



C.R.P.No.3048 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 28.04.2023

Delivered on 17.08.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.3048 of 2021

The President,
No.1655, Udumalpet Co-operative Housing Construction Society,
Udumalpet,
Tiruppur District. ...2nd Respondent/Petitioner

-Vs-

1.V.Balasubramaniam,
S/o.Venkatachalam,
Door No.K.1655, Udumalpet Taluk,
Co-operative Housing Society,
Palani Road, Gandhinagar,
Udumalpet, Tiruppur District. ...Appellant/1st Respondent

2.The Deputy Registrar of Co-operative Societies,
(Housing),
Coimbatore region,
Coimbatore District. ...1st Respondent/2nd Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment in C.M.A.No.36 of 2012 dated 28.02.2018 on the file of the II Additional District and Sessions Court, Tiruppur.

For Petitioner : Mr.M.S.Palaniswamy

For R1 : Mr.C.Prakasam



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For R2

: Mr.V.Jeevagiridharan,
Additional Government Pleader

ORDER

This Civil Revision Petition had been filed challenging the order passed by the learned II Additional District and Sessions Judge, Tiruppur, in C.M.A.No.36 of 2012 setting aside the surcharge proceedings passed by the 2nd Respondent/Deputy Registrar of Co-operative Societies, [Housing], Coimbatore Region, Coimbatore District, which is without jurisdiction and is to be set aside.

2.The learned Counsel for the Revision Petitioner contended that the surcharge proceedings were initiated against the 1st Respondent who was the Appellant in C.M.A.No.36 of 2012, on the file of the learned II Additional District and Sessions Judge, Tiruppur. The 1st Respondent was serving as a Secretary at K.1655, Udumalpet Taluk Co-operative Housing Society, Palani Road, Gandhinagar, Udumalpet, Tiruppur District. He had received salary for the post higher than his regular salary, for which there was an inquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. In the inquiry, it was found out that he had received salary higher



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than his regular salary without getting appropriate orders from his superiors.

Based on the inquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, surcharge proceedings were initiated by the 2nd Respondent/Deputy Registrar of Co-operative Societies, [Housing], Coimbatore Region, Coimbatore District.

3. Aggrieved by the surcharge proceedings imposing a surcharge penalty of Rs.4,15,711/- against the 1st Respondent, the 1st Respondent had preferred C.M.A.No.36 of 2012 as per the Tamil Nadu Co-operative Societies Act before the learned II Additional District and Sessions Judge, Tiruppur. The learned II Additional District and Sessions Judge, Tiruppur, had only passed orders allowing the Appeal of the 1st Respondent in C.M.A.No.36 of 2012 and setting aside the surcharge proceedings of the 2nd Respondent by judgment and decree dated 28.02.2018. Therefore, aggrieved by the judgment and decree of the learned II Additional District Judge, Tiruppur in CMA No.36 of 2012, dated 28.02.2018, this Civil Revision Petition had been filed under Article 227 of the Constitution of India.



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4.The learned Counsel for the Revision Petitioner invited the attention of this Court to G.O.Ms.No.247 of the Co-operation, Food and Consumer Protection Department, dated 08.11.1994, and also to Section 152 of the Tamil Nadu Co-operative Societies Act.

5.Section 152 of the Tamil Nadu Co-operative Societies Act, 1983, reads as follows:-

*“152. Appeals. __ (1) Any person aggrieved by—
(a) any decision or award passed or order made or proceedings taken under sub- 93 section (1) of section 87, sub-section (2), sub-section (3) or sub-section (4) of section 90, section 118, section 119, section 143, section 144 or section 167; or*

(b) any award of an arbitrator or arbitrators under sub-section (2) or sub-section (3) of section 90; or

(c) any award of an arbitrator under section 100, may appeal to the Tribunal:

Provided that nothing contained, in clause (a) or clause(b) of this sub-section shall apply to —

(i) any decision, order or award under sub-section (2), sub-section (3) or sub-section (4) of section 90, in respect of any matter relating to, or in connection with, the constitution of a board including any election thereto; or

(ii) any decision, order or award under sub-section (2), sub-section (3) or sub-section (4) of section 90 in respect of any matter relating to, or in connection with, any matter not being a money claim;

(iii) any order of transfer, reference,



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withdrawal or re-transfer of a dispute under subsection (2) or sub-section (3) of section 90,

