

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 12.09.2017  
Orders Pronounced on : 22.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No. 35415 of 2015  
and  
M.P. No. 1 of 2015

V.A. Balasubramaniam .. Petitioner

vs.

1.The Joint Registrar of  
Co-operative Societies  
Coimbatore Region  
Coimbatore - 641 018.

2.The Deputy Registrar of  
Co-operative Societies  
Coimbatore Region  
Coimbatore - 641 018.

3.The Veerakeralam Urban  
Co-operative Credit Society  
rep. by its President  
Veerakeralam,  
Coimbatore - 641 007.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records relating to the impugned order dated 07.09.2015 made in Na.Ka. No. 3212/2015/Ve.2 passed by the 1<sup>st</sup> respondent, quash the same and pass such further orders.

For Petitioner : Mr. N. Manokaran

For Respondents : Mr. L.P. Shanmugasundaram,  
Spl. Govt. Pleader

## ORDER

The petitioner has filed this writ petition seeking to quash the order dated 07.09.2015 made in Na.Ka. No. 3212/2015/Ve.2 passed by the 1<sup>st</sup> respondent.

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

The petitioner was the elected Director of the 3<sup>rd</sup> respondent Society during the period 09.05.2007 to 25.05.2001. An enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 was conducted and report submitted on 29.09.2014, stating that 70 loanees are defaulters in the year 2013. The 2<sup>nd</sup> respondent has sent a communication to the 3<sup>rd</sup> respondent, to take action against the defaulters for recovery of the loan dues under Section 90 of the Act, failing which, the Board will be held liable for the said loss. The 3<sup>rd</sup> respondent submitted his report dated 16.05.2015 to the 2<sup>nd</sup> respondent, to initiate action under Section 90 of the Act. However, the 2<sup>nd</sup> respondent returned the proposal on 24.05.2015, directing the 3<sup>rd</sup> respondent to resubmit the claim along with necessary receipts and proof for payment. The 3<sup>rd</sup> respondent filed a claim against the then Secretary and the erstwhile board members of the Society, for recovery of Rs.13,89,683/- with an interest of Rs.39,42,216/- and totaling a sum of Rs.49,31,899/- being the dues payable by 70 defaulters. Hence, the 2<sup>nd</sup> respondent issued the impugned show cause notice on the petitioner and other Board of Directors to submit their explanation as to why action should not be taken under Section 36 of the Act, to disqualify them from taking up any position in the society, in future. Challenging the said show cause notice dated 07.09.2015, the present writ petition has been filed before this Court.

3. The learned counsel for the petitioner would submit that the 2<sup>nd</sup> respondent has pre-determined the issuance of show cause notice. According to the petitioner, there is no wilful negligence on the part of the petitioner. After an inordinate delay of 14 years, action has been taken by the respondents. Further, the show cause notice issued by the 1<sup>st</sup> respondent is pre-determined. The learned counsel for the petitioner strongly relied upon the judgement of the Hon'ble Supreme Court in the case of ORYX FISHERIES PRIVATE LIMITED vs UNION OF INDIA & ORS., reported in (2010) 13 SCC 427, Therefore, the impugned show cause notice is liable to be quashed, on the main ground that the authorities have pre-determined the issue.

4. Relying on the counter affidavit filed by the respondents 1 and 2, learned Special Government Pleader submitted that the petitioner is one among the Directors of the

Board. During that period, loan amount was sanctioned to many members, out of which 497 are still outstanding and not even a single due was repaid by 173 borrowers. Out of them, 70 borrowers were not found in the addresses given by them, while obtaining the loan. Hence, an enquiry was conducted under Section 81 of the Tamil Nadu Cooperative Societies Act. Based on the report submitted, action was initiated under Section 36 of the Act and also initiated arbitration proceedings before the 2<sup>nd</sup> respondent in ARC No.239/2015 and the same is pending. According to the respondents, the present writ petition has been filed without availing the appeal remedy provided as per the Act and hence the petition is at a pre-mature stage.

5. Heard the submissions made by the learned counsel for the petitioner and the learned Special Government Pleader and perused the material on records.

6. As per the aforesaid decision in the case of ORYX FISHERIES PRIVATE LIMITED, the Hon'ble Supreme Court has held as follows in paragraphs 23, 24 and 43 :-

"23. Relying on the underlined portions in the show cause notice, the learned counsel for the appellant urged that even at the stage of the show cause notice the third respondent has completely made up his mind and reached a definite conclusion about the alleged guilt of the appellant. This has rendered the subsequent proceedings an empty ritual and an idle formality.

24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

...

43. For the reasons aforesaid, this Court quashes the show cause notice as also the order dated 19.03.2008 passed by the third respondent. In view of that, the appellate order has no legs to stand and accordingly is quashed.

"

7. The Hon'ble Supreme Court has laid down the law as under in the following decisions :

(i) In State of U.P. v. Brahm Datt Sharma reported in 1987 (2) SCC 179, at Paragraph 9, held as follows:

"When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. 'The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature, the High Court in our opinion ought not have interfered with the show cause notice.

