

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.10885 of 2009

and M.P.Nos.1 and 2 of 2009

S-495 Krishnagiri Taluk
Agricultural Producers
Co-operative Marketing Society,
Rep. by its Special Officer,
Krishnagiri District. ... Petitioner

vs.

1. The Presiding Officer,
District Co-operative Tribunal
(Principal Judge)
Krishnagiri.

2. The Deputy Registrar of
Co-operative Societies,
Krishnagiri District.

3. T.Gopal

4. R.Veerapandian

5. N.Muthapa

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the Judgement passed in C.M.A.(CS) Nos.40/2001 and 6/2003 dated 19.12.2008 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.M.S.Palani swamy

For Respondents : R1 - Tribunal

Ms. T.Girija,
Government Advocate for R2

Mr.C.Prakasam for R3

Mr. Dhanaram

for Mr. G.Ethirajulu for R4

No appearance for R5

ORDER

This writ petition has been filed challenging the

common Judgement passed in C.M.A.(CS) Nos.40/2001 and 6/2003 dated 19.12.2008 by the 1st respondent.

2. The brief facts of the case is as follows :

The writ petitioner society initiated surcharge proceedings against 3rd and 4th respondents, along with N.Muthappa, based on the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, it was found that the aforesaid three persons have caused loss to the society and hence surcharge order was passed against them on 11.10.1996. Challenging the said order, respondents 3 and 4 alone filed appeals in C.M.A. (CS) Nos. 42 and 45 of 1996 and the 1st respondent by his order dated 26.02.1999 remanded the matter to the 2nd respondent to be decided afresh. After due enquiry, the 2nd respondent passed an order levying surcharge on respondents 3 and 4. The same was challenged in C.M.A. (CS) Nos. 40/2001 and 6/2002 before the 1st respondent. By judgement dated 19.12.2008, the appeals were allowed on the ground that sufficient opportunity was not given to the respondents 3 and 4 to cross examine the witnesses and that the enquiry was not concluded within the time limit as per Section 87(1) proviso 2 of the Act. Aggrieved by the order, the Society has filed this writ petition seeking the aforesaid prayer.

3. According to the petitioner society, the common judgement has been passed by the Appellate Court, allowing the appeal relying upon the decision in the case of V. Ekambaram & two others. v. The Co-operative Tribunal cum District Judge, Madurai & 2 Ors., reported in 2000(II) CTC 659 and also the other decisions of this Court in the case of R. Kamalam vs. The Deputy Registrar of Co-operative Societies & 2 ors. reported in 2004 W.L.R. 267 and Gabriel vs. The Deputy Registrar (Housing) Cuddalore & anr., reported in 2003 (3) CTC 23, on the ground that the enquiry has not been completed within a period of six months, as per the provisions of the Act.

4. It was further submitted that the said decisions have been considered by the Division Bench of this Court in the subsequent cases of S.V.K.Sahasraman Vs. Deputy Registrar of Cooperative Societies, Tiruvannamalai Circle, Tiruvannamalai and others reported in (2008) 8 MLJ 231 and in the recent judgment of this Court in S.Ramadevi Vs. The Special Officer, Ambur Cooperative Sugar Mills, Vadapudupet, Vellore District and others, reported in 2016-4-L.W.452, wherein this Court had considered in detail and had held that the time limit for concluding the enquiry is not mandatory and it is only discretionary. Following the aforesaid judgments, this Court has considered similar issues and has held that the time limit to conclude the enquiry is not mandatory and only discretionary.

5. The learned counsel for the respondents fairly stated that the Appellate Court has held the appeal on the ground of limitation and therefore, in the event of allowing the writ petition, the Appellate Court may be permitted to decide the case on merits.

6. In view of the above submissions made by the learned counsel for the parties and in the light of the decisions cited supra, this Court has no hesitation to set aside the impugned judgment of the 1st respondent in C.M.A.(CS) Nos.40/2001 and 6/2003 dated 19.12.2008 and remand the case to the Appellate Court to be decided on merits and in accordance with law. On instructions, the learned counsel for the petitioner and the respondents submitted that they would co-operate for speedy disposal of the appeal. Hence, the Appellate Court is directed to dispose of the appeal as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order.

7. The Writ Petition is allowed, with the above direction. Consequently, the connected Miscellaneous Petitions are closed. No costs.

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Presiding Officer,
District Co-operative Tribunal
(Principal Judge)
Krishnagiri.
2. The Deputy Registrar of Co-operative Societies,
Krishnagiri District.

+1 C.C. to MR.C.Prakasam Advocate SR.NO.65032/17

+1 C.C. to MR.M.S.Palaniswamy Advocate SR.NO.64210/17

W.P.No.10885 of 2009
and
M.P.Nos.1 and 2 of 2009

VGI (CO)
VS 13.11.2017