



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 28.04.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P(MD)No.8605 OF 2016 & WMP(MD)Nos.6893 & 6894 of 2016

The Marthandam Bee Keepers
Cooperative Society No.2050,
Rep.by its President Manas,
Periyavilai Veedu,
Kuzhithurai Village & Post,
Kanyakumari District.

..Petitioner

.Vs.

1.The State of Tamil Nadu Rep.by
The Principal Secretary to Government,
Tamil Nadu Khadi, Village Industries &
Handloom Department, Secretariat,
Chennai-9.

2.The Chief Executive Officer/
Executive Registrar,
Tamil Nadu Khadi, Village Industries
& Handloom Department, Kuralagam,
Chennai-108.

3.The Assistant Director,
Khadi, Village Industries & Handloom,
Kottar, Nagercoil,
Kanyakumari District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records on the file of the second respondent in connection with the order passed by him in his Proc.Na.Ka.No.12820/2014/C1, dated 09.03.2016 served on 13.03.2016 and quash the same as illegal and pass further orders as this Court may deem fit and proper.

For Petitioner :Mr.R.Singaravelan
Senior Counsel
for Mr.D.Selvanayagam

For Respondents :Mr.N.S.Karthikeyan
Addl.Govt.Pleader.

ORDER

The prayer in the Writ Petition is for a Writ of Certiorari to call for the records on the file of the second respondent in connection with the order passed by him in his Proc.Na.Ka.No.12820/2014/C1, dated 09.03.2016 served on 13.03.2016 and quash the same as illegal.

2. Mr.N.S.Karthikeyan, learned Additional Government Pleader takes notice for the respondents.

3. By consent, the writ petition itself is taken up for final disposal.

4.The writ petitioner is a Society. The petitioner is aggrieved against the order passed under Section 88 of the Tamil Nadu Co-operative Societies Act, 1983. According to him, the impugned order is *per se* illegal, as the same has been issued straightaway without conducting any enquiry, thus violating the mandatory provisions, Sections 81 and 87 of the Act. Therefore, the impugned order is wrong.

5. In the meanwhile, the petitioner Society filed a civil suit in O.S.No.104 of 2014 claiming damages from the United India Insurance Company, Marthandam, towards the loss caused on 04.05.2014, based on the damages quantified by the Insurance Surveyor and Loss Assessor. It is further contended that if the impugned order is not set aside, the relief prayed for in the suit itself would become infructuous. Therefore, the impugned order has to be set aside.

6. Since the impugned order passed is in violation of the above said mandatory provisions, the petitioner Society preferred an appeal before the appellate authority namely, the Principal Secretary to the Government/ first respondent herein. That appeal has been filed and as early as on 28.03.2016. Even though the appellate authority has received the appeal, neither the appeal nor the stay petition was taken up for hearing. In the stay petition, the petitioner has sought for stay of the impugned order to safeguard the interest of the Society and money obtained by the Society till the final order is passed in the above appeal.

7. The learned Additional Government Pleader appearing for the respondents submitted that the appropriate authority is an appellate authority. Once the appellate authority is seized of the matter, it is for the petitioner to pursue the appeal before the first respondent and hence the present writ petition filed by the petitioner is not maintainable.



9. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, if the stay application is not taken up for hearing by the first respondent, the very right of the Society would be lost. As the suit is also pending, suffice to state that the appellate authority who has already seized of the matter, will entertain the stay application and give opportunity to the petitioner and pass appropriate order within a period of 15 days from the date of receipt of a copy of this order. Till the disposal of the appeal, the respondents shall not take any coercive steps to implement the impugned order.

10. Accordingly, this writ petition is disposed of. No costs. Consequently, the connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

- 1.The Principal Secretary to Government,
Tamil Nadu Khadi, Village Industries &
Handloom Department, Secretariat,
Chennai-9.
- 2.The Chief Executive Officer/Executive Registrar,
Tamil Nadu Khadi, Village Industries
& Handloom Department, Kuralagam, Chennai-108.
- 3.The Assistant Director,
Khadi, Village Industries & Handloom,
Kottar, Nagercoil, Kanyakumari District.

+1cc to M/s.D.Selvanayagam, Advocate in SR.24840

W.P(MD)No.8605 OF 2016
28.04.2016

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