the case, Mr.K.Marappan had challenged his demotion, and the same was rejected by this court, holding that it was a contractual matter, and that the proper remedy should be, to file an alternate proceeding under the TNCS Act.

14. I have extracted the salient points of **K.Marappan's** case in order to point out that Mr.K.Marappan had challenged an action of a Cooperative Society. Hence, this court had taken a view that writ petition is not maintainable. However, is not the situation in the present case. The order of attachment has been passed by the first respondent exercising its statutory power. Here, the order passed by



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the first respondent is not an order passed by the second respondent, but an order passed on an application filed by the second respondent.

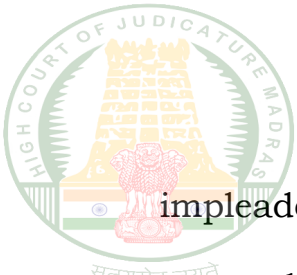
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If it had been the order passed by the second respondent, I would have agreed with Mr.M.Muthusamy. That not being the factual position, I have to reject the argument relying upon the **Marappan's** case.

15. Insofar as the plea under Section 152 of the TNCS Act is concerned, I have to point out that, since the issues of interpretation of law and jurisdiction have been raised, the writ petition would be maintainable. [See **Radhakrishan Industries v. the State of Himachal Pradesh and Others, AIR 2021 SC 2114** (paragraphs 20 & 26)].

16. In addition, this Court had entertained the writ petition, and had granted an interim order, and issued notice. The practice of this Court has been that, where a writ petition has been entertained, a party must not turned away at the stage of final disposal referring to the doctrine of alternate remedy. Hence, I am inclined to go into the merits of the case.

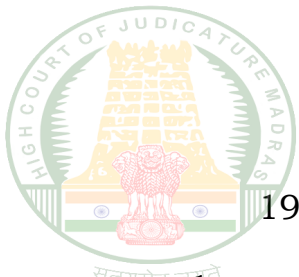
17. A perusal of the typed set of papers shows that in ARC.No.3 of 2024, not only Mr.Rajendran, but also four other persons have been



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impleaded as parties. The petitioner has been arrayed as the second respondent therein. When the writ petitioner has been made as a party to the proceedings, the plea that he is a third party, cannot stand scrutiny even for a moment. 'Third party' to a proceeding means a person other than those arrayed as parties. When the petitioner is admittedly a party to the proceedings, as is clear from page 112 of the type set of papers, the plea of Mr.S.Sathiaseelan that he is a 'third party' and, therefore, his property ought not to have been attached is absolutely untenable.

18. On the aspect of maintainability, under Section 90 of the TNCS Act, I have to point out that under Section 90(1)(c), if a dispute arises between the society and any officer, agent or servant, then an application is maintainable before the Registrar. Insofar as Mr.Rajendran is concerned, the petition filed in ARC.No3 of 2024 discloses that he was the Secretary of the society from 01.02.2009 onwards till 2023, when he was placed under suspension. Since Mr.Rajendran continues to be under suspension, as the relationship of employer and employee subsists between the society and him. Consequently, a petition under Section 90 is maintainable. This leads us to the aspect of limitation that has been raised by Mr.Sathiaseelan.



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19. Under Section 90(9)(a)(ii) of the TNCS Act, if the dispute

relates to

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*“any act or omission” on part of any of the parties referred to clause (b) or (c) of subsection (1), then the period of limitation shall be six years from the date on which the act of omission, with reference to which dispute arose, took place.”*

20. On this aspect, I should point out, that the issue of limitation is a mixed questions of law and fact. This implies that the issue of limitation should not be decided in a summary manner without affording the parties to an opportunity to present evidence, especially, when the facts giving rise to the cause of action are disputed. Unless and until plain reading of the petition itself discloses that the claim is barred by limitation, the court should not throw out the petition on the ground of limitation. The issue of being barred by time should be “patently and unequivocally” evident from the petition itself. Whether the society was aware of the malverisation of funds by Mr.Rajendran in the year 2015 itself or whether it came to be aware of the facts subsequently, are matters which require oral and documentary evidence.

