

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2015

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.22703 & 23369 of 2009
and M.P.Nos.1 of 2012 in W.P.No.22703 of 2009

1.J.Senthilvel .. Petitioner in WP.No.22703 of 2009
2.N.S.Krishnan .. Petitioner in WP.No.23369 of 2009

Vs

- 1.The State of Tamil Nadu, rep. by its
Secretary to Government,
Department of Cooperative, Food & Consumer
Protection Department,
Fort St.George, Chennai - 600 009.
.. 1st Respondent in both WPs
- 2.The Registrar of Co-op. Societies,
No.170, E.V.R. Periyar High Road,
Kilpauk, Chennai - 600 010.
.. 2nd Respondent in both WPs
- 3.No.AA.226 - Modakuruchi Primary Agricultural
Co-operative Credit Society Ltd.,
Rep by its Special Officer,
Modakuruchi - 638 104,
Erode District. ..3rd Respondent in WP.No.22703 of
2009
..4th Respondent in WP.No.23369 of 2009
- 4.The Joint Registrar of Co-op. Societies,
Erode Region, Karungalpalayam, Erode-638 003.
..3rd Respondent in WP.No.23369 of 2009
- 5.The Secretary, Modakuruchi Primary Agricultural
Co-operative Credit Society Ltd.,
Modakuruchi - 638 104,
Erode District. ..5th Respondent in WP.No.23369 of 2009

Prayer in WP.No.22703 of 2009: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned orders passed by the 2nd respondent in his proceedings Na.Ka.No.109517/09 Ma.Va.Ko.2 dated 19.10.2009 along with the consequential communication passed by the 3rd respondent dated 28.10.2009 and quash the same as null and void and direct the 1st respondent Government to direct the respondents 2 & 3 to implement and apply the orders in para.4(2) of the G.O. (2D) No.77 Cooperative, Food and Consumer Protection Department dated 22.07..2009 to the petitioner.

Prayer in WP.No.23369 of 2009: 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 2nd respondent in and by his impugned order passed in Na.Ka.No.109517/09 Ma.Va.Ko.3 dated 19.10.2009 and quash the same and direct the 2nd, 4th & 5th respondent to extend the proper interest calculation benefits to the petitioner from the actual date of availing the loan i.e., on 29.05.1998 in order to settle the loan as per the G.O. (2D) No.77 Cooperation, Food and Consumer Protection Department dated 22.07.2009 to the petitioner.

In WP.No.22703 of 2009

For Petitioner : Mr.K.Premkumar
For Respondents 1 & 2: Ms.T.P.Savitha
Government Advocate
For Respondent 3 : Mr.Muthumani Doraisami

In WP.No.23369 of 2009

For Petitioner : Mr.K.Premkumar
For Respondents 1 to 3 : Ms.T.P.Savitha
Government Advocate
For Respondents 4 & 5 : Mr.Muthumani Doraisami

ORDER

Heard the learned counsel appearing on either side and with their consent, both the Writ Petitions are taken up for final disposal.

2. In both the Writ Petitions, the dispute lies in a very narrow compass.

3. The Government extended the benefits of concessional rate of interest for cash credit loans and other loans extended by the Co-operative Societies, such as

Modakuruchi Primary Agricultural Co-operative Credit Society Ltd.,. It is not in dispute that the petitioners were the borrowers of the cash credit loan from the Modakuruchi Primary Agricultural Co-operative Credit Society Ltd., and that there were defaults. It is the stand of the respondent-Society that the loan was renewed in the year 2005. While granting the benefit of G.O.Ms.No.77, the respondent-Society is ready and willing to grant the same from the date on which the loan was extended, which, according to the respondent-Society, is to the effect from October 2005.

4. Though counter affidavits have been filed by the respondents setting out all the facts, it is submitted by the learned counsel appearing for the petitioners that there is no record to show that the loan was renewed later and the ledger entries clearly reveal the same and therefore, the petitioner is entitled to the benefit of the Government Order from the date of borrowal i.e., in the year 1998.

5. The learned counsel appearing for the second respondent produced copies of certain records belonging to the respondent-Society to state that the loan was renewed on 01.10.2005.

6. However, this Court cannot examine all these aspects in these Writ Petitions, when the petitioners seriously dispute the fact that there is no consent obtained from the petitioners to renew the loan. Therefore, while recording the stand taken by the respondents that they are ready to extend the benefit of the Government Order to the petitioners, the short issue, which is in dispute, between the parties is the date from which the benefit of Government Order has to be extended, for which purpose, it is necessary for perusing the records of the respondent-Society to ascertain the date of renewal of loan, which is said to have been made by the respondent-Society. This exercise cannot be done in a Writ Petition and for which purpose, this Court is of the view that, the second respondent should nominate an Officer in the cadre of Joint Registrar, who will independently assess the matter, call for records of the Modakuruchi Primary Agricultural Co-operative Credit Society pertaining to petitioners' loan amount and after affording an opportunity to the petitioners and the respondent/Society, take a decision in the matter, which shall be final binding upon the parties.

7. In the light of the above, there will be no necessity to set aside the proceedings, since the applicability of the Government Order is not in dispute. But only the date from which it is to be made applicable is at controversy. Therefore, the second respondent is directed to nominate Senior Officer in the cadre of Joint Registrar, who will issue notice

to the petitioners and the third respondent/Society, call for records, examine the correctness of the submissions made by the petitioners and pass a speaking order and communicate the same to the petitioners within a period of eight weeks from the date of receipt of a copy of this order.

8. These Writ Petitions stands disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.

1. The Secretary to Government
Department of Cooperative, Food & Consumer
Protection Department,
Fort St.George, Chennai - 600 009.

2.The Registrar of Co-op. Societies,
No.170, E.V.R. Periyar High Road,
Kilpauk, Chennai - 600 010.

3.The Special Officer,
NO.AA 226 Modakuruchi Primary Agricultural
Co-op Credit Society Ltd, Modakuruchi
Erode 638 104

4.The Joint Registrar of Co-op. Societies,
Erode Region, Karungalpalayam, Erode-638 003.

5.The Secretary, Modakuruchi Primary Agricultural
Co-operative Credit Society Ltd.,
Modakuruchi - 638 104,
Erode District-638 104

+2 ccs to Mr.K.Premkumar Advocate sr.65109
& 65110/15

+1 cc to Government Pleader sr.65266/15

W.P.Nos.22703 & 23369 of 2009

aa18/12/2015