

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.04.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.Nos.8335 and 8336 of 2014
and M.P.Nos.1 and 2 of 2014

V.Muthukrishnan ... Petitioner in both W.Ps

Versus

1.The Deputy Registrar of Co-operative Societies,
Cheyyar, Tiruvannamalai District.

2.The Co-operative Tribunal,
Tiruvannamalai,
Tiruvannamalai District
(District Court,
Tiruvannamalai.

... Respondents in both W.Ps

Prayer in W.P.No.8335 of 2014:-Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in respect of the order dated 28.11.2011 passed in C.T.A.No.9/2004 by the 2nd respondent, confirming the award ARC No.890/2002-2003, dated 17.03.2004 passed by the 1st respondent and quash the same.

Prayer in W.P.No.8336 of 2014:- Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in respect of the order dated 28.11.2011 passed in C.T.A.Nos.7/2004 by the 2nd respondent, confirming the award ARC No.1/2002-2003, dated 04.02.2004 passed by the 1st respondent and quash the same.

For Petitioner : Mr.M.Devaraj in both W.Ps

For R1 : Mr.S.T.S.Moorthy, AAG
Assisted by
Mr.L.P.Shanmugasundaram
SPL GP in both W.Ps

For R2 : Tribunal in both W.Ps.

C O M M O N O R D E R

The petitioner, in these writ petitions, seeks issuance of a Writ of Certiorari calling for the records in respect of the order dated 28.11.2011 passed in C.T.A.Nos.9/2004 and C.T.A.Nos.7/2004 by the 2nd respondent, confirming the award ARC No.890/2002-2003 and ARC No.1/2003-2004, dated 17.03.2004 and 04.02.2004 respectively passed by the 1st respondent and quash the same.

2. According to the learned counsel for the petitioner, the impugned order passed by the tribunal, without impleading the petitioner as a party, is liable to be set aside. The learned counsel for the petitioner relied upon the decision of this Court in W.P. (MD)Nos.7338 and 7339 of 2012, dated 21.07.2014 wherein, this Court has allowed the Writ Petitions and remanded the matter back to the tribunal to decide the issue, after affording sufficient opportunity to all the parties concerned. The learned counsel, therefore, prayed to allow these present Writ Petitions.

3. Per contra, the learned counsel for the respondents would submit that the tribunal has gone into the merits of the case and allowed the appeal. The learned counsel for the respondent would also submit that in the light of the decision rendered by this Court, the matter may be remanded back to the tribunal and the respondents may also be given liberty for furnishing any additional document and the same shall be considered by the tribunal.

4. Heard the learned counsel for the respondent and perused the materials.

5. Admittedly, the petitioner was not impleaded as a party in the appeal filed by the second respondent. In the decision relied on by the learned counsel for the petitioner in W.P.(MD) Nos.7338 and 7339 of 2016, dated 21.07.2014, this Court in paragraphs 8 and 9 of the order has held as follows:-

8. This is not the first case, wherein this Court has noticed such a flaw committed by Co-operative Tribunals. In a number of cases, within a short of span of one month, I have noticed that many of the Co-operative Tribunals in the State do not follow the said settled procedure, inasmuch as

they, in a causal manner, entertain the appeals and dispose of the same without insisting for impleadment of the parties in whose favour the award has been passed under Section 87 of the Act. I am hopeful that atleast hereafter the Co-operative Tribunals in the State shall avoid the shortcomings indicated hereinabove.

9. In view of the foregoing discussion, the Writ Petitions are allowed; the impugned order of the Co-operative Tribunal, Dindigul, in CMA CS Nos.14 and 16 of 2004, dated 09.12.2010, is set aside and the matter is remanded back to the Tribunal, which shall suo-motu implead the petitioner Society as a party respondent in the appeals, afford sufficient opportunity to all the parties concerned and then pass appropriate orders, in accordance with law, within a period of six months from the date of receipt of a copy of this order. No costs.

