

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.13180 of 2017
and
W.M.P No.14171 of 2017

S.Viswanathan .. Petitioner

Vs.

1. The Joint Registrar of Co-op Societies
Tirupur Region,
Tirupur - 641 601.
 2. The Deputy Registrar of Co-op. Societies,
Dharapuram circle,
Tirupur District - 638 656.
 3. No.K-797, Kongalnagaram Primary
Agricultural Co-operative Credit Society
rep. by its Secretary,
Kongalnagaram - 642 245,
Udumalpet Taluk,
Tiruppur District.
- .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the first and second respondents to consider the petitioner's requests dated 31.03.2017 and

06.04.2017 and furnish the documents requested by him, for the purpose of submitting explanation in the Section 87 enquiry being held against the petitioner pursuant to the notice Na.Ka. No.718/2016/Sa.Pa. dated 19.05.2016 of the second respondent and until then forbear the respondents from proceeding with the same, and pass such other orders.

For Petitioner : Mr.N.Yogesh Kannadasan

For Respondents : Mr.S.T.S. Moorthy,
Additional Advocate General,
Asst. by
Mr. L.P. Shanmugasundaram
Special Government Pleader for R1 & R2
Mr. M.S. Palanisamy for R3.

ORDER

This Writ Petition has been filed seeking to direct the first and second respondents to consider the representation of the petitioner dated 31.03.2017 and 06.04.2017 and furnish the documents requested by him, for the purpose of submitting his explanation in the Section 87 enquiry being held against the petitioner, pursuant to the notice in Na.Ka. No.718/2016/Sa.Pa. dated 19.05.2016 of the second respondent and until then forbear the respondents from proceeding with the same.

2. The learned counsel for the petitioner submitted that the

petitioner is the elected President of the 3rd respondent Society from 09.05.2013. An audit was conducted by the Deputy Registrar for the period from 2009 to 2014 and the petitioner, in the capacity of the President of the Society, was held liable for the losses caused to the Society. Section 81 proceedings were initiated and inquiry was conducted and it was held that the petitioner has not prevented the occurrence of loss and so guilty. Subsequently, enquiry under Section 90 of the Tamil Nadu Co-operative Societies Act 1983 was conducted. According to the petitioner, as per the by-laws of the Society, the president has no role in the day to day affairs of the society and the same is managed only by the Secretary and the concerned Co-operative Sub Registrar of the Societies. Further, without giving the reports of the inquiry, show cause for surcharge proceedings dated 19.05.2016 has been initiated. The respondents have earlier conducted inquiry through various officers and the report was not properly given. Based on such erroneous findings, the impugned proceedings has been issued. Since the petitioner is unable to prove his innocence without the requisite documents, this writ petition is filed seeking the aforesaid prayer.

3. The learned Additional Advocate General appearing for the

respondents 1 and 2, would submit that there is an alternative efficacious remedy available to the petitioner, under Section 152 of the Tamil Nadu Cooperative Societies Act, 1983, to file an appeal before the Tribunal. However, the petitioner has preferred the present writ petition, without exhausting the alternate remedy. So the present writ petition is not maintainable and the same is liable to be dismissed.

4. Heard the learned counsel for the petitioner, the learned Additional Advocate General, the learned counsel for the 3rd respondent and perused the material available on record.

5. In view of the above submissions, the writ petition is liable to be dismissed as not maintainable. However, the petitioner is at liberty to file an appeal before the Tribunal, if so advised, within a period of two weeks from the date of receipt of a copy of this Order, excluding the period of pendency of the writ petition before this Court, under Section 14 of CPC.

7. The writ petition is disposed of, with the above directions.

Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

07.08.2017

rkp/avr

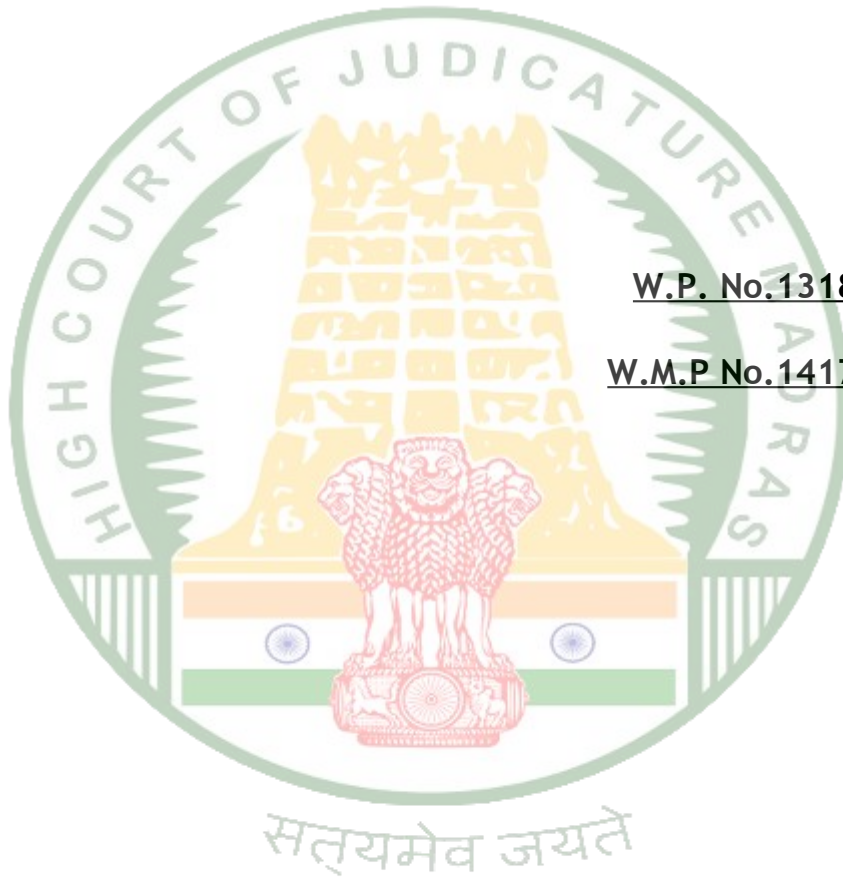
To

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D. KRISHNAKUMAR J.

rkp/avr



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