(2) (a) Any person aggrieved by any— (i) decision under section 7, sub-section (4) of section 23, sub-section (6) of section 34; or

(ii) refusal to register the Society under sub-section 9 or the amendment of the by-laws under section 11; or

(iii) registration of amendment of the by-laws under sub-section (2) of section 12; or

(iv) approval of or refusal to approve the expulsion of a member under sub-section (2) of section 25, the proposal to take loan under clause (e) of sub-section (I) of section 105, the decision of the board under clause (ii) of sub-section (1) of section 106, the regulations under section 108 or the removal of a member under the proviso to section 109; or

(v) order under section 14, clause (ii) of sub-section (2) of section 21, section 36, subsection (1) of section 88, sub-section (1) of section 89, section 137 or section 181, may appeal if such decision, refusal, registration, approval or refusal to approve or order is that of— (A) the Registrar for the State, to the Government; or (B) any other person, to the Registrar.

Explanation. __For the purposes of this clause; "person aggrieved" means in relation to section 11 or section 12, the registered Society.

(b) Any person, who is refused admission to a registered Society under sub-section (2) of section 21 or who is aggrieved by any order of the liquidator under section 139, may appeal to the Registrar.

(3) Any appeal under sub-section (1) or sub-section (2) shall, subject to the other provisions of the Act, be preferred within sixty days from the date of communication of the decision, order, award, refusal, registration or approval complained of, but the



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appellate authority may admit an appeal preferred after the said period of sixty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(4) In disposing of an appeal under this section, the appellate authority may, after giving the parties an opportunity of making their representations, pass such order thereon as the appellate authority may deem fit.

(5) Subject to the provisions of sections 153 and 154, the decision or order of the appellate authority on appeal shall be final.

(6) The appellate authority may pass such interlocutory order pending the decision on the appeal as the appellate authority may deem fit.

(7) The appellate authority may award costs in any proceedings before the appellate authority to be paid either out of the funds of the registered Society or by such party to the appeal as the appellate authority may deem fit.”

6.In the light of Section 152 of the Tamil Nadu Co-operative Societies Act and based on the G.O.Ms.No. 247 of the Co-operation, Food and Consumer Protection Department, dated 08.11.1994, the learned II Additional District and Sessions Judge, Tiruppur, who had allowed the Appeal of the 1st Respondent and set aside the surcharge proceedings of the 2nd Respondent has no jurisdiction to pass such order. Therefore, the same is to be set aside and the subject matter of the Civil Miscellaneous Appeal has to be sent back for fresh disposal as per Section 152 of the Tamil Nadu Co-



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operative Societies Act and as per G.O.Ms.No.247, Co-operation, Food and Consumer Protection Department, dated 08.11.1994.

7.The learned Counsel for the Revision Petitioner invited the attention of this Court to ground No.2, which is extracted hereunder:

“2.It is submitted that as per G.O.Ms.No.247, CF&CP department dated 08.11.1994 Constituting Special Tribunal for Co-operative Societies, the Government constituted the presiding judge of the district court for the area within the local limits of concern district. In the present case, the Appeal filed by the 3rd Respondent under Section 152 of the TNCS Act, 1983 has been entertained by the II Additional District Judge, Tiruppur and not by the presiding judge of the District Court and therefore the impugned judgment passed by the II Additional District Judge, Tiruppur is liable to be quashed as it had been passed without jurisdiction.”

8.In support of his contention, the learned Counsel for the Revision Petitioner relied on the following rulings:-

- (a) In the case of ***Kiran Singh and Others Vs. Chaman Paswan and Others*** reported in ***AIR 1954 SC 340***.
- (b) In the case of ***A.Balaraman and Others Vs. Deputy Registrar of Co-operative Societies, Cheyyar, Thiruvannamalai District and Others***



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reported in (2009) 3 MLJ 1032.

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9.The learned Counsel for the 1st Respondent who was the Appellant before the learned II Additional District and Sessions Judge, Tiruppur, had vehemently opposed the submission of the learned Counsel for the Appellant, stating that the Appellant is prevented from making such argument as he himself submitted to the learned II Additional District and Sessions Judge, Tiruppur, that he had participated in the proceedings. While so, he is estopped from making such statement and turn around. Further, he would submit that the 1st Respondent is serving as Secretary of the Co-operative Housing Construction Society. He was promoted as Secretary for the Society and his juniors were paid higher salary than him. Therefore, he had presented those facts to his superiors, based on which he was granted his dues.