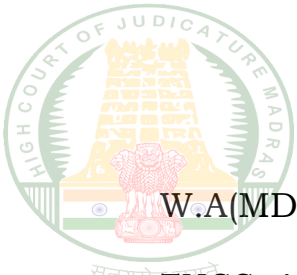


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21. The statement of Mr.Sathiaseelan that, as the matter has been referred to the Full Bench, the doubt persists does not appeal to me. This is because, the reference is not with respect to section 90(9) (a)(ii) of the TNCS Act, but pertains to interpretation of Section 87 of the TNCS Act.

22. Apart from this, the pendency of a reference does not *ipso facto* result in a stay of proceedings involving the same issues, nor does it render the existing judgment ineffective. The courts must continue to apply the law as it stands. [(See, **Ashok Sadarangani v. Union of India, (2012) 11 SCC 321**, (para 29)]. As the reference relates to an entirely different provision under the TNCS Act, which only incorporates a similar provision as under Section 90, I am of the view that the plea of Mr.S.Sathiaseelan on the basis of the reference made in the year 2013, is not germane to the facts of the present case. As I am not going into the issue of limitation, it is left open to the writ petitioner to raise the plea before the first respondent during the course of proceedings in ARC 3 of 2024, and if it is so raised, the first respondent shall frame an issue and answer the same.

23. I shall now advert to the fulcrum of Mr.S.Sathiaseelan's argument, namely, the application of the judgment of this Court in



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W.A(MD).No.1511 of 2018 and the interpretation to Section 144 of the

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TNCS Act. The Division Bench of this Court held, in the aforesaid case, that the property of a third party cannot be a subject matter of attachment during the course of surcharge proceedings. After reading this judgment extensively, Mr.Sathiaseelan took me to Section 144 of the TNCS Act to urge that it applies only for recovery of debt from a member, past or present, or the legal heirs of a deceased member. Hence, he pleads that the petitioner's property is not capable of being attached.

24. I have already pointed out that the writ petitioner, being the second respondent in ARC 3 of 2024, he cannot be treated as a third party. I am of the view that Section 144 also does not apply to the facts of the present case, since Section 144 falls under Chapter XVI, which relates to *execution of decrees, decisions, awards and orders*. Even under traditional civil law, a third party to a decree cannot be made answerable to the decree, other than in certain exceptional circumstances.

25. In the case before the Division Bench in W.A(MD).No.1511 of 2018, the writ petitioner Tmt. S.Rathinam, had not been arrayed as a party to the proceedings under Section 87 of the TNCS Act. Yet, her



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property was attached. It was in those circumstances, the Division

Bench held that a Society cannot proceed against the property of a

stranger. In this case, since the writ petitioner has been arrayed as the

second respondent in ARC 3 of 2024, he is obviously neither a third

party nor a stranger to the proceedings. Hence, the judgment in

**Rathinam**'s case does not come to the rescue of the writ petitioner.

26. Rule 135 (2) of the TNCS Rules falls under Chapter XI, which relates to execution. This Chapter commences with Rule 115 and goes on till Rule 144. Therefore, the reliance placed by the Government Pleader on Rule 135 is equally untenable. It is nobody's case, that an award has been passed and in execution of such an award, the attachment has taken place. As seen from the facts, an arbitration petition had been filed under Section 90 of TNCS Act. Pending disposal of the said proceedings, an application for attachment had been taken out. Such an application is akin to an application for attachment before judgment under Order XXXVIII of the Code. An attachment pursuant to a decree would fall under Order XXI of the Code.

27. The entire argument of Mr.Sathiaseelan is based on the proceedings which deal with execution and not based on proceedings, pending disposal of the original claim petition. When Section 144 does



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not apply to the fact of the case, placing reliance upon the same is totally untenable.

