

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2015

CORAM

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.20820 and 21942 of 2015
and

M.P.Nos.1, 1 & 2 of 2015

D.Radhakrishnan ...Petitioner in both W.Ps.

Vs.

1. The Joint Registrar of Co-operative Societies,
Perambalur Region,
Perambalur Town,
Perambalur Taluk & District.
2. The Deputy Registrar of Co-operative Societies,
Perambalur Circle,
Perambalur Town,
Perambalur Taluk & District. ...Respondents in both W.Ps.

Prayer in W.P.No.20820 of 2015: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in his proceedings bearing No.Na.Ka.3587/2014/Sa.Ba dated 16.06.2015 and quash the same and direct the respondents to furnish the alleged detailed report of the enquiry officer which had said to have been conducted under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983.

Prayer in W.P.No.21942 of 2015: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent in his proceedings bearing No.Na.Ka.3587/2014/Sa.Ba dated 10.07.2015 by Speed Post (posted on 16.07.2015 and served on me only on 17.07.2015) and quash the same.

For Petitioner
in both the petition : Mr.G.Ilamurugu

For Respondents
in both the petition : Mr.L.P.Shanmughasundaram
Spl.Govt.Pleader

C O M M O N O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. Heard Mr.G.Ilamurugu, learned Counsel appearing for the petitioner and Mr.L.P.Shanmughasundaram, learned Special Government Pleader appearing for the respondents.

3.The petitioner in both these Writ Petitions is the President of an Agricultural Co-operative Society and he has filed W.P.No.20820 of 2015, challenging the show cause notice issued under section 36 of the Tamil Nadu Co-operative Societies Act, 1983 (in short the 'Act'), in proceedings dated 16.6.2015 and subsequently since an order was passed under section 36 of the Act removing the petitioner from the post of President of the Society, separate Writ Petition in W.P.No.21942 of 2015 has been filed. Therefore, both the Writ Petitions were heard together and are being disposed of by a common order.

4.The preliminary objection raised by the learned Special Government Pleader is with regard to the maintainability of the Writ Petitions, by stating that the petitioner has not availed the alternate remedy available under the Act and without exhausting the alternate remedy, the petitioner should not be permitted to file these Writ Petitions. The further Submission is that W.P.No.20820 of 2015 has been filed only against a show cause notice.

5.However, upon hearing the learned counsel for the parties and perusing the materials placed on record, it has to be pointed out that the impugned orders have been questioned on the ground of violation of principles of natural justice, thereby disintitling the petitioner to putforth his contentions. When such contention is raised and if it is accepted, then the petitioner need not be directed to avail the alternate remedy available under the Act. The result in W.P.No.21942 of 2015 would cover W.P.No.20820 of 2015 also,

since the Writ Petitions are challenging the proceedings passed under section 36 of the Act.

6.The petitioner's case is that he assumed the Office as the President of the Society after being successfully elected in the election held on 09.05.2013 and he was administering the Society in a very efficient manner. At the relevant time, it came to the notice of the petitioner that the Secretary of the Society one Gandhi Pillai, had committed serious irregularities and therefore, the petitioner issued show cause notice to him on 04.09.2014, for which an explanation was submitted by the Secretary and not being satisfied with the explanation given, an enquiry officer was appointed and the enquiry report was submitted on 16.02.2015. Based on the enquiry report, show cause notice was issued to one Tmt.Vasantha, who was the Clerk in charge of Fertilizer Sales and the petitioner also took steps by filing a petition under section 90 of the Act before the second respondent.

8.In such factual scenario, the petitioner received a notice under section 87 of the Act based on a report submitted under Section 82 of the Act and simultaneously the petitioner's request for initiating proceedings under section 90 of the Act against the erring employees was rejected. In the background of these facts, the petitioner sought for the copy of the investigation report made under section 82 of the Act by representation dated 16.3.2015. However, without furnishing the same, the show cause notice under section 36 of the Act was issued which is challenged by the petitioner in W.P.No.20820 of 2015. The petitioner would state that only on 16.7.2015, he received the copy of the investigation report and the petitioner has demonstrated before this Court by producing the postal covers that the report was received by him only on 16.7.2015. However, on the same day i.e. on 16.7.2015, the petitioner received the impugned order under section 36 of the Act, which is impugned in W.P.No.21942 of 2015.

