

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.1414 of 2012
and
M.P.No.2 of 2012

M.Chandran

..Petitioner

Vs.

1. The Principal District Judge /
Co-operative Tribunal,
Tiruvallur (PO) & (DT.).

2. The Deputy Registrar of
Co-operative Societies,
Ponneri.

..Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the first respondent relating to his order in Co-operative CMA.No.6/2008 dated 26.04.2011 and of the Second Respondent relating to his order No.Rc.No.436/06 S.Pa.1 dated 04.02.2008 and quash both the orders.

For Petitioner : Mr.P.Anbarasan

For 1st Respondent : Tribunal

For 2nd Respondent : Mr.V.Selvaraj
Additional Government Pleader

O R D E R

This writ petition is filed by the petitioner to call for the records of the first respondent relating to his order in Co-operative C.M.A.No.6/2008 dated 26.04.2011 and of the Second Respondent relating to his order No.Rc.No.436/06 S.Pa.1 dated 04.02.2008 and quash both the orders.

2. The Special Officer of the society had noticed the malfeasance and misappropriation of funds by the Secretary of the Society, the 2nd respondent ordered an enquiry under Section 81 of the Act, in his order No.4652/04/Pa.Ku.Sa. dated

07.01.2005. The inquiry was completed after the lapse of more than nine months. The report was submitted on 25.11.2005. The 2nd respondent initiated action under Section 87 of the Act by giving notice in his reference No.436/06 Sa.Pa.1 dated 05.02.2007 after the lapse of nearly two years from the date of the inquiry report.

3. On getting the notice dated 05.02.2007, the petitioner gave a preliminary reply to the notice on 16.03.2007 and also given the letter dated 18.07.2007 requesting to furnish the documents and opportunity to be granted to the petitioner for furnishing his reply. The 2nd respondent posted a hearing on 31.07.2007. But, without furnishing copy of the documents and providing opportunity to the petitioner, the 2nd respondent sent a reply on 23.11.2007. The 2nd respondent proceeding with the enquiry and passed the impugned order. It is also stated in the affidavit that due to the accident on 31.01.2008, the petitioner was not able to attend the enquiry. Challenging the said award, the writ petitioner has filed an appeal before the District Court, Tiruvallur and the appeal was dismissed. Hence, the petitioner has filed the present writ petition before this Court.

4. The learned counsel for the petitioner would submit that the respondent has not followed the provisions of the Act, as well as the Rule 104 of the Tamil Nadu Co-operative Societies Rules which stipulates procedure to conduct enquiry and also to furnish the documents as requested by the petitioner. The petitioner also raised other grounds in the writ petition challenging the order passed by the Tribunal. Therefore, he filed the present writ petition before this Court to set aside the order passed by the Tribunal in C.M.A.No.6 of 2008 on the file of the Principal District Court, Tiruvallur.

5. The learned Additional Government Pleader would submit that the petitioner has not been impleaded Cholavaram Panchayat Union Government Teachers and Staff Cooperative Thrift and Credit Society Ltd., Cholavaram, as a party in the appeal before the Tribunal. Therefore, without impleading the society as a party to the proceedings, the Tribunal passed the impugned order. This Court has considered the similar issue in W.P(MD). Nos.7338 and 7339 of 2012 dated 21.07.2014 and held that the Society is a necessary party before the Tribunal. Therefore, the order passed by the Tribunal was set aside and remanded to the Tribunal and to implead the petitioner/society as a party respondent in the appeal and to dispose of the appeal, after providing opportunity to the parties concerned.

6. In the light of the above said judgment, this Court has no hesitation to set aside the order passed in the appeal and

the order passed in C.M.A.No.6 of 2008 is set aside and the matter is remanded back to the Tribunal and suo-motu implead the petitioner society as a party respondent in the appeal after providing opportunity to the parties concerned and to pass orders in accordance with law, within a period of six months from the date of receipt of a copy of this order.

7. With the above directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Principal District Judge /
Co-operative Tribunal,
Tiruvallur (PO) & (DT.).

2. The Deputy Registrar of
Co-operative Societies,
Ponneri.

+1cc to Mr.P.Anbarasan, Advocate SR.No.58840
+1cc to Government Pleader, SR.No.59480

सत्यमेव जयते

W.P. No.1414 of 2012
and
M.P.No.2 of 2012

SV(CO)
GN(12/09/2017)

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