10.The learned Counsel for the 1st Respondent had invited the attention of this Court to the finding of the surcharge officer:-

“உடுமலைப் பேட்டை கூட்டுறவு வீட்டமைப்புச்
சங்கத்தில் திரு.வெ.பாலசுப்பிரமணியன் செயலாளராகப்
பணியாற்றிய போது சங்கத் தலைவரிடம் ஏற்பட்ட கருத்து



வேறுபாடு காரணமாக 09-09-1995 முதல் தற்காலிகப் பணி நீக்கம் செய்யப்பட்டும், ஆதனைத் தொடர்ந்து எவ்வித முகாந்திரமுமின்றி நிரந்தரப் பணி நீக்கம் செய்யப்பட்டும், இதனை எதிர்த்து பதிவாளர் (வீட்டு வசதி) சென்னை அவர்களிடம் பிரிவு 153-ன் கீழ் சீராய்வு மனு தாக்கல் செய்துள்ளார் எனவும், இதனை ஊற்று பதிவாளர் மேற்படி செயலரின் பணி நீக்க ஆணையை ரத்து செய்து மீண்டும் பணியில் சேர்த்துக் கொள்ள உத்திரவிட்டுள்ளார். மேலும் ஒழுங்கு நடவடிக்கையும் அகற்றப்பட்டது. இதனைத் தொடர்ந்து 17-06-2002ல் சங்கத்தின் செயலராகப் பொறுப்பேற்று பணியாற்றி வந்துள்ளார். பதிவாளர் (வீட்டு வசதி) அவர்களின் ஆணையில் சங்க செயலரின் தண்டனை ரத்து செய்யப்பட்ட பின்பு அவர் மீது ஒழுங்கு நடவடிக்கை தேவையில்லை என்று அறிவுறுத்தியுள்ளதால், மேற்படி செயலரின் தற்காலிக பணி நீக்கம் காலம் பதவி நீக்கம் செய்யப்பட்ட காலம் ஆகியவற்றை பணிக்காலமாகக் கருதி அதற்குரிய சம்பளங்கள் வழங்கப்பட்டுள்ளது.

இச்சங்கத்தில் திரு.வெ.பாலசுப்பிரமணியன், செயலாளராகப் பணியாற்றிக் கொண்டிருந்தும், ஏழுத்தருக்குரிய சம்பளமே வழங்கப்பட்டு வந்துள்ளது எனவும், இவருக்கு செயலருக்குரிய சம்பளமும் ரூ.5500-17-9000 வழங்காலம் என 03-09-1998-ல் நிர்வாகக்குழு தீர்மானித்துள்ளது எனவும், அதனை அமுல்படுத்தும் நேரத்தில் சங்க செயலருக்கும், தலைவருக்கும் கருத்து வேறுபாடு ஏற்பட்டு, வழங்காமல் நிறுத்தி வைக்கப்பட்டு இருந்தது எனக் குறிப்பிட்டுள்ளார். தலைவரால் வழங்கலாம் என தீர்மானிக்கப்பட்ட சம்பள விசிதத்தை வழங்கும்படி செயலரின் தொடர்ச்சியான கேகரிக்கையின் அடிப்படையில் உரிய சட்டக் கருத்து பெறப்பட்டு, மேற்படி ஊதியத்திலிருந்து நிலுவைத் தொகை கணக்கிடப்பட்டு இ கீழ்க்கண்ட நடைமுறைகளின்படி வழங்கப்பட்டுள்ளது எனத் தெரிவித்துள்ளார்.