(ii) In Whirpool Corporation v. Registrar of Trade Marks reported in 1998 (8) SCC 1, the Supreme Court, held that,

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is

that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal".

(iii) The Supreme Court in *Special Director v. Mohd. Ghulam Ghouse* reported in 2004 (3) SCC 440, at paragraph 5, held as follows:

"This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was

totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted."

(iv) In Union of India v. Kunisetty Satyanarayana, reported in 2006 (12) SCC 28, the Supreme Court, held that,

"15. Writ jurisdiction is discretionary jurisdiction and hence, such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

8. Considering the judgement passed by the Hon'ble Supreme Court in ORYX FISHERIES PRIVATE LIMITED and other afore cited judgements of the Hon'ble Supreme Court, the Division Bench of this Court consisting of Justice S. MANIKUMAR and myself as a party to the aforesaid Judgment, after discussing various decisions, in W.A. No. 702 and 703 of 2016 dated 18.04.2017, has held as follows :-

"17. In the light of the above discussions and decisions, we set aside the order passed by the Writ court and the impugned show cause notice issued by the first appellant is sustained with liberty to the respondents to submit their reply to the show cause notice dated 8.5.2015 within a period of six weeks from the date of receipt of a copy of this order and on receipt of the said reply, the first appellant is directed to consider the same on merits and in accordance with law. Accordingly, the Writ Appeals are allowed. No order as to costs. Connected Miscellaneous Petitions are closed."

9. In view of the afore cited judgements, the contention of the petitioner that the issuance of show cause notice is pre determined could not be accepted.

9. Therefore, the Writ Petition is dismissed, with liberty to the petitioner make his explanation before the authorities concerned within a period of eight weeks from the date of receipt of a copy of this order. On receipt of such order, the authorities concerned shall consider the same, in accordance with law. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Registrar of  
Co-operative Societies  
Collectorate Compound  
Coimbatore - 641 018.

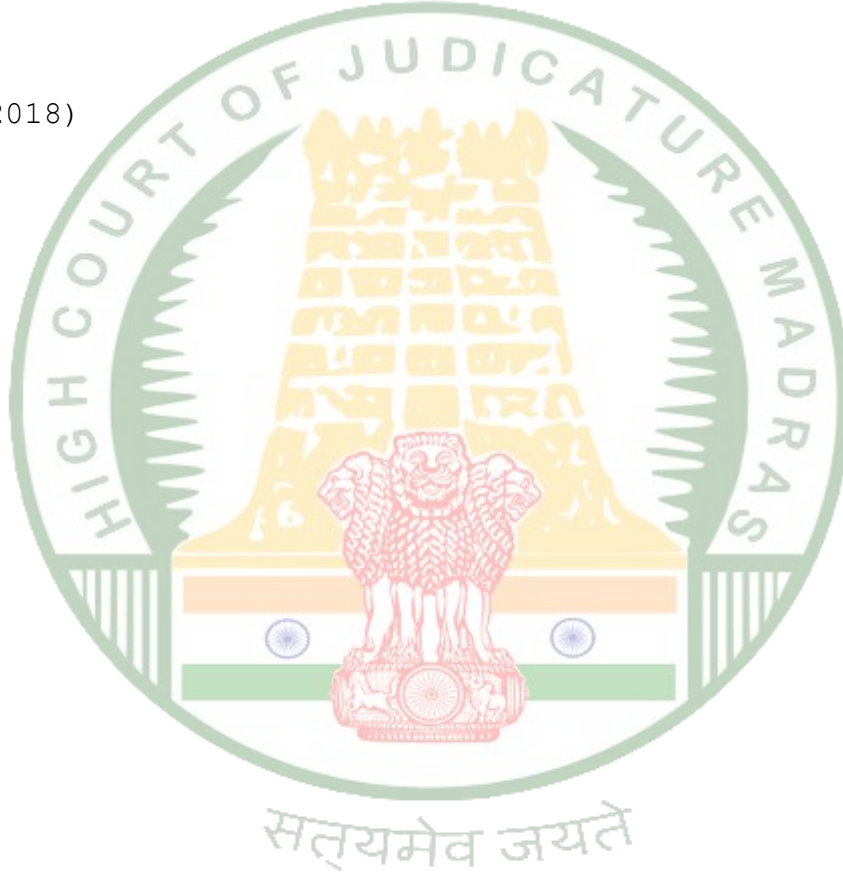
2.The Special Officer  
Vaiyampalayam Primary  
Agricultural Co-operative Bank  
Vaiyampalayam, Coimbatore.

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+lcc to Mr.N.Manokarangh, Advocate, S.R.No.9218  
+lcc to Mr.L.P.Shanmuga sundaram, Advocate, S.R.No.12  
+lcc to the Government Pleader, S.R.No.306

W.P.No. 35415 of 2015  
and  
M.P. No. 1 of 2015

rr(CO)  
sK(03/02/2018)



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