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28. The application seeking attachment falls under Chapter XIX. This is covered under Section 167 of the TNCS Act. Under this provision, if the Registrar is satisfied, on an application filed by a registered society in respect of a reference under Section 90(1) of the TNCS Act, that any party to the reference is about to dispose of or remove from his jurisdiction, the whole or any part of the property, with an intention to delay or defeat execution or any decision that may be passed on reference, the Registrar, by an order, can direct the party to furnish security. Under Section 167(2), he can also pass an order of conditional attachment, but, such order is subject to the proviso contained therein. The corresponding Rule for Section 167 of the TNCS Act is Rule 140 of the TNCS Rules. As in the Code of Civil Procedure, if a third party's property is attached, then under Rule 140(2), he is entitled to investigate the matter in the same manner as it would be done in course of execution proceedings under Rule 135 of the TNCS Rules.

29. It is a settled position of law that a claim petition cannot be filed by a party to a proceeding. A claim petition must be filed by a



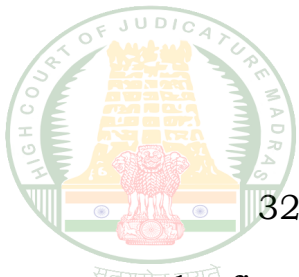
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stranger or a third party to the proceeding. When the writ petitioner is himself a party to the proceedings, it does not lie in his mouth to content that judgments which relate to third party proceedings should be applied to him.

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30. I shall now examine whether the impugned order satisfies the requirement of Section 167 of the TNCS Act. Under Section 167, satisfaction has to be recorded by the Registrar that the respondent before him in a reference under Section 90 is about to dispose of the property. In such a case, he should call upon the party to furnish security and to pass an order of interim attachment.

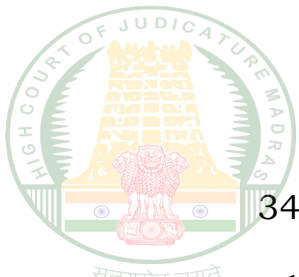
31. A perusal to the order dated 14.05.2024 shows that the Registrar has been satisfied with the claim filed before him for a sum of Rs.84,82,148/-. He has also been satisfied that the respondents were attempting to alienate the property. Accordingly, he had called upon them to furnish security on or before 22.05.2024. Pending the proceedings, he had attached the property recording his satisfaction in paragraph 1 of the said order. Therefore, by an order dated 23.05.2025, the attachment was directed to continue until further orders.



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32. An opportunity was given to the petitioner to appear before the first respondent on 22.05.2024 and furnish security. The counter asserts that, notice calling upon him to furnish security had been served and yet, the petitioner had not complied with the same. This factual averment had not been denied by the writ petitioner. When a notice has been issued to a party and the same is duly served, and still the party chooses not to appear or object to the same, he cannot thereafter turn around and plead violation of principles of natural justice.

33. When the second impugned order came to be passed on 23.05.2024, all that the first respondent had before him, was the petition filed by the second respondent asserting that the respondents therein were attempting to alienate the property. The petitioner did not even take steps to appear before the authority to state that he had no such intention to do so. There is no such averment in the affidavit filed in support of the writ petition either. When the first respondent, exercising statutory power under section 167(2) noticed that the respondents before him have not furnished security, the only order that he has to pass is to continue the prohibitory order earlier passed on 14.05.2024.