03.09.1998-ம் தேதிய நிர்வாகக் குழு கூட்டத்தில்



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தீர்மானமாக இயற்றி அனுமதிக்கப்பட்ட ஊதிய விகிதமான ரூ.5500-175-9000 கணக்கில் எடுத்துக் கொள்ளப்பட்டு சங்கச் செயலருக்கு ஊதியம் வழங்கப்பட்டுள்ளது என்றும், இதற்காக 27-12-2003-ல் முறைப்படி தீர்மானம் இயற்றப்பட்டுள்ளது எனக் குறிப்பிட்டு சங்கச் செயலருக்கு முன்னாள் சங்கத் தலைவரால் நிர்ணயிக்கப்பட்ட ஊதிய விகிதத்திலேயே ஊதியமும் நிலுவைத்தொகையும் வழங்கப்பட்டுள்ளது. பதிவாளர் (வீட்டுவசதி) சென்னை அவர்களின் கடிதம் ந.க.8048/2000 அப.நாள் 23-05-2002 மற்றும் 17-07-2002 ஆகியவற்றின் அடிப்படையில் செயலரின் தற்காலிப் பணி நீக்க தண்டனை ரத்து மற்றும் ஒழுங்கு நடவடிக்கை அகற்றப்பட்டது என்ற முடிவுகளின் அடிப்படையில் செயலாளருக்கு ஏற்கனவே முன்னாள் தனி அலுவர் திரு.பி.ராமகிருஷ்ணன் அவர்களால் எழுத்தருக்கு உரிய சம்பள விகிதத்தில் மட்டுமே நிலுவைத் தொகை வழங்கப்பட்டிருந்தாலும், 01-06-1997 முதல் செயலராக உரிய சம்பளம் வழங்கப்பட வேண்டியது நியாயமானது எனக் கருதி ரூ.3,58,014/- நிலுவை ஊதியமாகவும், ஊரியர் வருங்கால வைப்பு நிதி சங்கத்தின் பங்கு ரூ.57,697/- ஆக மொத்தம் ரூ.4,15,211/- வழங்கப்பட்டுள்ளது. மேலும் இத்தொகையை வழங்க சங்கத்தின் நிதி நிலைமை ஏற்படையதாக இருந்ததாகவும், ஊதிய உயர்வினை வழங்க நிர்வாகக் குபவால் தீர்மானிக்கப்பட்டு இருந்தால், ஊதிய உயர்வு மற்றும் நிலுவைத் தொகை வழங்க தனி அலுவலராகிய தனக்கு அதிகாரம் உண்டா, இல்லையா என்ற கேள்வி எழவில்லை எனவும், செயலராகப் பணி புரிந்து கொண்டு எழுத்தருக்குரிய மிகக் குறைந்த சம்பளம் பெற்றதாலும், தனக்கு கீழ் எழுத்தர் நிலையில் உள்ள ஊரியர் அதிக சம்பளம் பெற்று வருவதால், தனக்கு மிகவும் மன வருத்தம் அளிப்பதாகச் செயலர் தொடர்ந்து கோரிக்கை வைத்தமையாலும், பாதிப்பு அடையாமலிருக்க கருதியமையாலும், 01-06-1997-ம் தேதியிலிருந்து செயலராகப் பணியாற்றி வந்தமையாலும், சங்கத்தின் நிதி



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நிலைமைக்கு ஏற்ப அத்தேதியிட்டு செயலருக்கு உரிய
நிர்வாகக் குழு நிர்ணயிக்கப்பட்ட ஊதியம் வழங்கப்பட்டது
எனத் தெரிவித்துள்ளார்.”

Also, he would submit that the 2nd Respondent as Deputy Registrar of Co-operative Societies, does not have the power to impose surcharge penalty proceeding.

11.In support of his contention, the learned Counsel for the 2nd Respondent relied on the following rulings:-

(a) In the case of *The Management, Tindivanam Primary Co-operative Agriculture and Rural Development Bank Ltd., Represented by its President, Tindivanam – 604 001, Villupuram District. Vs. The Joint Registrar of Co-operative Societies, Villupuram Region, Villupuram.* Dated 12.07.2022.

(b) In the case of *R.Murugesan Vs. The Joint Director (Tea), INDCOSERVE Campus, Coonoor – 643 101, The Nilgiris District* dated 07.09.2012.

12.Point for consideration:

Whether the judgment pronounced by the learned II Additional District and Sessions Judge, Tiruppur in



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C.M.A.No.36 of 2012, dated 28.02.2018 is to be set aside under Article 227 of the Constitution of India as it is without jurisdiction?

