

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.8.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR  
W.P.No.640 of 2012

R.MINERVA  
W/O. (LATE) RAJU NO.19 HIG OLD QUARTERS  
AVVAI NAGAR DHARMAPURI-636705. ... PETITIONER

Vs.

- 1 THE DEPUTY REGISTRAR OF  
CO-OPERATIVE SOCIETIES DHARMAPURI CIRCLE  
DHARMAPURI.
- 2 THE SPECIAL OFFICER  
S 6152 ETTIMARUTHUPATTI PRIMARY  
AGRICULTURAL CO-OPERATIVE BANK  
ETTIMARATHUPATTI UNGARANAHELLI POST  
DHARMAPURI DISTRICT. ... RESPONDENTS

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records in pursuant to the judgment and decree dated 01.06.11 passed in C.M.A.(C.S.).No.4/2010 on the file of the District Co-operative Tribunal Dharmapuri and quash the same.

For Petitioner : Mr.R.Premnarayan  
For Respondent No.1 : Ms.T.Girija, G.A.  
For Respondent No.2 : Mr.L.P.Shanmugasundaram,  
Spl. Govt. Pleader

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O R D E R

According to the petitioner, petitioner's husband Raju, an employee of the second respondent Bank. There was some allegations against the deceased Raju in sanctioning the agriculture loan to the farmers. Hence, an enquiry under Section 81 of the Tamilnadu Cooperative Societies Act was initiated against the deceased employee Raju. On the basis of the enquiry report, Surcharge proceedings under Section 87 was

initiated against the deceased Raju. Pending enquiry, petitioner's husband died on 15.7.2003. Thereafter, petitioner has filed W.P.No.16329 of 2008 challenging the award passed by the Deputy Registrar of Cooperative Societies, first respondent herein. The aforesaid writ petition was dismissed by this Court with liberty to file an appeal. The petitioner has filed an appeal in C.M.A.(CS) No.4 of 2010 before the District Cooperative Tribunal, Dharmapuri. The aforesaid appeal was dismissed on 1.6.2011. Challenging the judgment and decree passed by the tribunal in C.M.A.(CS) No.4 of 2010, the petitioner has filed the present writ petition before this Court.

2 According to the learned counsel for the petitioner, the deceased Raju died in the year 2003. According to the learned counsel for the petitioner, enquiry has not been completed within a period prescribed under Section 87 of the Act. Secondly, at the time of enquiry before the first respondent, relevant documents as contemplated under the Act have not been furnished to the petitioner. Even though aforesaid grounds have also been raised before the Appellate Court. These aspects were not considered by the tribunal. Therefore, judgment and decree passed by the tribunal is liable to be set aside.

3 The learned Special Govt. Pleader appearing for the second respondent would submit that the contentions raised by the appellant has been considered in detail by the tribunal. In support of his submission, the learned Special Govt. Pleader placed reliance on the following judgments.

- (i) Senthil Kumar vs. Co-operative Tribunal (Principal District Judge), Madurai and others reported in 2007 (7) MLJ 1048
- (ii) S.Ramadevi vs. The Special Officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellore District & others 2016(4) L.W. 452

4 Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

5 In so far as the first contention of the petitioner is concerned, petitioner cannot raise a ground that the enquiry has not been completed within a period prescribed under the Act, in the light of the judgment of this Court in Senthil Kumar vs. Co-operative Tribunal (Principal District Judge), Madurai and others reported in 2007(7) MLJ 1048 Following the aforesaid judgment, the Division Bench of this Court in S.Ramadevi vs.

The Special Officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellore District & others 2016(4) L.W. 452 has held as under:

"21. On the other hand, learned counsel for the first respondent sought to submit that use of the expression 'shall' in the proviso should be read as 'may' since it is a case where public funds are involved and sometimes proceedings may take time. In support of her contention, she has relied upon the judgment of the Division Bench of this Court in W.A.No.949 of 2008 (between S.V.K.Sahasramam vs. The Deputy Registrar of Co-op. Societies, Tiruvannamalai District) and Others) decided on 29.08.2008. The factual matrix related to an enquiry under Section 81 of the said Act. The issue which was examined was whether the period for completion of enquiry as provided under Section 81 of the said Act was mandatory or not and whether the word 'shall' has to be construed as mandatory. In that context, the Division Bench observed that the expression used in the section whether mandatory or not would be decided on various factors and mere expression of the word 'shall' alone is not decisive in the matter. In this behalf, a reference was made to the celebrated case of Montreal Street Railway Company vs. Normandin, AIR 1917 Privy Council 142, quoting as under:

'The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statutes must be looked at.'

22. The Division Bench also made a reference to two judgments of Hon'ble Supreme court in State of U.P. vs. Babu Ram Upadhy, AIR 1961 SC 751 and the Constitution Bench judgment in State of U.P. vs. Manbodhan Lal, AIR 1957 SC 912. After discussing the issue, the Division Bench opined that the enquiry under Section 81 of the said Act could not be compared to an enquiry against an

individual employee and such enquiry is to be followed by a proceeding under Section 87 of the said Act. A categorical finding was given that both the period under Section 81 and the second proviso to Section 87 could not be held to be mandatory, especially as allegations of embezzlement and misappropriation of public funds are involved and the members of general public who have been cheated have no control over those who hold the enquiry in respect of the time limit and thus, holding such enquiry as time barred would be great injustice. The time period was, thus, held not to be mandatory."

