

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 04/09/2014

DATED: 07/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.15768 of 2014

&

M.P.No.2 of 2014

E.2576, Poovalai Primary Agricultural
Co-operative Credit Society Ltd.,
Rep. by its President,
Poovalai Post, Chidambaram Taluk,
Cuddalore District.

...Petitioner

Vs.

1. The Joint Registrar of
Co-operative Societies,
Cuddalore Region,
Cuddalore.
2. D.Siva Sankar,
The Administrator,
E-2576, Poovalai Primary Agricultural
Co-operative Credit Society Ltd.,
Poovalai Post, Chiadambaram Taluk,
Cuddalore District.
3. R.Singaravelu,
Secretary,
E.2576, Poovalai Primary Agricultural
Co-operative Credit Society Ltd.,
Poovalai Post, Chidambarak Taluk,
Cuddalore District.

4. V.Chandramohan

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records of the order passed by the first respondent in Na.Ka.No.3933/2012 Thu.Va.tha.1, dated 03.05.2013 and quash the same.

For Petitioner : Mr.Pitty Parthasarathy &
Mr.G.Ethirajulu

For Respondents : Mrs.T.P.Savitha
Government Advocate for R1

Mr.R.Karthikeyan for R4

R2 and R3 (No appearance)

O R D E R

The petitioner submits that he is the elected President of the Poovalai Primary Agricultural Co-operative Credit Society. He assumed Office on 15.05.2013. The petitioner submits that after assuming office, he received a communication dated 03.05.2013 from the first respondent. The first respondent therein directed the administrator to re-convey the property belonging to the society S.No.2, in Puduchatram, a hamlet in Alamelumangapuram Village, to one Chandramohan, son of Venkatakrisnan. He gathered from the communication that Venkatakrisnan, since deceased, borrowed a sum of Rs.26,470.50/- on 27.01.1973 on the security of his land above mentioned. Venkatakrisnan created an equitable mortgage of his properties measuring 9.89 acres. He died on 03.05.1977 during the subsistence of the mortgage. He further submits that the Society had filed an ARC for recovery of the sum borrowed and obtained the award in its favour. Then, it seems that the Society filed an EP and brought the property of Venkatakrisnan for auction. Since there were no bidders the property was purchased by the Society as a set off for the E.P. amount. Consequent to the purchase, the society took possession of the property as per Law, mutation of records has been effected and the society is in possession and enjoyment of the property for the past 41 years. The society is paying the kist to the Government and has leased out the land to a self help group.

2. The petitioner further submits that in the impugned order, the first respondent has directed the administrator to re-convey the property to the son of the above said Venkatakrisnan. The order of the re-conveyance is made under Rule 131 of the Tamil Nadu Co-operative Societies Rules, 41 years after the purchase by the society. From the impugned order, he gathered that Chandramohan filed petition under Rule 131 before the then Administrator of the Society for re-conveyance of the property. The impugned order further states that the administrator of the society passed a resolution No.1, dated 28.06.2011 for re-conveyance and forwarded

it to the Deputy Registrar of Co-operative Societies, Chidambaram. The petitioner further submits that no records are available with the Society to confirm and verify the statement made in the order cited above. The present Secretary of the Society does not co-operate and will not oblige him by producing the file. The order dated 03.05.2013 does not mention the ARC No, the date of award, the copy of the award, details of execution petition, the date of auction, the amount for which the auction was confirmed, the date of conveyance etc. The order is bereft of facts and states only the amount borrowed and the expenses incurred by the Society and the interest. The total amount given in the order is Rs.2,42,500.50/-. This figure is at variance with the earlier stated figure in the body of the order viz., Rs.2,20,000/-. This amount of Rs.2,20,000/- is alleged to have been deposited by Chandramohan to the Society. The date of deposit was not mentioned. The date of application by Chandramohan before the administrator and the application itself are not available with the Society. If it is available, it ought to have found a place in the order. The first respondent herself states that the above said facts were informed by the Secretary and the then Administrator of the Society. Mystery surrounds the entire event and the genuineness of the proceedings is itself under suspect.