13.On perusal of the order passed by the learned II Additional District and Sessions Judge, Tiruppur, it is found that he had discussed the disputes and the issues raised by the Appellant before the learned II Additional District and Sessions Judge, Tiruppur. On behalf of the second Respondent, the learned Additional Government Pleader submitted his arguments based on the instructions given by the Respondents in CMA No.36 of 2012 viz., (i) the Deputy Registrar (Housing), Coimbatore Zone, Coimbatore and (ii) the Special Officer, No.1655 Udumalpet Co-operative Housing Society, Udumalapettai, who is the Revision Petitioner herein. At the relevant point of time, the elections to the Co-operative Society were not held. Therefore, the Special Officer was the second Respondent. After the election, the President of the said Society had raised this Civil Revision Petition. The only contention raised in this Civil Revision Petition is that the learned II Additional District and Sessions Court, Tiruppur, is not the Appellate Authority under the Tamil Nadu Co-operative Societies Act, 1989. Therefore, the judgment and decree passed by the learned II Additional



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District and Sessions Judge, Tiruppur, in C.M.A.No.36 of 2012 is without jurisdiction. Therefore, the same is to be set aside.

14.In the ruling relied on by the learned Counsel for the Revision Petitioner in *(2009) 3 MLJ 1032 [A.Balaraman and others -vs- Deputy Registrar of Co-operative Societies, Cheyyar, Thiruvannamalai District and others]* it is held that as per the Tamil Nadu Co-operative Societies Act, 1983, the Petitioner in the Writ Petition and the Appellant in the Writ Appeal had straight away approached the Writ Court without exhausting the remedy available under the Tamil Nadu Co-operative Societies Act, 1983. Therefore, the Division Bench of this Court had laid down the rule that without exhausting remedy available under the Tamil Nadu Co-operative Societies Act, 1983 by way of regular appeal before the Special Tribunal which is presided over by the Senior District Judge which has all the powers of Civil Courts. Without availing or exhausting the remedy available under the Tamil Nadu Co-operative Societies Act, 1983, Writ Petition is not maintainable. The Revision Petitioner had participated in the proceedings. Only if the Revision Petitioner herein, who is the second Respondent in C.M.A.No.36 of 2012, had raised at the initial stage before ever the appeal



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is taken for disposal and the learned II Additional District and Sessions Judge, Tiruppur, had rejected the contention of the learned Counsel for the second Respondent, then this Court can consider that issue. After participating in the proceedings and not raising jurisdictional issue before the learned II Additional District and Sessions Judge, Tiruppur, before ever disposing C.M.A.No.36 of 2012 when the judgment and decree of the learned II Additional District and Sessions Judge, Tiruppru, is against the Respondents in C.M.A.No.36 of 2012, now in this Civil Revision Petition, they cannot raise it.

15.The learned Counsel for the Revision Petitioner Thiru.M.S.Palanissamy relied on Paragraph No.6 of the reported ruling in ***(1955) 1 SCR 117 [Kiran Singh and others -vs- Chaman Paswan and others]*** which reads as under:

“6.The answer to these contentions must depend on what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of section II of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether



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it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be' determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of [section 11](#) of the Suits Valuation Act on this position."

Whereas the Hon'ble Supreme Court had relied on the ruling of the Privy Council in ***Rachappa Subrao Jadhav v. Shidapa Venkatrao Jadhav*** reported in **46 IA 24** wherein in the Privy Council held that the objection which was "the most technical of technicalities" was not taken in the Court of first instance, and that the Court would not be justified "in assisting an objection of that type", and that it was also untenable. Before concluding it observed:

"The Court Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent but to secure revenue for the benefit of the State...The defendant in this suit seeks to utilise the provisions of the Act not to safeguard the interests of the State, but to obstruct, the plaintiff; he does not contend that the Court wrongly decided to' the detriment of the revenue but that it dealt with the case without jurisdiction. In the circumstances this plea, advanced for the first time at the hearing of the appeal in the District Court, is misconceived, and was rightly rejected by the High Court."

16.The conduct of the Revision Petitioner before this Court is that



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having suffered an adverse order now he raised the point that the learned II Additional District and Sessions Judge, Tiruppur, is not the Tribunal to hear the appeal as per the Tamil Nadu Co-operative Societies Act, 1983. Here the revision is filed by the President of the Co-operative Society and not the Special Officer. Before the learned II Additional District and Sessions Judge, Tiruppur, the second Respondent was the Special Officer of the Society.

