

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.18423 of 2016
and
W.M.P Nos.16124 & 16125 of 2016

C.K. Muniswami

.. Petitioner

/Vs/

1. The Principal District Judge/
Special Tribunal for Co-op.Cases
Vellore, Vellore District.
2. The Joint Registrar of
Cooperative Societies,
Vellore Region, Vellore District.
3. The Deputy Registrar of
Cooperative Societies,
Ranipet Circle, Vellore District.
4. The Management of VL.SPL.81
Thenkadapanthangal Primary
Agricultural Co-operative Credot
Society, rep. By its Special Officer
Thenkadapanthangal,
Wallajah Taluk, Vellore District.
5. The Assistant Director of
Co-operative Audit
Officer's Lane, Vellore
Vellore District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the impugned order in C.T.A. No.7/2010 dated 27.03.2015 passed by the 1st respondent herein and the order dated 29.06.2012 passed by the 4th respondent herein and quash the same and consequently direct the 4th respondent to pay the entire retirement benefits and all other attendant benefits to the petitioner herein and to pass further orders.

For Petitioner : Mr. T. Sundaravadanam

For Respondents : Mr. V. Selvaraj, AGP
for R1 to R3 & R5

Mr. L.P. Shanmughasundaram
Spl.Govt. Pleader for R4

O R D E R

This Writ Petition has been filed seeking to quash the order passed by the 1st respondent in C.T.A. No.7/2010 dated 27.03.2015 and the order dated 29.06.2012 passed by the 4th respondent and consequently direct the 4th respondent to pay the entire retirement benefits and all other attendant benefits to the petitioner.

2. Brief facts of the case is as follows :-

The petitioner, is the ex-Secretary of the 4th respondent Society. Two charges were framed against the petitioner. The first charge is, for misappropriation to a tune of Rs.9.5 lakhs towards subsidy to the members, who obtained loan from the Bank and the second charge is that he has misappropriated a sum of Rs.6,85,000/-, as if the above amount was disbursed to the members towards additional loan. After enquiry, it was found that the petitioner has misappropriated the aforesaid amount. Hence, surcharge proceedings were initiated against the petitioner under Section 81 of the Tamil Nadu Cooperative Societies Act. Aggrieved by the above said order, the petitioner preferred an appeal in C.T.A. (CS) No. 7 of 2010 before the Principal District Judge, Vellore. In the aforesaid appeal, the petitioner has raised various grounds, particularly, stating that the conditions envisaged under Section 82 or Section 87 of the Act has not been followed, by the respondents. But the respondents has appreciated the Special By-laws prescribing duties and responsibilities for each posts, as defined in Clause (v) of Sub Rule (1) of Rule 149 of the Tamil Nadu Cooperative Societies Rules, 1988. On fact, the petitioner has also raised the ground that the petitioner has not misappropriated, as charged by the 3rd respondent. The Appellate Tribunal has framed the issues only with regard to, 'Whether the appellant has committed misappropriation as found in the surcharge order, and Whether the appellant is liable to pay the surcharge amount, with interest, as per the order?' On the basis of the said points for determination, the Tribunal dismissed the appeal filed by the appellant. Challenging the aforesaid order passed by the Tribunal, the petitioner has filed the present Writ Petition before this Court.

3. Learned counsel for the petitioner would submit that the petitioner has filed an appeal by raising the grounds before the Tribunal. The main grounds raised by the appellant is that the procedures as contemplated under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 and Rule 104(5) of the Tamil Nadu Cooperative Societies Rules, 1988 were not followed by the 3rd respondent. The aforesaid provisions under the Act is mandatory. Further, learned counsel for the petitioner contended that the petitioner has raised the ground that as per Section 81 of the Tamil Nadu Cooperative Societies Act, which prescribes under sub section (4) that the inquiry shall be completed within a period of three months from the date of ordering the inquiry. The said provisions of the Act has not been satisfied by the 3rd respondent. Further, as per Section 87 (1) of the Tamil Nadu Cooperative Societies Act, under the proviso clause, no action can be taken after a period of 7 years from the date of occurrence. The aforesaid grounds raised by the petitioner before the Tribunal has not been taken for consideration but the Tribunal has passed order only with regard to the surcharge order, passed by the 3rd respondent and to pay the interest, if it is in order. Except the said issues framed by the Tribunal, the other grounds raised by the petitioner has not been framed for determination in the appeal. Therefore, the impugned order passed by the Tribunal is liable to be quashed.