3. The petitioner further submits that in the same order at a later stage, the first respondent states that she went through the prayer in the petition and the documents available in the Society. The first respondent contradicts herself at every stage in the order. The first respondent states that power is vested in her for re-conveyance in the Tamil Nadu Co-operative Societies Act and she is ordering the same on the recommendation made by the then Administrator and the Deputy Registrar, Chidambaram. No independent investigation and application of mind is evident from the order. The petitioner further submits that a property purchased by the Society in the year 1973 is ordered to be re-conveyed by the first respondent after receiving the sale price then paid with an interest at a flat rate of 18%. The Society has been in possession of the property for more than 41 years. Under the Indian Limitation Act, if no period of limitation is fixed in the Act, Article 137 will apply and the limitation period is 3 years. The order passed by the first respondent is against law. Further, the Registrar of Co-operative Societies, Chennai issued Circular No.1/87, dated 09.01.1987 limiting the period for re-conveyance to 6 months from the date of sale. The first respondent is bound by the circular and cannot disregard the circular and pass an order of re-conveyance against the direction given in the circular. The re-conveyance order by the first respondent is against the rule of perpetuity also. The petitioner further submits that the property is worth more than Rs.60 lakhs in the open market. A factory is coming

adjacent to the property. Property values have escalated multi fold in the recent times. The Society cannot be deprived of the gain it will make by selling it in the open market. The petitioner further submits that a petition dated 06.11.2013 has been sent to the Chief Minister's Cell, Chennai, The Chief Secretary, Chennai, District Collector, Cuddalore, Superintendent of Police, Cuddalore etc. His petitions has angered the first respondent and she, through the Deputy Registrar of Co-operative Societies, Chidambaram, had it ordered for inspection under Section 82 of the Tamil Nadu Co-operative Societies, Act. One Madavi CSR was appointed as Inspection Officer. She issued summons dated 03.02.2014 to the petitioner, directing him to appear before her on 07.02.2014. On that day, the petitioner was made to give a statement without the help of the records. Later, the petitioner understands that his statement was recorded by Madavi after she has submitted her report on 25.12.2013. The inspection report dated 25.12.2013 is not a only report submitted by Madavi. It could be seen from the records that another report dated 25.02.2014 was also submitted by her. The copies of the two reports are not served on him.

4. The petitioner further submits that from the above facts, it is clear that the 82 inspection report is a stage managed report and no inspection was carried out by Madavi. There cannot be better evidence to hold the inspection report as false and fabricated. The inspection report is illegally created to victimize him. On the basis of the report submitted by Madavi, the first respondent issued a notice dated 14.05.2014, in Na.Ka.No.2553/2014, calling upon him to give his reply to the question as to why the Board should not be superseded under Section 88 of the Tamil Nadu Co-operative Societies Act. The petitioner further submits that the supersession notice was issued by the first respondent out of malice and to blackmail him to execute the re-conveyance deed as desired by her. Hence, the petitioner has filed the above writ petition.

5. The first respondent has filed a counter affidavit and resisted the above writ petition. The first respondent submits that the petitioner has assumed office on 14.05.2013. The first respondent further submits that one Thiru.Venkatakrishnan (since deceased) borrowed a sum of Rs.26,170.50 on 27.01.1973 pledging his land as security, in land Survey No.2, Puduchatram, a hamlet of Alamelumangapuram Village, Cuddalore District. He created one equitable mortgage of his properties to the extent of 9.89 acres. The borrower Thiru.Venkatakrishnan died on 03.05.1977, without repaying the loan amount together with interest borrowed from the petitioner's society, that the society has obtained a money decree ARC No.1932/70.70. Then, the Society has filed execution petition No.CEP 1868/71.72 and brought the said property for auction sale.

However as there was no bidders, the property was set off to the society for the Execution Petition amount. The society took possession of the property as per law and the property was kept vacant from 28.05.1974 to 05.10.2003 and the lands were maintained by the Santhana Mullai Self Help Group, Mani Kollai Village by lease from 06.10.2003 to 12.07.2007 and renewed for further three years from 13.07.2007 to 26.07.2010 after that, the said Self Help Group handed over the land on lease to the petitioners society on 26.07.2010 and from that date, the land was again kept vacant by the Society till the date of re-conveyance. The first respondent further submits that Thiru.V.Chandramohan has filed a requisition petition under Section 131 of the Tamil Nadu Co-operative Societies Rules before the Administrator of the said Society for re-conveyance of the landed property mentioned above and the connected files and records are under the custody of third respondent and there is no evidence that the petitioner has requested the connected records from the third respondent. The Inspection Officer and the Auditor have verified the said records at the time of the visit. The files and records are with the Society.