9.The primary ground on which the impugned order has been questioned is by contending that it is in total violation of the principles of natural justice. It is submitted that along with the show cause notice dated 16.6.2015 did not contain the copy of the alleged report filed by the investigation officer appointed under section 82 of the Act was not furnished and the same was served on the petitioner after he filed the Writ Petition challenging the show cause notice on 16.7.2015 and on

the next date, the impugned order under section 36 of the Act was served on him, without affording an opportunity to submit further explanation.

10. Perusal of the counter affidavit shows that this contentions raised by the petitioner has not been satisfactorily explained. Further more, on a perusal of the impugned order dated 10.7.2015, it is evidently clear that the authority has initiated proceedings under section 36 of Act, based on the investigation report submitted under section 82 of the Act, which is by the Deputy Registrar dated 16.2.2015. Therefore, when such report is the basis for action under section 36 of Act, the petitioner should have been furnished with the copy of the report which he has sought for and he should have been given sufficient opportunity to submit his explanation and raise all objections and thereafter only the authority could have proceeded with. However, this being not done, the entire proceedings stands vitiated.

11. Accordingly, W.P.No.21942 of 2015 is allowed and the order dated 10.07.2015 received by the petitioner on 17.7.2015 is quashed.

12. As the order passed under section 36 of the Act, challenged in W.P.No.21942 of 2015 has been allowed, the matter has to be remitted back to the stage of show cause notice dated 16.6.2015. Accordingly, W.P.No.20820 of 2015, is disposed of by directing the petitioner to submit his objections to the report under section 82 of the Act and on submission of such objections, the first respondent shall afford an opportunity of personal hearing to the petitioner and decide the matter afresh in accordance with law, after affording full and effective opportunity to the petitioner to defend himself. It is made clear that the first respondent should independently apply his mind without being in any way influenced by any of the observations made in his order dated 10.7.2015, which has already been set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

rpa

To

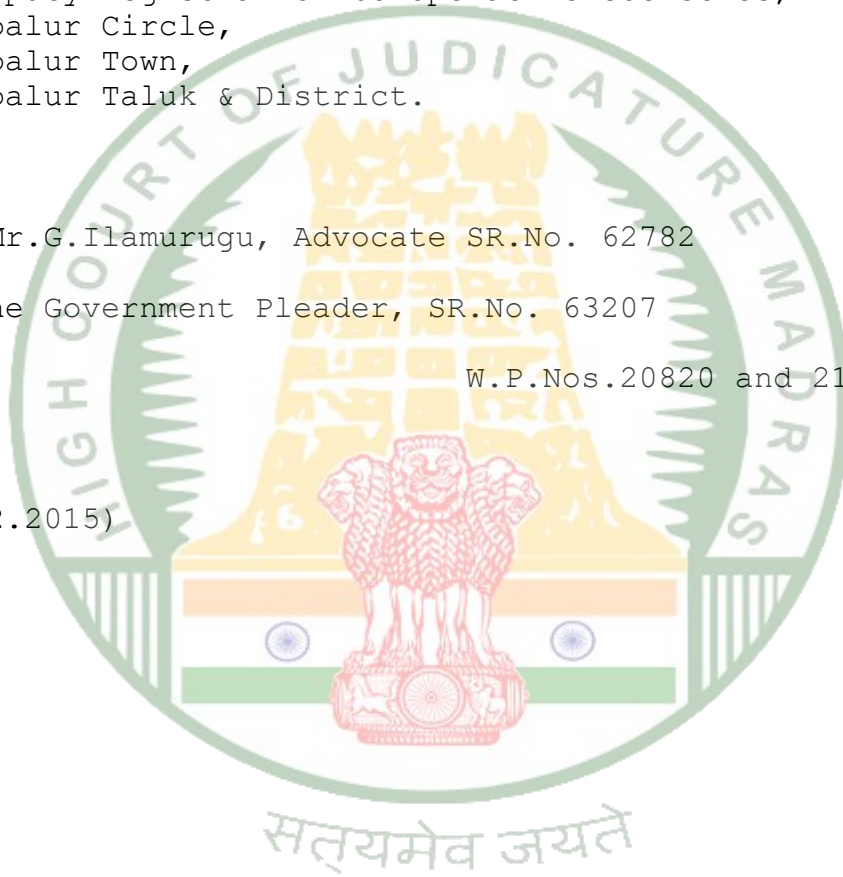
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2 CCs to Mr.G.Ilamurugu, Advocate SR.No. 62782

1 CC to the Government Pleader, SR.No. 63207

W.P.Nos.20820 and 21942 of 2015

PA (CO)
PSI (07.12.2015)



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