

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.09.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 14069 of 2016
and WMP.No.12289 of 2016

P.Buddaraj

..Petitioner

Vs

1.The Deputy Registrar of Co-operative Societies,
Ranipet,
Vellore District.

2.The Enquiry Officer,
Thalikkal Primary Agricultural
Co-operative Credit Society,
Thalikkal Village,
Nemili Taluk,
Vellore District.

3.The President,
Thalikkal Primary Agricultural
Co-operative Credit Society,
Thalikkal Village,
Nemili Taluk,
Vellore District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the 2nd respondent not to proceed the enquiry under Section 81 of Tamil Nadu Co-operative Societies Act without furnishing necessary documents related to the enquiry.

For Petitioner : Mr.S.Sairaman

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader
(Co-operative Societies)

O R D E R

The relief sought for in this writ petition is to forbear the second respondent not to proceed with the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, without

furnishing the necessary documents related to the enquiry.

2. The very relief sought for as such, is totally misconceived. In view of the fact that Section 81 of the Tamil Nadu Co-operative Societies Act contemplates an enquiry and the Registrar may, of his own motion and shall, on the application of a majority of the Board or of not less than 1/3 of the members or on the request of the financing bank or of the District Collector hold an inquiry or direct some persons authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered Society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice, or mismanagement in relation to that Society or into any particular aspect of the working of that Society.

3. Thus, it is clear that the Registrar may order for an enquiry to find out any irregularity or illegality in relation to the administration of the Co-operative Societies in the State. It is a statutory enquiry to be conducted by the enquiry officer so appointed by the Registrar, in this regard under Section 81 of the said Act and the enquiry officer is bound to conduct an enquiry in accordance with the said Act. At this stage, the question of supplying documents to the writ petitioner does not arise at all. If any action is initiated pursuant to the enquiry report submitted under Section 81 of the said Act, by the enquiry officer, then only the question of seeking documents will arise and not at the stage of enquiry.

4. The learned Special Government Pleader appearing on behalf of the respondents made a submission that the issue was decided by this Court in the case of D.Sathyamoorthy Vs.The Deputy Registrar of Co-operative Societies, Uthakamandalam, reported in 2014(2) CWC 615, wherein at Paragraph Nos. 7,10 and 11 of the judgement is extracted hereunder.

" 7. At the outset, I should say that this contention is untenable and the same is contrary to the express provision contained in Section 82 of the Act. To appreciate this contention of the learned Counsel, it is worthwhile to have a quick look into Sections 80, 81, 82, 83 & 87 of the Act. Section 80 of the Act speaks of audit to be conducted by the Registrar of the Societies. Section 81 of the Act deals with an inquiry into the constitution, working and financial condition of a registered Society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt

practice, or mismanagement in relation to that Society or into any particular aspect of the working of that Society. Section 82, speaks of inspection and investigation. The language used in Section 82, will clearly indicate that it materially differs from Section 81, inasmuch as what is conducted under Section 81, is an inquiry whereas what is conducted under Section 82, is not an inquiry. It is either a simple inspection into the affairs of the registered Society in general or investigation into any alleged misappropriation, fraudulent retention of money or property, breach of trust, corrupt practice or mismanagement in relation to that Society or into any particular aspect of the working of that Society. While doing so, the officer, who conducts inspection or investigation shall have all the powers to Registrar when holding an inquiry under Section 81 of the Act. Section 83 of the Act speaks of inspection of books by financing Bank. According to which, a financing Bank may at any time, but shall at least once in every year, inspect through an officer or a member of its paid staff the books of every registered Society which is indebted to it.

10. In this regard, we may usefully refer to the Judgment of a Division Bench of this Court in S.V.K.Sahasramam v.The Deputy Registrar of Co-op.Societies and others, 2008(8) MLJ 231, wherein, in Para 9, the Division Bench has held as follows :

"9. It is nobody's case that in the instant case, the proceeding under Section 81 of the said Act amounts to an enquiry which can be called a Departmental or Disciplinary Enquiry. It cannot be disputed that an enquiry under Section 81 of the said Act is an enquiry in public interest in order to find out whether the affairs of a Cooperative Society are conducted legally and whether there are financial improprieties in the matter of conduct of its affairs. Such an enquiry cannot be prima facie compared to an enquiry against any individual Employee. It is obviously true that as a follow up action on such enquiry under Section 81, various other steps may be taken, viz., Surcharge proceedings can be initiated under Section 87, and steps can be also taken for initiating Criminal proceedings. In the instant case, both these

steps have been taken."