6. The first respondent further submits that the then Administrator of the petitioner's society have passed resolution No.1, dated 28.06.2011 for re-conveyance of the said property after getting the loan amount with interest and other charges and she has submitted the re-conveyance proposal to the Deputy Registrar of Co-operative Societies, Chidambaram recommending re-conveyance of the said property to Thiru.V.Chandramohan, the legal-heir of the deceased loanee Thiru.V.Venkatakrishnan. It is further submitted that the petitioner has never requested for seeing the Societies records which is in charge of the Secretary. The copy of re-conveyance proposals filed and minute book were kept in the society's custody, inspection officer has also inspected above records, besides other records. The first respondent further submits that the first respondent has never hidden the particulars in the permission for re-conveyance dated 03.05.2013. In the order, the first respondent has mentioned the CEP No. and other details mentioning of arbitration No. and award etc were not necessary to mention in the said order dated 03.05.2013 Thiru.V.Chandramohan had deposited Rs.2,20,000/- by a cash challan No.5, dated 08.06.2011 in the petitioner's society. Two years have lapsed, for permission and Thiru.V.Chandramohan the date proposal on 15.02.2013, after calculating further interest 15.02.2013 to 09.05.2013 Rs.5,000/-. Hence, the difference in the deposit was arrived. The statement of the petitioner that mystery surrounds the entire event and suspicion above the genuineness of the proceedings of the first respondent are incorrect.

7. The first respondent further submits that the first respondent being the Regional Joint Registrar has Jurisdiction over the Cuddalore District and under his control, 3 Circle Deputy Registrars' are working. The Field Officer and Special Officer / Administrator in the field recommend each of the proposal of the society and the immediate officer who is having jurisdiction over the circle peruses the proposal and if it is found fit, the proposal to the first respondent will be recommended. This is the regular procedure adopted in co-operatives. In this case, the Administrator has submitted a proposal for re-conveyance of the land as per the requisition of Thiru.V.Chandramohan and have passed Resolution for the re-conveyance of the land to Thiru.V.Chandramohan. It is evident that the entire required certificate and records were furnished by the administrator and checked by the Circle Deputy Registrar, Chidambaram. Powers were confirmed to the Joint Registrar (first respondent) to issue re-conveyance order under Rule 131 of the Tamil Nadu Co-operative Societies Act, 1983 as per Government Order 2(D) No.108 and 109 Co-operation, Food and Consumer Protection Department dated 31.03.2005. Accordingly, after the examination of the proposals along with records, the first respondent issued proceedings in her R.C.No.3933/2012, dated 03.05.2013. The order is perfect and according to law. The petitioner has falsely stated that the first respondent has not investigated independently. Further, the first respondent has issued permission order for re-conveyance of the landed property after getting full settlement. The petitioner's society has not purchased the said land in the auction sale. The Sale Officer has set off the auction sale equal to the amount repayable to the petitioner's Society. No period of limitation is mentioned, hence period of re-conveyance shall be made to the borrower, when they have come forward to settle the loan amount with further interest and other charges. The order of re-conveyance will be made by the first respondent and the Indian Limitation Act will not be applicable in this issue.

8. The first respondent further submits that the Registrar of Co-operative Societies, Chennai have not issued any period of limitation for the re-conveyance of the landed property to the borrower and hence Cir.No.1/987, dated 09.01.1987 will not be applicable in this issue. The re-conveyance order made by the respondent is according to the law. The statement of the petitioner that the re-conveyance order of the first respondent is against law is not sustainable. The first respondent further submits that the petitioner has not filed petition dated 06.11.2013 to this Court for redressal. The first respondent further submits that the petition, said to have been submitted by the petitioner to the Higher Officials, were suitably answered and report submitted to the Registrar of Co-operative Societies, Chennai. The Registrar of

Co-operative Societies, after physically verifying the concerned file at Chennai was satisfied with the reply submitted by the respondent. The first respondent further submits that the circle Deputy Registrar, Chidambaram have ordered the inspection of accounts of the petitioner Society under Section 82 of the Tamil Nadu Co-operative Societies Act. The Field Officer Tmt.A.Madhavi was appointed as Inspection Officer in the third respondent Society by the Circle Deputy Registrar, Chidambaram. The Inspection Officer had enquired the petitioner on 13.02.2014 and obtained deposition on 13.02.2014, besides others, and completed the inspection and submitted inspection reports on 25.02.2014 and she has submitted reports for taking surcharge action under Section 87 of the Act and supersession of the Committee under Section 88 of the Act.