In the light of the aforesaid judgment, proviso to Section 81 could not be held to be mandatory.

6 In so far as the second contention is concerned, non furnishing of enquiry report to the petitioner has also been considered by the tribunal. In the judgment of the Division Bench of this court in S.Ramadevi vs. The Special Officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellore District & others (supra), the Division Bench of this Court held as under:

"24. In so far as furnishing of copies of certain documents and giving adequate opportunities to put forth the case is concerned, the proceedings do show that the appellant was permitted inspection of the material records. Depositions were given to her. She was given repeated opportunities to cross-examine the witnesses, which she earlier declined on account of absence of documents and thereafter also refused to cross-examine the witnesses. It cannot be said, there was inadequacy of opportunity violating the principles of natural justice as applicable to such proceedings. The judgment sought to be relied upon by the learned counsel for the appellant of the learned Single Judge of this Court in Sambandam vs. The Deputy Registrar (Credit) Co-op. Societies, Mylapore, Madras, 1999 (3) MLJ 310, would not really apply, as in the facts of that case, the enquiry report had not been furnished, while the

protest in the present case is apparently on an incomplete enquiry report. It does appear from the conduct of the appellant that excuses were sought to be made, despite sufficient opportunities to defend her case, of violation of principles of natural justice rather there being actually any such absence. The second plea is also, thus, rejected.

Therefore, when the petitioner was given opportunity before the enquiry officer and the said document was perused by the petitioner, thereafter, the petitioner cannot raise a ground that he was not furnished the document sought for by him. Thus, both the grounds raised by the appellant have been rightly negatived by the Appellate tribunal.

7. The other contention of the learned counsel for the writ petitioner, petitioner being the L.Rs. of the deceased employee Raja, even the said award has become final, the respondents cannot proceed against the legal heirs of the deceased employee, at this premature stage, this court cannot interfere with the recovery proceedings initiated against the petitioner, in the light of the judgment cited supra. The respondent can proceed recovery proceedings against the petitioner in accordance with the provisions of the Tamilnadu Cooperative Societies Act. Therefore, this question is left open to the petitioner to agitate before the appropriate forum in the appropriate stage.

8. Therefore, considering at any angle, the grounds raised by the petitioner, have been well considered by the tribunal. Therefore, there is no error or illegality in the order passed by the tribunal and thus, there is no warrant to interfere with the judgment and decree passed by the tribunal.

The writ petition fails and accordingly dismissed. No costs.

Sd/-  
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1 THE DEPUTY REGISTRAR OF  
CO-OPERATIVE SOCIETIES DHARMAPURI CIRCLE  
DHARMAPURI.

2 THE SPECIAL OFFICER  
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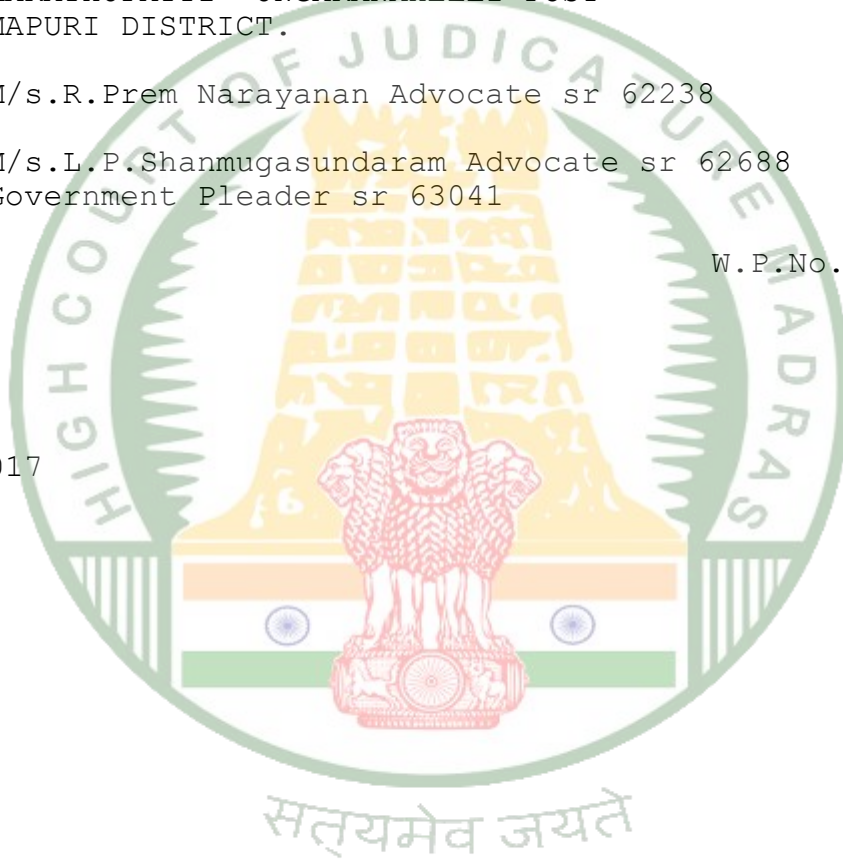
+1 cc to M/s.R.Prem Narayanan Advocate sr 62238

+1 cc to M/s.L.P.Shanmugasundaram Advocate sr 62688

+1 cc to Government Pleader sr 63041

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