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34. It is still not too late for the petitioner to move the first

respondent by way of an application and furnish security to the claim in ARC.No.3 of 2024 and thereafter, seek raising of attachment. The petitioner has averred that there is no show cause notice was issued to him. This assertion is contrary to the specific statement in paragraph 5.4 of the counter affidavit wherein the respondent has stated as follows:

*“the said notice was served on the petitioner on 15.05.2024 through Registered post with acknowledgement due”*

35. Now turning to the authorities cited by Mr.S.Sathiaseelan, the judgment in ***The Kattabettu Industrial Co-operative Tea Factory Limited v. V.Radhakrishanan and others, (1999) 1 LW 725***, on the question of limitation, after the proceedings had concluded before the Registrar, and an appeal under Section 152 of the TNCS Act had been filed before the Appellate authority. The Appellate authority had concluded on facts that the reference was barred. This shows that the judgment came to be pronounced on the basis of appreciation of evidence and not at a preliminary stage as in the present case. Furthermore, the challenge before this Court today is only to an order of interim attachment, and the issue of limitation, as pointed out above, being a mixed questions of law and facts, cannot be



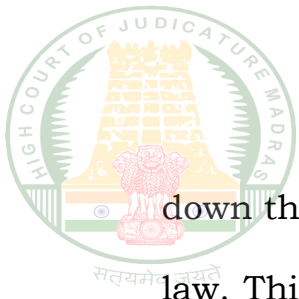
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collaterally raised in a writ proceedings. It is for the petitioner to appear before the competent authority as set forth above and raise the plea.

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36. The judgments in ***Bharathidasan University v. All-India Council for Technical Education, (2001) 8 SCC 676*** and ***Union of India v. S. Srinivasan, (2012) 7 SCC 683*** both dealt with the issue where a Rule exceeding the Statute. I should point out that no declaration has been sought in this writ petition that the Rule is unconstitutional. Furthermore, these cases does not relate to Section 144, which, as already pointed out, arises only in case of execution. We are still at a stage prior to the passing of an award/decreed and hence, the judgments relied upon are not applicable to the facts of this case. The constitutional validity of a provision is a grave matter and should follow specific procedural channels designed for that purpose. It cannot be raised in a collateral challenge and that too, in a proceeding where the provisions sought to be nullified does not even apply.

37. In fact, the very paragraph relied upon by Mr.S.Sathiaseelan in ***Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664*** holds that where there is a valid law, the court without striking



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down the same cannot give any direction, which is contrary to the said law. This is a proposition that as long as the law stays on the statute book, the court has to apply as it is. This proposition also does not help Mr.S.Sathiaseelan. I have concluded in the earlier portion of this order that Section 144 applies only to execution proceedings whereas, the law applicable for the present proceedings is governed by Section 167 of the TNCS Act read with Rule 140 of the TNCS Rules and there is no necessity for me to go into the so called conflict between Section 144 of the TNCS Act and Rule 135 of the TNCS Rules.

38. In the light of the above discussion, leaving it open to the petitioner to approach the first respondent, furnish security, and seek for raising of attachment of the property, this writ petition is dismissed. No costs.

39. Just before the pronouncement of the judgment, Mr.S.Sathiaseelan reported that Hon'ble Mr.Justice G.K.Ilanthiraiyan has quashed A.R.C.No.3 of 2024 and the order of attachment dated 23.05.2024, by an order dated 05.08.2024 in W.P.No.14633 of 2024 (**P.Sundaresan v. The Registrar of Co-operative Societies and Others**). A perusal of the papers shows that the learned Judge has allowed the writ petition insofar as the Writ Petitioner therein is



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concerned. Hence, this judgment would not be applicable to the petitioner.

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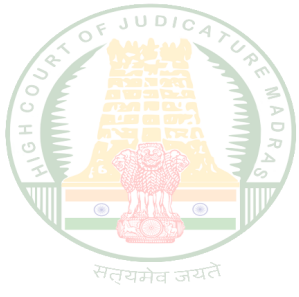
Neutral Citation : Yes/No

To

1.The Deputy Registrar of Cooperative Societies,  
Krishnagiri Circle,  
Krishnagiri District.

2.The Administrator,  
D.K.137, Krishnagiri District Primary  
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3.The Sub Registrar,  
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**V. LAKSHMINARAYANAN. J,**

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