6. The above said order is also squarely applicable to the facts of the present case. Considering the above fact, this Court is inclined to set aside the impugned orders and remanded back to the Tribunal, which shall suo-motu implead the petitioner Society as a party respondent in the appeals and afford sufficient opportunity to all the parties concerned.

7. Before parting with the order, it is brought to the notice of this Court that in similar matters, this Court has seen in several cases, the respondent Department has not initiated action under Section 36 (1) of the Tamil Nadu Co-operative Societies Act to disqualify the member of the Board. In the instant case, surcharge order was passed by the department under Section 87 of the Tamil Nadu Co-operative Societies Act on 04.02.2004. But, so far the Department has not initiated any action under Section 36(1) of the Tamil Nadu Co-operative Societies Act to disqualify the petitioner as a member of the Board. At this stage, this Court has directed the Registrar of Co-operative Societies to submit a report why action has not been initiated under Section 36(1) of the Tamil Nadu Co-operative Societies Act. Pursuant to the query raised by this Court, the Additional Registrar of the Co-operative Societies appeared before this Court and informed that action being taken under Section 36(1) of the Tamil Nadu Co-operative

Societies Act against some of the members of the society and requested time to issue necessary orders to the concerned authorities to initiate action under Section 36(1) of the Tamil Nadu Co-operative Societies Act. Again, when the matter is posted before this Court on 26.04.2017, the Joint Registrar and the Additional Registrar of the Co-operative Societies present in the Court and placed the Circular No.5/2017 issued by the Registrar of Co-operative Societies, wherein in para 3 of the circular, the following instructions had been issued which reads as follows:-

3.The pre-requisite to initiate action under Section 36(1) shall be an audit under Section 80 or inquiry under Section 81 or inspection or investigation under Section 82 or inspection of books of accounts under Section 83 of Tamil Nadu Co-operative Societies Act, 1983. The regional Joint Registrars or the Additional Registrar, Chennai Region should ensure that this pre-requisite is satisfied before initiating action under Section 36(1). The report of audit under Section 80 or inquiry under Section 81 or inspection or investigation or inspection of books of accounts under Section 83 should be atleast in the recent past and should reveal misappropriation or fraudulent retention of any money or other property or has been guilty of breach of trust in relation to the society or of gross or persistent negligence in connection with the conduct and management of, or gross mismanagement of the affairs of the society. It should be noted that an action under Section 36(1) can be initiated against a past or present member of the board including the President or Vice President of a cooperative Society who is responsible for the misappropriation or fraudulent retention of any money or other property or has been guilty of breach of trust in relation to the society or of gross or persistent negligence in connection with the conduct and management of, or gross mismanagement of the affairs of the society. It should be noted that an action under Section 36 (1) can be initiated against a past or present member of the board including the President or Vice President of a

cooperative society who is responsible for the misappropriation or fraudulent retention of any money or other property or has been guilty of breach of trust in relation to the society or of gross or persistent negligence in connection with the conduct and management of, or gross mismanagement of the affairs of the society.

4. The powers of the Registrar under Section 36 in respect of any primary and central society have been conferred upon the Joint Registrars of Cooperative Societies and in respect of any primary, central and apex societies in Chennai Region have been conferred on the Additional Registrar of Cooperative Societies by G.O.(2D)No.108, Co-operation, Food and Consumer Protection Department, dated 31.08.2015. In order to curtail the delay in initiating of disposing the cases falling under section 36 it is instructed that immediately on receipt of reports under section 80 or 81 or 82 or 83 recommending action under section 36 of the Tamil Nadu cooperative Societies Act, 1983, against any person action should be taken to issue show cause notice under section 36(1) of the Tamil Nadu Co-operative Societies Act, 1983, to the person concerned. In the show cause notice, a time limit of not less than 15 days shall be given to the person concerned to give his explanation when extension of time to give his explanation is sought for by the person concerned it may be given in one or two occasions. It should be ensured that a reasonable opportunity of being heard is given to the person concerned to give his/her explanation.