9. The first respondent further submits that the copy of inspection report was not called for by the petitioner and served to him. The first respondent further submits that the Inspection Officer has properly inspected the records of the Society and he had obtained deposition wherever necessary. The petitioner has no right to state that the inspection reports are false and fabricated. The Inspection Officer never created any illegal report to victimize the petitioner. The petitioner clearly knows that he had swallowed the Societies fund and created loss by misappropriation. The first respondent further submits that the first respondent has issued notice under Section 88 of the Act in her notice dated 14.05.2014, served on the petitioner itself a show cause notice calling for his explanation as to why the committee should not be superseeded. The petitioner requested time for his explanation besides others. The petitioner was in wrong impression that the supersession notice was issued by the first respondent to blackmail the petitioner. The first respondent, after careful explanation to the proposal, issued order for re-conveyance. The order dated 03.05.2013 is in accordance with law. Hence, the first respondent entreats the Court to dismiss the above writ petition.

10. The fourth respondent has filed a counter statement and resisted the above writ petition. The fourth respondent submits that his father Late Venkatakrisnan had borrowed a sum of Rs.15,000/- from the petitioner Society in the year 1970 and thereafter, he failed to repay the loan amount which was ultimately calculated at Rs.26,170.50/-. He further submits that the land situated in Survey No.2 of Puduchatram, a hamlet of Alamelumangapuram Village, Cuddalore District which was offered on equitable mortgage to secure the loan, was brought in auction by the third respondent Society in pursuance of an award obtained in ARC No.1932/70-71. The Society also filed E.P.No.1868/71-72 bringing the subject matter of property for auction. But, however, since there was no proper bidders in the auctions, the said

property could not be sold in auction and ultimately the property was set off to the society for the amount due to the Society from the above mentioned late Venkatakrishnan. The fourth respondent further submits that he was only a school student at the relevant point in time and he was not aware of the proceedings initiated by the Society and about the fact that the properties being mortgaged and having been taken over by the Society. Only in the year 2011, he came to know about the facts that his father mortgaged the family properties in favour of the Society to secure certain loan amount and the same was set off for the dues to the Society and the property was leased out to the third parties for lease. However the same has been lying unused since August 2010. It was in these circumstances, the fourth respondent had preferred an application dated 08.06.2011 seeking for repayments of the loans in question by including the power available to the Society in Rule 131 of the Tamil Nadu Co-operative Societies Rules, 1988, for which the first respondent was enabled to consider the application for re-conveyance as the said power under Rule 131 was delegated to the first respondent by the Registrar of Co-operative Societies. The fourth respondent further submits that the said representation of the fourth respondent was originally considered by the second respondent / Administrator, who had passed a resolution recommending the re-conveyance of the property and forwarded the same to the first respondent for confirming the proposal in which the second respondent has specifically mentioned that the fourth respondent had paid the entire dues as on date to the Society, that has to be leviable under the Tamil Nadu Co-operative Societies Rules, 1988. The fourth respondent further submits that the first respondent on receipt of the resolution for the proposal for re-conveyance of the property under Rule 131 of the Tamil Nadu Co-operative Societies Rules, 1988, based upon which, the third respondent by registered re-conveyance dated 10.05.2013 had re-conveyed the property in the name of the fourth respondent.

11. The fourth respondent further submits that the deponent Mr.Vijayakumar who is a student undergoing B.E. course in Annamalai University was proposed to the post of President of the petitioner Society by his father K.Murugan for his own unjust enrichment and the deponent was elected as the President of the petitioner Society in the local body elections conducted in the month of May, 2013 and assumed charge on 15.05.2013. However, since the President himself is a college student, the entire affairs of the petitioner Society has been controlled by the father of the President K.Murugan and he has been playing havoc in the Society by misusing the powers of the president and virtually acting as the defacto President of the petitioner Society. The President of the petitioner Society after assuming office, very well had knowledge about the re-conveyance made in favour of the fourth respondent