17. On perusal of the judgment of the learned II Additional District and Sessions Judge, Tiruppur, as well as the proceedings relied on by the learned Counsel for the first Respondent herein who is the Appellant before the learned II Additional District and Sessions Judge, Tiruppur, it is found that the Special Officer had recommended pay of the Petitioner as a Secretary of the Society and on behalf of the then President, who had promoted the first Respondent as Secretary of the Society which was approved by the Registrar of Co-operative Societies. Subsequently, the elected President had difference with the first Respondent and the then Secretary of the Society Thiru.P.Mani. Therefore, he had recommended suspension which suspension was revoked by the Joint Registrar of Co-



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operative Societies and also the first Respondent was promoted to join duty and to be paid for the period of suspension as his regular pay. The learned II Additional District and Sessions Judge, Tiruppur, is a Senior District Judge as per the Tamil Nadu Co-operative Societies Act, 1983 and as per the reported ruling relied on by the learned Counsel for the Revision Petitioner in **(1955) 1 SCR 117 [Kiran Singh and others -vs- Chaman Paswan and others]**, usually the Principal District Judge of the District is the competent authority under the Tami Nadu Co-operative Societies Act, 1983 to deal with the appeal arising from the disputes under the Co-operative Societies Act. Here either by special order or by inadvertence by the Principal District Judge, this case was allotted to the learned II Additional District and Sessions Judge, Tiruppur.

18.In the reported decision in **(1955) 1 SCR 117 [Kiran Singh and others -vs- Chaman Paswan and others]** the facts of the case was that the Plaintiff before the learned Sub Judge had undervalued the suit as per the Court Fees and Suit Valuation Act and filed the suit before the learned Sub Judge against the agricultural tenants seeking compensation from the agricultural tenants and for measne profits. The Defendants raised the issue



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that if the Court Fees had been properly considered, the District Judge of the District concerned was the competent Court to decide the case and appeal ought to have been filed before the Hon'ble High Court. In that case, as per the Court Fees and Suit Valuation Act, the Hon'ble Supreme Court had held that territorial and pecuniary jurisdiction can be raised at any stage. The ratio laid down in that case will not be helpful to the Revision Petitioner herein as Additional District Judge and Principal District Judge are equal as per the designation. The Principal District Judge, Tiruppur, himself has delegated the case to Additional District Judge. If this case had been decided by the Senior Civil Judge/Sub Judge, Tiruppur, then even if the finding is as per the provisions of Tamil Nadu Co-operative Societies Act, this Court has to necessarily set aside the order as the Court was without jurisdiction. Here, it is only a technical point as observed in paragraph No.10 by the Privy Council in the reported decision relied on by the learned Counsel for the Petitioner.

19.It is only a technical plea. In any way, the Revision Petitioner had suffered an adverse judgment. On merits, the judgment of the learned II Additional District and Sessions Judge holds good. When the promotion of



the first Respondent from the Clerk of the Society as Secretary of the Society had been approved by the Registrar of Co-operative Societies. When the first Respondent, who was appointed as Clerk of the same Society, having qualified in Diploma in Co-operation which is the prescribed qualification for consideration for promotion and on his experience, he was promoted as Secretary of the Society. The promotion was granted on the basis of the Board resolution of the very same Society which was approved by the Registrar of Co-operative Societies. Even though he was promoted as Secretary, he was not granted the salary of the Secretary which was recommended by the then Special Officer of the very same Society viz., Thiru.P.Mani.

20.The proceedings of the second Respondent in this Civil Revision Petition who was the first Respondent in C.M.A.No.36 of 2012 before the learned II Additional District and Sessions Judge, Tiruppur, against the then Special Officer Thiru.P.Mani was set aside on the very same ground. Also, before ever considering the first Respondent before this Court as a Secretary, the Board resolution had stated that the Co-operative Society has enough resources to pay the salary of the Secretary which also was



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considered by the Registrar of Co-operative Societies. Under those circumstances, the second Respondent in this Civil Revision Petition, who is the first Respondent in C.M.A.No.36 of 2012 initiating surcharge proceedings without holding proper enquiry under the principles of fairness, equity and good conscience which governs the departmental enquires and as per Section 87 of the Tamil Nadu Co-operative Societies Act, 1989. Further, it is the submission of the learned Counsel for the first Respondent/the Appellant before the learned II Additional District and Sessions Judge, Tiruppur that the Deputy Registrar of Co-operative Societies has no power to decide the service matters of the employees and officers of the Societies. It is to be considered only by the Registrar of Co-operative Societies who delegates his power to Joint Registrar of Co-operative Societies. The Deputy Registrar is incompetent to decide those issues. For that submission, the learned Counsel for the first Respondent Thiru.C.Prakasam relied on the orders passed by this Court in ***W.P.No.96344 of 2019 [R.Murugesan vs. The Joint Director (Tea), INDCOSERVE Campus, Coonoor – 643 101, The Nilgiris District and another]*** by the learned Judge of the Writ Court which is based on the ruling of the Hon'ble Supreme Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others*** reported in