5. As soon as the explanation is received, it shall be examined fairly and properly without any bias with available records and factual information furnished by the person concerned and final orders shall be passed on merits in accordance with law as early as possible. The Joint Registrars and the Additional Registrar, Chennai Region should see that the allegations

made in the show cause notice, the replies received from the person concerned, and the conclusion arrived at and the basis therefor are all discussed in the final order in detail. The Regional Joint Registrar/Additional Registrar, Chennai Region shall, if such person holds office of a member of the board, also by the same order remove him from that post. It should be ensured that the final order should be a speaking order. It should be borne in mind that the final orders shall contain the seal and signature of the Regional Joint Registrar or the Additional Registrar, Chennai Region.

8. The aforesaid circular shall form part of the record. The concerned authorities shall strictly adhere to the said circular without any deviation. If there is any deviation on the part of the concerned authorities, the Registrar of Co-operative Societies shall take necessary action against the concerned authorities. The said copy of the order also to be communicated to Registrar of other Co-operative Societies including Registrar, Housing Co-operative Societies.

9. With the above direction, these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

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To

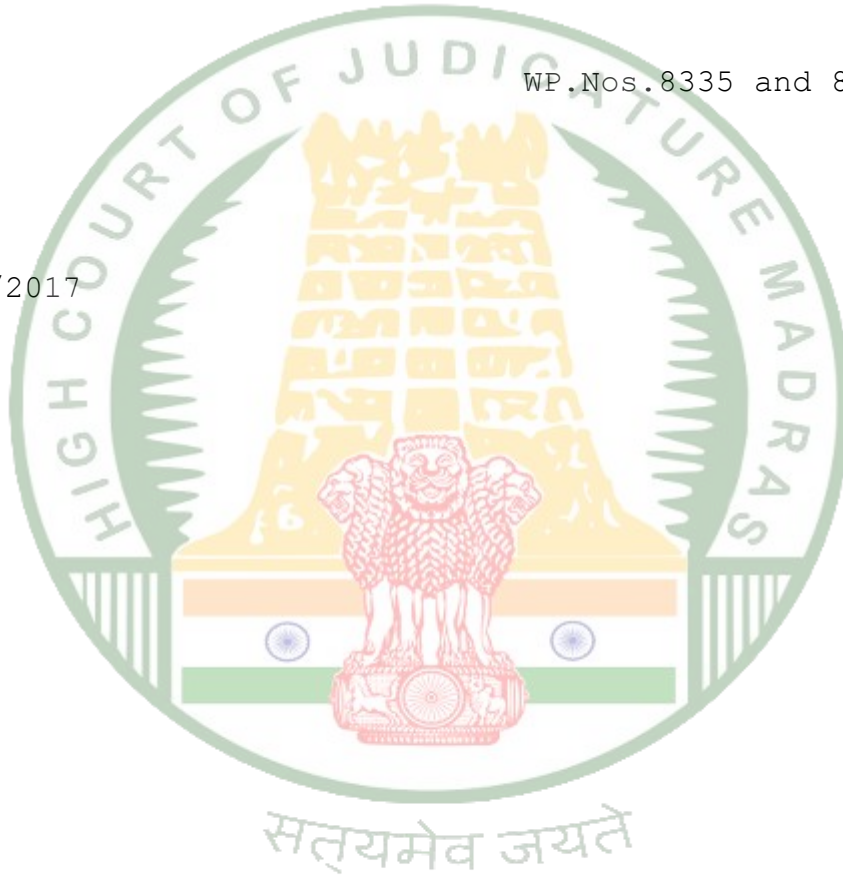
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+2cc to M/S.M.Devaraj, Advocate Sr.25995, 25996
+1cc to the Government Pleader Sr.36519

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nr[co]
srg 05/06/2017



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