which has been admitted by the petitioner in the affidavit also. However, one K.Murugan father of the President of the petitioner Society who had acquaintance with the fourth respondent for quite some time when the fourth respondent was also visiting the Society had borrowed some amount from the fourth respondent during November 2013 as hand loan. When the fourth respondent called upon the said K.Murugan to repay the said loan amount, he had issued a cheque dated 16.11.2013 for a sum of Rs.2,80,000/- in order to repay the loan with interest. This respondent further submits that the said K.Murugan, father of the President of the petitioner Society had assured to repay the said loan amount by cash, but ultimately requested this respondent to deposit the cheque in the month of February 2013 and further since the said K.Murugan had failed to repay the loan amount as promised, this respondent had proceeded to issue notice under Section 138 of Negotiable Instruments Act and also had filed a private complaint before the Judicial Magistrate, Cuddalore which is yet to be numbered. Hence, the fourth respondent entreats the Court to dismiss the above writ petition.

12. The highly competent counsel Mr.Pitty Parthasarathy appearing for the petitioner submits that the petitioner is the elected President of the petitioner's society and he assumed office on 15.05.2013. The first respondent herein / Joint Registrar of Co-operative Societies herein directed the administrator to re-convey the property belonging to the Society, in Puduchathiram hamlet at Almelumangapuram Village to one Chandramohan S/o. Venkatakrishnan. The said Venkatakrishnan, now deceased, had borrowed a sum of Rs.26,470.50 on 27.01.1973 on the security of his land comprised in Survey No.2, Puduchathiram hamlet. The said Venkatakrishnan created an equitable mortgage of his properties measuring to an extent of 9.89 acres. After the mortgage, he had expired on 03.05.1977. Subsequently, the Society had to initiate recovery proceedings before the Registrar concerned and obtained award in its favour. Subsequently, the Society had initiated execution proceedings and brought the property on public auction. However, no bidders came forward to buy the property on public auction. But, the property was purchased by the Society as a set-off for the E.P value amount. Consequently, the property has been taken by the Society and connected records were mortgaged in the name of Society and they are enjoying the same for the past 41 years.

13. The highly competent counsel appearing for the petitioner further submits that the Society is remitting the mandatory tax towards the land to the statutory authorities. The first respondent passed impugned order and directed the administrator to re-convey the property to the son of the above said Venkatakrishnan. Further, the order has been passed under Rule 131 of the Tamil Nadu Co-operative Societies Rules. The said order

has been passed after a lapse of 41 years. Further, the impugned order has been passed on the strength of resolution dated 28.06.2011. The highly competent counsel further submits that the total loan amount also is at variance with the actual amount and deposited amount by the fourth respondent. Hence, the highly competent counsel entreats the Court to allow the above writ petition since after limitation, the impugned order has been passed.

14. The highly competent Government Advocate Mrs.T.P.Savitha appearing for the first respondent submits that the fourth respondent's father had borrowed a sum of Rs.26,170.50 as loan after mortgaging his property to an extent of 9.89 acres. The loanee had expired on 03.05.1977. Thereafter, the Society had initiated recovery proceedings and obtained decree and award. The decree also had been executed and property had been taken by the Society. Now, the property is maintained by self-help group. The highly competent Government Advocate further submits that the fourth respondent made an application under Section 131 of the Tamil Nadu Co-operative Societies Act before the Administrator, for re-conveyance of the landed property. Further, all the records were verified by the Inspection Officer Auditor. Besides, Society also passed a Resolution and forwarded it to Deputy Registrar for re-conveyance of land in favour of fourth respondent. The highly competent Government Advocate further submits that the fourth respondent had remitted a sum of Rs.2,20,000/- by way of cash to the petitioner's society. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition.

15. The highly competent counsel Mr.R.Karthikeyan appearing for the fourth respondent submits that the petitioner cannot invoke Article 226 of the Constitution for challenging the Co-operative Societies Order. The fourth respondent's father borrowed a sum of Rs.15,000/- against the mortgage of his property which has been situated at Puduchatram, a hamlet. The third respondent had obtained award and decree against the mortgagor, viz., the father of the fourth respondent. Subsequently, the property had been brought on public auction and the Society themselves participated in the public auction and knocked the bid which is not sustainable under law, since the public auction was not conducted in a fair manner. Suppose on the first occasion, no one comes forward to bid for the land on public auction, the second respondent has to bring the same property for auction for a second time, again after observing all legal formalities. In the instant case, the auction proceedings were not valid and therefore, all the subsequent proceedings has become null and void. However, the fourth respondent is an agriculturist / small farmer and filed a petition under Section 131 of the Tamil Nadu Co-operative Societies

Rules. The same was decided on merits. The Society also passed a resolution and recommended to the top officer of the Society to re-convey the said land. The highly competent counsel further submits that the fourth respondent is a bona-fide person and a good citizen of India and a hard worker, involved in agricultural operations. The fourth respondent and his family members are depending upon the land for their livelihood. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition.

