

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.11843 of 2017

and

W.M.P.No.12786 of 2017

1. A.Mathivanan

2. T.Vasudevan

3. S.Ambika

4. L.Rani

5. R.Murugan

6. R.Seetharaman

7. R.Thiruppathi

...Petitioners

Vs.

1. The Deputy Registrar of
Co-operative Societies,
Krishnagiri Circle,
Krishnagiri

2. S.615, Gundalapatti Primary
Agricultural Co-operative
Credit Society,
Rep.by its Secretary,
Gundalapatty Post,
Krishnagiri Taluk & District
(R2 amended as per Order dated
28.06.2017 by DKKJ in WMP.No.17650/2017
in W.P.No.11843 of 2017)

..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records of the 1st respondent in surcharge notice

No.01/2017/sa.pa1 dated 09.01.2017 and consequential summon dated 20.02.2017 and quash the same insofar as the petitioners are concerned.

For petitioners : Mr.M.S.Palaniswamy

For respondents : Mr.V.Selvaraj
Additional Government Pleader

ORDER:

According to the first petitioner, the first petitioner is the President and the petitioners 2 to 7 are the board of directors of the second respondent Society. The first respondent ordered an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 to enquire into the affairs of the second respondent society. Based on the enquiry report dated 11.05.2016, the petitioners were given surcharge show cause notice No.01/2017/sa.pa1 dated 09.01.2017 under Section 87 of the Act. After receipt of the notice, the petitioners approached the first respondent and stated that the then Secretary of the Society had paid the entire loss amount with interest and also produced the recovery certificate. The first respondent assured to drop the surcharge proceedings after verification. In spite of that, the first respondent issued a summon dated 20.02.2017 to appear for enquiry on 07.03.2017. In the enquiry as well, the petitioners stated the above facts. Further, the first petitioner made a representation to the first respondent on 07.03.2017 for furnishing documents relating to the above summon and also requested to grant time to submit explanation.

2. The learned counsel for the petitioners would submit that the surcharge notice issued by the first respondent does not satisfy the requirement under Section 87 of the act and is not sustainable under law. Hence, the petitioners have filed this writ petition before this Court.

3. It is seen from the affidavit that the petitioners have filed the present writ petition before this Court, at the stage when the first respondent has issued the impugned surcharge notice to the petitioners to submit their explanation within fifteen days. The writ petitioners submitted their explanation, pursuant to the notice. Therefore, at this stage, this Court is not inclined to entertain this writ petition in view of the decision rendered by the Hon'ble Supreme Court in the case of Union of India Vs. Kunisetty Satyanarayana reported in 2006 (12) SCC 28, wherein it is held as follows.

"15. Writ jurisdiction is discretionary jurisdiction and hence, such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interest in such a matter."

4. The learned counsel for the petitioners seek further time to make additional explanation, on his request, if so advised two weeks' time from today is granted to file additional explanation.

5. The first respondent has to consider the petitioners' explanation dated 07.03.2017 and the additional explanation, if any, on merits and in accordance with law and pass orders as early as possible preferably within a period of eight weeks from the date of receipt of a copy of this Order.

6. The writ petition is disposed of with above directions. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

lok

To

1. The Deputy Registrar of
Co-operative Societies,
Krishnagiri Circle,
Krishnagiri

WEB COPY

2. The Secretary,
S.615, Gundalapatti Primary
Agricultural Co-operative
Credit Society,
Gundalapatty Post,
Krishnagiri Taluk & District

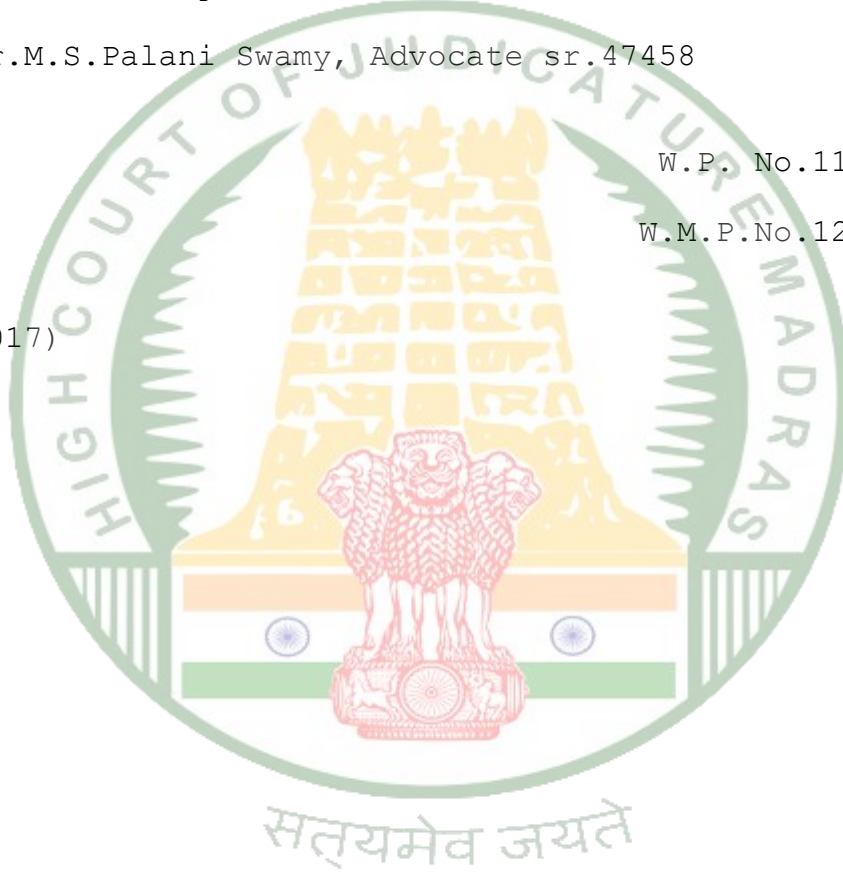
+1cc to Government Pleader sr.48087

+1cc to Mr.V.Selvaraj, Advocate sr.47478

+1cc to Mr.M.S.Palani Swamy, Advocate sr.47458

W.P. No.11843 of 2017
and
W.M.P.No.12786 of 2017

sj (co)
ss(20/9/2017)



WEB COPY