

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.22789 of 2014

and

M.P.No.1 of 2014

1.J.Sanjeev Jayaprakesh

2.D.Nagarajan

..Petitioners

vs.

1. The Deputy Registrar Of Co-operative Societies
Cheyyar Circle, Chayyar,
Tiruvannamalai District

2.The Enquiry Officer,
V.C.95, Cheyyar Revenue Divisional
Revenue Department Employees Co-opetative
Thrift and Credit Society, Vandavasi,
Tiruvannamalai District.

..Respondents

PRAYER: This Writ Petition is filed under Article 226 of Constitution Of India, to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings No. Surcharge No.1/2013-3014, Sa.Pa. (Na.Ka.No.3000/2013 Sa.Pa.) dated 09.05.2014 and quash the same and pass further orders.

For petitioner : Mr. C. Prakasam

For respondents : Mr.T. Girija

Government Advocate for R1

Mr.L.P.Shanmugasundaram

Special Government Pleader for R2

ORDER

This Writ Petition has been filed challenging the impugned surcharge proceedings initiated under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, passed by the 1st respondent in his proceedings Surcharge No.1/2013-3014, Sa.Pa.(Na.Ka.No.3000/ 2013 Sa.Pa.) dated 09.05.2014.

2. The learned counsel for the petitioners submitted that while the petitioners were working in the 2nd respondent Society, the 1st respondent ordered for enquiry under Section 81

of the Tamil Nadu Co-operative Societies Act, 1983 for the alleged irregularities in the issuance of loan to the members. The enquiry officer recommended to take disciplinary action against the petitioners and initiate surcharge proceedings under Section 87 of the Act and finally take criminal action. Since copy of the enquiry report was not furnished to the petitioners to defend their case, W.P. No.7121 of 2013 was filed by the petitioners. Based on the orders of this Court, the 1st respondent furnished a copy of the enquiry report. According to the petitioners, they have paid a sum of Rs.2.95 laksh to the 2nd respondent Society on 26.03.2013. In spite of the same, the petitioners were served with the notice under Section 87 and hence the same was challenged before this Court in W.P. No.9283 of 2014. Pending the said Writ Petition, order has been passed in the impugned surcharge proceedings, directing the petitioners to pay a sum of Rs.4,28,927/- together within interest, apart from the amount of Rs.2,95,515/- already paid by the petitioners. The grievance of the petitioners is that the respondents have initiated Section 87 proceedings against the petitioners alone, without implicating the Special Officers whose names are also found in the enquiry report, which is against the provisions of law. Hence, the present writ petition has been filed seeking the aforesaid prayer.

3. Learned counsel appearing for the respondents would submit that there is an alternative efficacious remedy available to the petitioner, under Section 152 of the Tamil Nadu Cooperative Societies Act, 1983, but the petitioner has come before this Court, without exhausting the said remedy. So the present writ petition is not maintainable and the same is liable to be dismissed.

4. Considered the rival submissions of the learned counsel for the petitioner and the learned counsel for the respondents.

5. Admittedly, the petitioners have filed the present writ petition, challenging the surcharge proceedings passed by the 1st respondent. When there is an alternative remedy available for the petitioner, to file an appropriate application, under Section 152 of the Act, the petitioner has to exhaust the efficacious remedy. Therefore, this writ petition is not maintainable and the same has to be dismissed as not maintainable. However, liberty is granted to the petitioner to file an appeal under the aforesaid provisions of the Act, if so advised, within a period of two weeks from the date of receipt of a copy of this order.

6. The writ petition is dismissed, on the above terms. Consequently, the connected Miscellaneous petition is

closed. No costs. Registry is directed to return the original impugned order, after obtaining a copy of the same.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

avr

To

1. The Deputy Registrar Of
Co-operative Societies
Cheyyar Circle, Cheyyar
Tiruvannamalai District
2. The Enquiry Officer,
V.C.95, Cheyyar Revenue Divisional
Revenue Department Employees Co-operative
Thrift and Credit Society, Vandavasi,
Tiruvannamalai District.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.46346

+1cc to the Government Pleader, S.R.No.46766

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and
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MSM (CO)
GN(31/08/2017)

सत्यमेव जयते

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