16. On considering the facts and circumstances and arguments advanced by the highly competent counsels on all sides and on perusing the typed-set of papers, this Court is of the view that the father of the fourth respondent had mortgaged his landed property and received loan. The said loan amount including accrued interest thereon had not been remitted to the Society. Therefore, the second respondent herein had brought the property on public auction and the Society / loaner itself took the property on public auction which is not fair as it is prejudicial to the fourth respondent and against the principles of natural justice. Further, the property had not been maintained by the Society but it has been mentioned by the self help group / third parties and been in enjoyment for around 40 years. Therefore, the Society has not been meted out any loss. This Court is of the view that the Society has passed resolution and recommended to the top officer of the Society to re-convey the land. Accordingly, the first respondent had issued Orders for re-conveyance of said land in favour of the fourth respondent which is suitable for execution. Hence, the above writ petition is dismissed on merits. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

r n s

To

The Joint Registrar of
Co-operative Societies,
Cuddalore Region,
Cuddalore.

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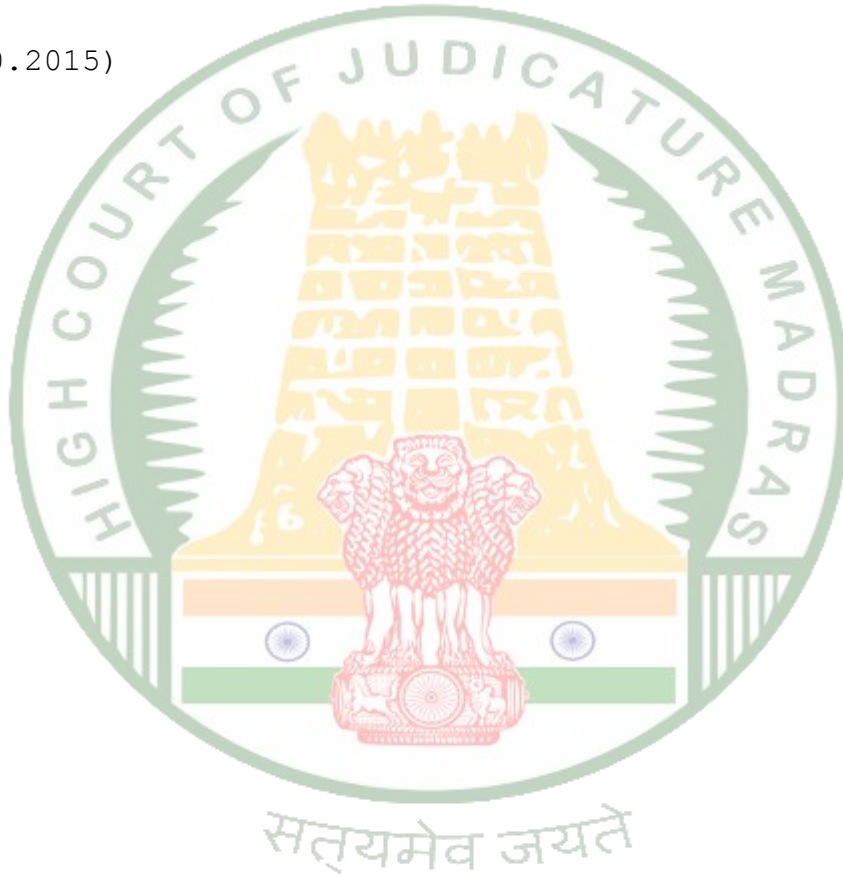
1 CC to Mr.R.Karthikeyan, Advocate SR.No. 48376

3 CCs to Mr.G.Ethirajulu, Advocate SR.No. 48410, 48801

1 CC to the Government Pleader, SR.No. 48638

W.P.No.15768 of 2014 &
M.P.No.2 of 2014

SVI (CO)
PSI (07.10.2015)



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