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(2015) 4 SCC 334 wherein the relevant part is extracted as under:

“8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee-s right would outbalance, and therefore eclipse, the right of the employer to recover.

Xxxxxxxx

18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.



(v) *In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer-s right to recover.? ”*

As per the ruling of the Hon'ble Supreme Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others*** reported in (2015) **4 SCC 334** for the wages or salary paid to the person who had worked as Secretary, the same cannot be recovered as he had functioned as Secretary for the relevant period. Here the case is not that the first Respondent was incompetent or not qualified to hold the post. The first Respondent in this Civil Revision Petition/Appellant before the learned II Additional District and Sessions Judge, Tiruppur had sought documents for effective representation during the enquiry. He was not provided with documents sought by him and was not afforded with the opportunity to defend himself regarding the contentions raised by the second Respondent that having been paid the salary of the Secretary by the first Respondent before the learned II Additional District and Sessions Judge, the Revision Petitioner herein had suffered loss.



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21.As per section 87 of the Tamil Nadu Co-operative Societies Act, 1983 only when the Co-operative Societies had suffered loss due to wanton act of any of the staff or officers, surcharge proceedings can be initiated. Here it is not the case. The first Respondent in this Civil Revision Petition had worked as Clerk. He had acquired the prescribed qualification viz., Diploma in Co-operation and was experienced in the very same Society. Based on his experience and qualification, he was promoted as Secretary by the Board of Directors of the Society. The resolution recommending his promotion was forwarded to the Registrar of Co-operative Societies for approval. Only after obtaining approval, he was promoted as Secretary. Considering the fact that the Society has enough resources to pay the salary of the Secretary from the income of the Society, the same was approved by the Registrar of Co-operative Societies. While so, the initiation of proceedings under surcharge proceedings by the second Respondent who is only a Deputy Registrar of Societies, who is not competent to decide on service matters as per the decision of this Court dated 12.07.2022 in **W.P.No.2628 of 2015 [The Management, Tindivanam Primary Co-operative Agricultural and Rural Development Bank Ltd., Rep. by its President, Tindivanam, Villupuram District -vs- The Joint Registrar of**



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Co-operative Societies, Villupuram Region, Villupuram and others] is without the force of law. Further, the submission of the learned Counsel for the first Respondent Thiru.C.Prakasam that as per the reported ruling in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others*** reported in **(2015) 4 SCC 334**, the salary paid to the staff or officer of the Co-operative Society cannot be recovered under the surcharge proceedings.

22.In the light of the above discussions from Paragraphs 13 to 21, the technical plea raised by the Revision Petitioner, the President of No.1655, Udumalpet Taluk Co-operative Housing Construction Society, Udumalpet, Tiruppur District, is found unacceptable, particularly, in the light of the observation of the Privy Council in ***Rachappa Subrao Jadhav v. Shidapa Venkatrao Jadhav*** reported in **46 IA 24**.

23. The point for consideration is answered against the Revision Petitioner and in favour of the first Respondent. The judgment of the learned II Additional District and Sessions Judge, Tiruppur in C.M.A.No.36 of 2012 dated 28.02.2018 cannot be set aside as it is found to be well reasoned judgment. The same is confirmed.



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In the result, **this Civil Revision Petition is dismissed** as having no merits. No costs. Consequently, the connected miscellaneous petitions are closed.

17.08.2023

cda/srm

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

To

- 1.The II Additional District and Sessions Court,
Tiruppur.
- 2.The President,
No.1655, Udumalpet Co-operative Housing Construction Society,
Udumalpet,
Tiruppur District.
- 3.The Deputy Registrar of Co-operative Societies,
(Housing),
Coimbatore Region,
Coimbatore District.



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SATHI KUMAR SUKUMARA KURUP, J.,

cda/srm

**Order made in
C.R.P.No.3048 of 2021**

17.08.2023