4. Per contra, learned Government Advocate would submit that the Tribunal has passed an order by determining the issues involved in the facts of the case, on the basis of the surcharge order passed under Section 87 of the Tamil Nadu Cooperative Societies Act. The Tribunal has rightly come to the conclusion and accepted the surcharge order passed by the 3rd respondent and the contention of the petitioner was rejected, on merits. Therefore, there is no warrant to interfere with the orders passed by the Tribunal.

5. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material available on records.

6. On fact, the 3rd respondent, the Deputy Registrar of Cooperative Societies has conducted an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. Pursuant to that, surcharge orders were passed under Section 87 of the Act. The petitioner has filed an appeal before the 1st respondent/Tribunal. In the said appeal, the petitioner has raised a ground that the 3rd respondent has not followed the conditions as contemplated under Section 87(4) of the Act, to conduct the

enquiry. The said ground raised by the petitioner was not considered by the Tribunal and there is no discussion in the findings of the Tribunal. Therefore, non-consideration of the grounds in the appeal is erroneous and sustainable in law.

7. Therefore, based on the facts and circumstances of the case, to meet the ends of justice, the impugned order passed by the Tribunal in C.T.A. (CS) No. 7 of 2010 dated 27.03.2015 is set aside and remanded to the Principal District Judge/ Special Tribunal for Co-operative Cases, Vellore, to decide the appeal on merits, in accordance with law and pass orders as expeditiously as possible, preferably within a period of six months, from the date of receipt of a copy of this order, after affording an opportunity to the parties concerned.

8. Accordingly, the Writ Petition is allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

avr

To

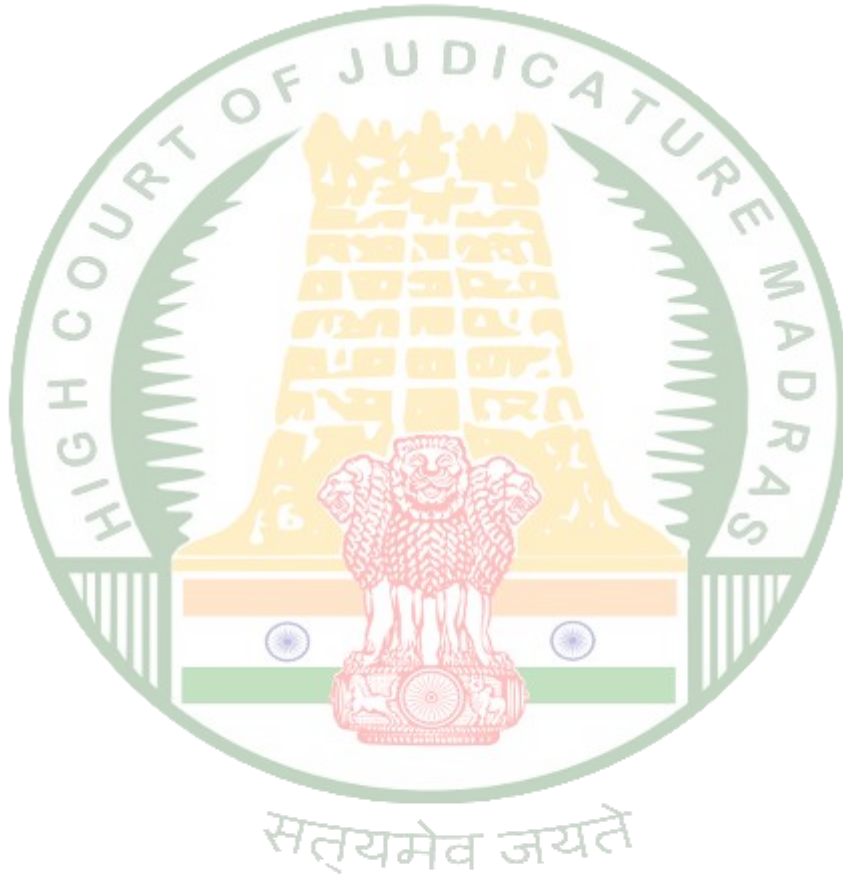
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+1cc to Mr.Sundaravadanam, Advocate in sr.no.22169
+1cc to Government Pleader in sr.no.21727
+1cc to Mr.L.P.shanmugasundaram, Advocate in sr.no.21704

W.P. No.18423 of 2016
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RR (CO)
NR 19/06/2017



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