

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.15768 of 2017

and

W.M.P.Nos.17053 & 17054 of 2017

P.Natarajan

... Petitioner

Vs.

1. The Co-operative Sub Registrar /
Supervisor (Housing), Kallakurichi
O/o. Deputy Registrar of Co-operative
Societies (Housing),
Cuddalore, Cuddalore District.

2. The Enquiry Officer,
O/o. Deputy Registrar of Co-operative
Societies (Housing),
Cuddalore, Cuddalore District.

3. The Managing Director,
District Central Co-operative Bank,
Villupuram,
Villupuram District.

... Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 2nd respondent in his proceedings No. Nil, dated 15.04.2017 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.V.Selvaraj

Additional Government Pleader

ORDER

When the matter is taken up today for hearing, the second and third respondents are present before this Court.

2. The petitioner has filed the present writ petition challenging the proceedings No.Nil dated 15.04.2017 passed by the second respondent.

3. According to the petitioner, the petitioner is the President of the Thanthai Periyar Transport Employees Cooperative Housing Society. As a President of the said Society, the petitioner is maintaining a savings bank account having A/c.No.200003015 and a personal savings bank account having A/c.No.704575243 in the District Central Cooperative Bank at Villupuram. Both the bank accounts are operated by the petitioner. The first respondent following the orders for conducting enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 passed by the Deputy Registrar of Cooperative Societies(Housing), Cuddalore, by communication dated 04.04.2017, directed the said Society not to allow the petitioner to operate the above bank accounts. Pursuant to the same, without giving any prior notice and without having any power, the second respondent passed orders on 15.04.2017 directing the third respondent to freeze the said bank accounts.

4. The learned counsel for the petitioner would submit that the second respondent do not have any power to pass such order as per provisions under Section 23 of the Tamil Nadu Cooperative Societies Act, 1983. Further, the order has been passed without issuing a prior notice and without giving an opportunity to the petitioner to submit explanation. Further, the learned counsel for the petitioner has pointed out that the provisions under Section 81 (2) (c), the respondent does not have any power to freeze bank accounts and hence the impugned order is liable to be quashed.

5. On contrary, on instructions, the learned Additional Government Pleader made objections saying that there is a serious allegation against the petitioner that the petitioner has misused the power of the President of the Society by depositing advance receipts of the Society in his personal savings account. Only taking into consideration, the nature of the serious allegation against the petitioner, as directed by the first respondent, the second respondent had informed the third respondent to freeze the bank accounts operated by the petitioner. Further, as per Section 81 of the Act, the question of opportunity or notice or show cause is not warranted and moreover, if a notice is issued, the petitioner may withdraw all the amounts from the above accounts and the purpose of inquiry will be vitiated. Hence, the contention of the petitioner is liable to be rejected.

6. Heard, the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and perused the materials available on record.

7. As pointed out by the petitioner, in the light of the provisions under Section 81 (2) (c) of the Cooperative Societies Act, 1983 which reads as follows.

"He may seize the books, accounts or documents of the society, if he considers that such seizure is necessary to ensure the safety of such books, accounts or documents or to facilitate his inquiry, and shall give the person from whose custody the books, accounts or documents have been seized a receipt for the same.

Provided that the books, accounts or documents seized shall be retained by him only for so long as may be necessary for their examination and for the purpose of inquiry.

Provided further that the books, accounts or documents shall not be retained for more than three months at a time except with the permission of the next higher authority."

8. However, taking into consideration the serious allegation of misappropriation of the Society fund, the petitioner is permitted to withdraw money from the Society bank account for the salary of the employees and other miscellaneous expenses to run the society only after getting consent from the second respondent. Further, the second respondent is directed to verify immediately, any such requests made by the petitioner and pass orders.

9. In view of the above, the impugned order passed by the second respondent is quashed and the writ petition is allowed. However, liberty is granted to the respondents to proceed in accordance with the provisions of law, within three months, after providing an opportunity to the petitioner. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

lok

+lcc to Mr.C.Prakasam, Advocate, S.R.No.47036

+lcc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.46842

+lcc to the Government Pleader, S.R.No.46911

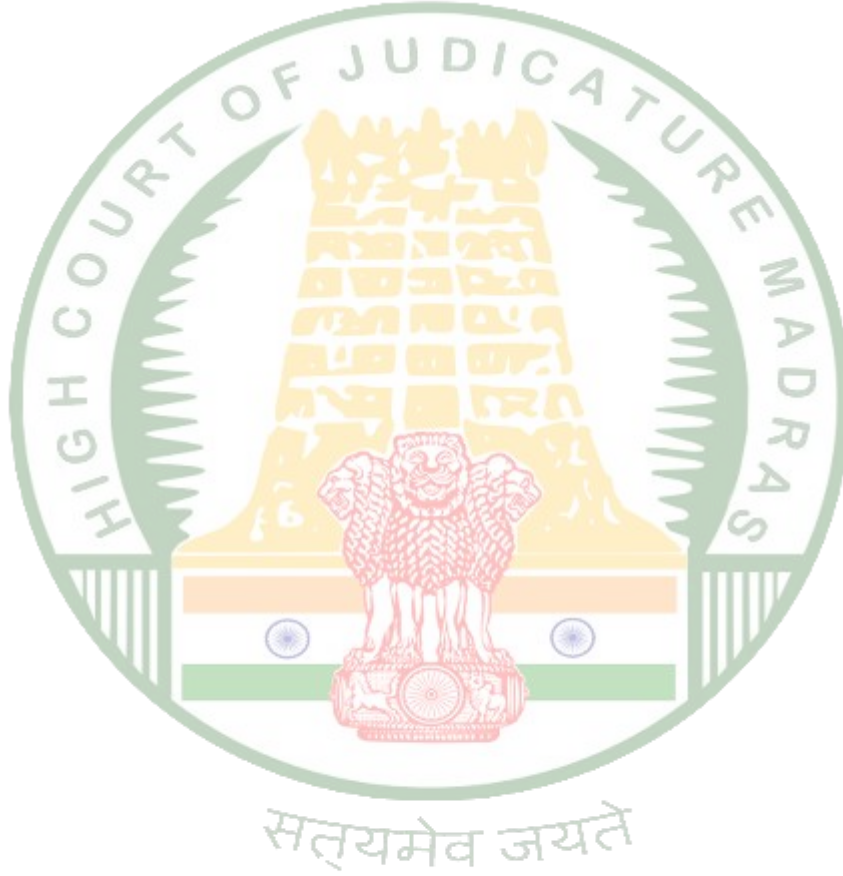
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CS IV

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