11. In view of the above legal position, it is manifestly clear that affording opportunity to cross-examine any person during the proceedings under these provisions is nowhere contemplated in the Act. Even Principles of Natural Justice have got no role to play inasmuch as there is no decision taken under these provisions by means of an adjudication so as to result in any Civil consequence against any person. As a matter of fact, it is like an investigation conducted by a Police Officer under Chapter XII of the Code of Criminal Procedure in respect of a Crime, during which, Accused shall have no opportunity to cross-examine any witness, who is examined by the Police Officer under Section 161 of Cr.P.C. Therefore, it is crystal clear that during the course of inspection or investigation under Section 82 of the Act, question of examining any witness in the presence of the person against whom proceeding has been initiated is unknown to the provisions of the Act. Therefore, the contention of the Petitioner that he was not allowed to cross-examine any witness during inspection under Section 82, is untenable and the same deserves only to be rejected."

5. In this view of the matter, the relief as such sought for in this writ petition cannot be considered and the writ petitioner has no legal right to claim any document at the stage of Section 81 enquiry conducted by the officer appointed by the Registrar under the Act. This being the factum of the case, no further consideration on the grounds raised in this writ petition, needs to be undertaken.

6. Accordingly, the writ petition stands dismissed. Consequently, connected miscellaneous petition is closed. However, there is no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Registrar of Co-operative Societies,
Ranipet,
Vellore District.

2.The Enquiry Officer,
Thalikkal Primary Agricultural
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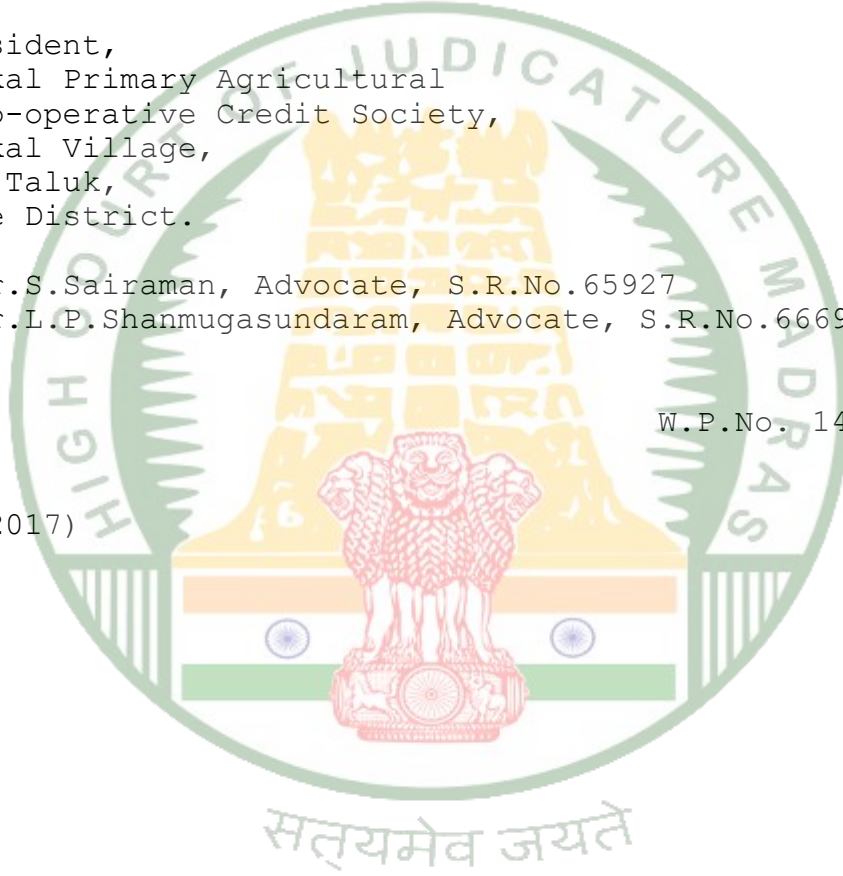
3.The President,
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+1cc to Mr.S.Sairaman, Advocate, S.R.No.65927

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.66691

W.P.No. 14069 of 2016

SVI (CO)
GN(12/10/2017)



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