

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

WP.No.21311 of 2011 and
MP.No.1 of 2011

1. The Special Officer,
S.390 Pothanur Primary Agricultural
Cooperative Credit Society Ltd,
Pothanur, Paramathi Velur taluk,
Namakkal District.
 2. The Deputy Registrar of Cooperative Societies,
Thiruchengodu circle,
Namakkal District.Petitioners
- Vs.
- 1.M.Kanagasabapathy
 2. The Cooperative Appellate Tribunal,
Principal District Judge,
Namakkal.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 relating to the proceedings of the second respondent in CMACS.No.9 of 2010 dated 08.06.2011 and quash the same.

For petitioners : Mr.L.P.Shanmuga Sundaram,
Special Government Pleader

For respondents : Mr.R.Krishnamoorthy for R1
: R2 - Appellate Tribunal

ORDER:

Brief facts of the case

Based on an audit report which was submitted on 28.09.2001, the first respondent was called for offering his explanation and thereafter, enquiry was conducted and finally Surcharge proceedings was initiated by the second petitioner under Section 82 of the Tamil Nadu Cooperative Societies Act, 1983 for the alleged irregularities committed by the first respondent. In the audit report, it had been found that the first respondent had committed misappropriation of funds of the

petitioner society to an extent of Rs.57,508/- and has not maintained Investment Register and also failed to invest the deposit amount in Kisan Vikas Pattarams etc. Challenging the order of the Surcharge proceedings dated 15.11.2002, the first respondent has preferred an appeal under Section 152 of the Tamil Nadu Cooperative Societies Act, 1983 before the second respondent. The Tribunal has considered the contention of the first respondent that the order passed under Section 87(4) proviso (1) is barred by limitation as the enquiry report has not been submitted within the prescribed time under the Act. The other contention of the first respondent before the Tribunal was that the first respondent being the Assistant Secretary of the Society, he is not responsible for the loss sustained to the petitioner society. Both the contentions have been accepted by the Tribunal and the appeal was allowed. Challenging the said order, the petitioner society has filed writ petition before this Court.

2. The learned counsel for the petitioner would submit that in the light of the decision rendered in this Court in the case of S.V.K.Sahasramam Vs. Deputy Registrar of Cooperative Societies, Tiruvannamalai Circle, Tiruvannamalai, and others reported in (2008) 8 MLJ p 231, the period prescribed for completing the enquiry under Section 81 and 81(4) is not mandatory and is only discretionary. Therefore the findings of the Tribunal is liable to be set aside. The other contention has been raised by the learned counsel for the petitioner society, that the petitioner has admitted that he is the Secretary incharge of the society. Therefore, under the bye-laws, the liability and responsibility of the Secretary also applies to the Secretary incharge of the society. Therefore, on both the grounds, the order of the Appellate court is unsustainable to law and the same is liable to be set aside.

3. The learned counsel for the first respondent would submit that on the first contention of the writ petitioner that the period prescribed under the Act is directory and not mandatory in the light of the aforesaid decision of this Court. Insofar as the second contention is concerned, now, the learned counsel for the first respondent fairly agreed that the Assistant Secretary of the society is Secretary incharge of the society during the aforesaid period. But the learned learned counsel for the first respondent vehemently argued that there is no misappropriation or there is any breach of trust on the part of the first respondent. Further, there is no loss sustained to the Society as charges levelled against the petitioner has not come under the definition of wilful negligence. Therefore, the impugned order passed under Section 87 of the Act would stand vitiated and Appellate court was right in allowing the said appeal.

4. Heard, the learned counsel of the respective parties and perused materials.

5. So far as the first contention of the petitioner with regard to the limitation period, both the counsel for the parties fairly conceded that in the light of the decision rendered by this Court in the case of S.V.K.Sahasramam Vs. Deputy Registrar of Cooperative Societies, Tiruvannamalai Circle, Tiruvannamalai, and others reported in (2008) 8 MLJ 231, the findings of the court below is liable to be set aside. Further, the Tribunal holding that the first respondent is the Assistant Secretary, but not the Chief Executive Officer of the society. In this regard, the Tribunal has not been properly appreciated the case of the department, as per the bye-laws, the first respondent has admitted in his evidence that he has been Secretary incharge of the society, responsible for day to day affairs and administration of the society, the Secretary incharge is also responsible for liabilities and responsibilities of the society. This court held that first respondent is also responsible for discharging duties and responsibilities for the day to day administration of the society as per bye-laws and the same is fairly argued by the learned counsel for the first respondent. Other contention of the first respondent that the loss sustained to the society has not been discussed in the Judgment passed by the Appellate court and there is nothing for wilful negligence of the first respondent.

6. Hence, in the light of the above said facts and decision of this Court, being the Secretary incharge of the society, the first respondent is also liable and responsible for day to day affairs of the society. The other contention raised by the respondent has to be decided on merits by the Appellate Court. Therefore, this court is of the view that impugned judgment passed by the Tribunal is liable to be set aside.

7. In the result, the writ petition stands allowed and the matter is remanded back to the Tribunal to decide the issue on merits and in accordance with law as expeditiously as possible, preferably within a period of six months from the date of the receipt of a copy of this Order after providing an opportunity to the parties to file additional documents if any, and the same is permissible under law. Consequently, connected miscellaneous petition is closed. No costs.
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Sd/-

Assistant Registrar [CCC]

/TRUE COPY/

Sub-Assistant Registrar

To

The Cooperative Appellate Tribunal,
Principal District Judge,
Namakkal.

+1CC to MR.L.P.Shanmugasundara Advocate SR.NO.60304

+1CC to MR.K.perumkumar Advocate SR.NO.60511

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NR 24/11/2017



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