

IN THE H IGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2017

CORAM

The Hon'ble Mr. Justice D.Krishnakumar

W.P. No. 17581 of 2009

M.P.No.1 of 2009

&

W.M.P.No.23964 of 2017

1.V.N.Padmini

2.Poongodi

3.V.Ulaganathan

4.Tamilarasi (Minor)

rep. by mother and Guardian V.N.Padmini

... Petitioners

Vs.

1.The Co-op Tribunal (The District Judge, Thiruvallur)
Thiruvallur.

2.The Deputy Registrar of Co-op Societies,
Thiruttani, Thiruvallur District.

3.The Special Officer,
Ammayarkuppam Primary Agricultural Co-op Bank,
J.J.623, Ammayarkuppam, Pallipat Taluk
Thiruvalur District.

4.S.M.Ramasami
Ex.President
Ammayarkuppam Primary Agricultural Co-op Bank
J.J.623, Ammayarkuppam, Pallipat Taluk
Thiruvalur District.

... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records connected with the order of the 1st respondent, the Principal District Judge, Thiruvallur, dated 18.07.2008 dismissing the CMA (Co-op) No.8/2006 and confirming the order of the 2nd respondent, the Deputy Registrar of Co-op Societies, Thiruttani, made in S.C.No.8/2000-E1 dated 05.12.2000 and to quash the same.

For Petitioners : Mr.S.Vijayakumar

For Respondent-1 : Tribunal

For Respondent-2 : Mr.V.Selvaraj
Addl. Government Pleader

For Respondent
R3 & 4 : Dismissed for default on 21/7/2010

O R D E R

This writ petition is filed challenging the order of the 1st respondent, the Principal District Judge, Thiruvallur, dated 18.07.2008 dismissing the CMA (Co-op) No.8/2006 and confirming the order of the 2nd respondent, the Deputy Registrar of Co-op Societies, Thiruttani, made in S.C.No.8/2000-E1 dated 05.12.2000.

2. The second respondent initiated surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, for the loss caused to the Bank and passed an Award against the said V.N. Voomaidurai. Challenging the said award, the petitioners, who are the wife, son and daughters of the deceased V.N. Voomaidurai, preferred an Appeal before the first respondent/Co-operative Tribunal in C.M.A.No. 8 of 2006, and the first respondent/Tribunal, by order, dated 18.07.2008, confirmed the award passed by the second respondent and dismissed the Appeal. Challenging the same, the present Writ Petition is filed.

3. Heard Mr.S.Vijayakumar, the learned counsel appearing for the petitioner and Mr.V.Selvaraj, the learned Additional Government Pleader for the second respondent.

4. So far as the third and fourth respondents are concerned, who are the contesting respondents, it is seen from the docket order, dated 21.07.2010, passed by this Court that, this Writ Petition was dismissed as against the said respondents, for non-compliance of the requirements pointed out by the Registry. Thereafter, the petitioners have not taken any steps to set aside the said dismissal order, dated 21.07.2010. Now, i.e., after a lapse of 7 1/2 years, they have taken out a Petition, in W.M.P.No.23964 of 2017, seeking to substitute the legal representatives of the deceased fourth respondent. Therefore, it is clear that, in the present Writ Petition, the said Official is the contesting respondent.

5. The challenge in this Writ Petition is only against the judgement passed by the first respondent/Cooperative Tribunal and the order passed by the second respondent. Hence, in view of the dismissal of the Writ Petition as against the contesting respondents 3 and 4, the Writ Petition is not maintainable. In fact, this Court has considered the similar

issue in the case of (M/s. A-1498 Pattiveeranpatti Coffee and Cardamom Growers Cooperative Society Vs. The Cooperative Tribunal (District Judge) Dindigul and others) in W.P.(MD) Nos.7338 and 7339 of 2012, dated 21.07.2010, wherein, in paragraph No. 7, it is held as follows:-

" 7. After the advent of the Indian Constitution, there were debates going on as to whether the common law principles of natural justice are applicable in the context of the Indian Constitution. The debate has now come to an end, after the historic judgment of the Hon'ble Supreme Court in Maneka Gandhi Vs. Union of India - AIR 1978 SC 597. In that case, the Hon'ble Supreme Court has held that the principles of natural justice is implicit in Article 14 of the Constitution of India and therefore the same should be scrupulously followed. When an order, which has ensued in favour of the petitioner is challenged in compliance with the principles of natural justice, the Tribunal ought to have impleaded, at least suo-motu, the petitioner as a party and should have heard the Society before passing any order. Apart from that, there can be no second opinion that the petitioner is a necessary party before the Tribunal. After all, under Rule 168 of the Tamil Nadu Co-operative Societies Rules, 1988, the procedure regarding disposal of appeal by the Co-operative Tribunal shall be governed, as far as practicable, by the proceedings of the Code of Civil Procedure, 1908, which speaks of the necessary parties to a litigation. Further, under sub-section (4) of Section 152 of the Act, in disposing of an appeal, the Tribunal may, after giving the parties an opportunity of making their representations, pass such order thereon as the Tribunal may deem fit. Thus, sub-section (4) of Section 152 of the Act and Rule 168 of the Rules clearly indicate that the Tribunal should afford an opportunity to the necessary parties concerned. When that is the legal position, it is strange that the Tribunal has entertained appeals and disposed of the same, by keeping the petitioner completely in dark."

6. In the said judgment, this Court has categorically held that the Society is a necessary party for the adjudication of the Writ Petition. The respondents 3 and 4, being the contesting respondents, are necessary and proper parties in this Writ Petition, but the fact remains that, the petitioners have not taken any steps to file an Application to restore the Writ Petition, which was dismissed as against the third and fourth respondents in the year 2010 itself. After a lapse of 7 1/2 years, now filed W.M.P.No.23964 of 2017, seeking to substitute the legal representatives of the deceased fourth respondent, as party respondents in the Writ Petition.

7. Therefore, in view of the facts and circumstances of the case, and in the light of the principles laid down by this Court, in the decision cited supra, and the fact that the Writ Petition against the third and fourth respondents was dismissed, long before, in the year, 2010 itself. Hence, the Writ Petition deserves to be dismissed.

8. Accordingly, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sd
To

1.The Co-op Tribunal (The District Judge, Thiruvallur)
Thiruvalur

+lcc to Government Pleader SR.No.63040/17
+lcc to Mr.S.Vijayakumar, Advocate SR.No.62129/17

W.P.No.17581 of 2009

and

M.P.No.1 of 2009

&

W.M.P.No.23964 of 2017

VGII (CO)
sm:13.12.2017

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