

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

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THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.34853 of 2016
and
WMP.Nos.30011 & 30012 of 2016

K.Perumal

..Petitioner

Vs.

1. The Deputy Registrar of Co-operative Societies,
Office of the Deputy Registrar,
Jayapuram,
Tindivanam,
Villupuram District.
2. C.L.Spl.99 Ongur Primary Agriculture Co-operative
Credit Society Limited,
Rep. By its President,
Ongur Village & Post,
Tindivanam Taluk,
Villupuram District.

..Respondents

PRAYER:

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, after calling for the concerned records from the 1st respondent, quash the order of the 1st respondent dated 25.07.2016 bearing Na.Ka.No.402/2016 Ku.Na. Is illegal, arbitrary, contrary to law and in violation of principles of natural justice and consequently direct the 1st respondent to conduct the surcharge proceedings after giving due opportunity to the petitioner by providing the document which has been sought for by the petitioner in his letter dated 18.05.2016 and 16.06.2016.

For petitioner : Mr.Balan Haridas
For Respondents : Mr.Selvaraj, Additional
Government Pleader for R1

: Mr.L.P.Shanmuga Sundaram,
Special Government Pleader for R2

ORDER:

According to the petitioner, when the petitioner was working as Attender in the second respondent society, the Secretary of the society initiated surcharge proceedings against the petitioner. Pursuant to that, an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 was conducted and its report was submitted on 31.07.2015. Then, the first respondent issued a show cause notice dated 27.01.2016 as to why a sum of Rs.19,46,635/- should not be recovered. For that, in order to submit explanation, the petitioner submitted an application dated 18.05.2016 requesting to furnish certain documents relating to the surcharge proceedings, but the petitioner was given only the enquiry report. Further, another application dated 16.06.2016 was submitted requesting the rest of the documents. After receiving the letter, the first respondent directed the petitioner to inspect the records and submit his explanation. The petitioner received a notice on 12.07.2016 wherein it had been stated the petitioner can inspect the records on 12.07.2016. On the very same day, the petitioner could not inspect the records. Therefore, the petitioner through a letter dated 12.07.2016 requested to furnish 43 statements and 178 documents which were obtained during Section 81 enquiry. The first respondent has passed an order dated 25.07.2016 under Section 87 of the Act holding the petitioner liable to pay Rs.14,68,152/-. Hence, the petitioner has filed this writ petition challenging the said order.

2. The learned counsel for the petitioner would submit that the respondent has violated the principles of natural justice by non furnishing the copy of the documents as requested by the petitioner. The learned counsel for the petitioner would further contend that this court having discretionary power may entertain the writ petition on the grounds raised in the present writ petition.

3. The learned Additional Government Pleader would submit that there is an efficacious alternative remedy under Section 152 of the Tamil Nadu Cooperative Societies Act, 1983. Further, the learned counsel for the petitioner has disputed the fact of non furnishing of the entire documents requested by the petitioner. Therefore, the petitioner has to file an appeal under the provisions of the Act.

4. By considering the submissions made by the learned counsel for the parties and in the light of the decision rendered by the Division Bench of this Court in the case of A. Balaraman & Ors. vs. The Deputy Registrar of C-operative Societies, Cheyyar and 2 Ors., in W.A. No.1101 of 2008, in paragraphs 5, 6 and 7, wherein it is held as follows :-

" 5. Therefore, the remedy of the writ petitioners/appellants was to file an appeal before the said high powered Tribunal, which has the trappings of a civil Court. Bypassing the said Tribunal, this writ petition has been filed, which, in our view is totally mis-conceived. It is not only the question of availing the statutory remedy. Here, what is in issue is where the statute is specific and creates a special right which creates a remedy whether for enforcing the said rights, such remedy has to be invoked. Here, the rights and remedies have been granted unto flato.

6. Such principles have been explained by the Hon'ble Supreme Court in the case of Titaghur Paper Mills Co. Ltd. Vs. State of Orissa (AIR 1983 SC 603) and it is held as follows:-

- It is now well recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. V. Hawkesford* (1859) 6 CBNS 336 at p.356 in the following passage:

- There are three classes of cases in which a liability may be established founded upon statute ##.. But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it ## the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to. #

The rule laid down in this passage was approved by the House of Lords in *Neville V. London Express Newspapers Ltd.*, 1919 AC 368 and has been reaffirmed by the Privy Council in *Attorney-General of Trinidad and Tobago V. Gordon Grant & Co.*, 1935 AC 532 and *Secretary of State V. Mask & Co.*, AIR 1940 PC 105. It has also been held to be equally applicable to enforcement of rights, and

has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine. #

7. In view of the well-settled legal principle, it is not possible for this Court to take a different view and go against the order passed by the learned Judge of the writ Court. We do not find any error in the judgment of the learned Judge of the writ Court. We make it clear that it is open to the petitioners to file an appeal before the Appellate Tribunal. Since, the Tribunal also has power to consider the prayer for interim protection, it is open to the petitioners to ask for such protection. However, we do not say anything on the merits of the case of the petitioners. We also make it clear that if the Appellate Authority is approached within ten days from the receipt of a copy of this order, the Appellate Authority shall entertain the appeal on file without insisting on the question of limitation since the matter was kept pending in this Court. With these observations, the writ appeal is disposed of. We have not decided anything on merit. All questions are kept open. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs. "

when there is an alternative remedy available under the provisions of the Act, the writ jurisdiction, under Article 226 of the Constitution of India, should not be invoked. As the petitioner is having efficacious alternative remedy, can raise all the issues before the appropriate forum as provided under the Act. Hence, the writ petition is liable to be dismissed as not maintainable.

5. The writ petition is dismissed as not maintainable. However, liberty is granted to the petitioner to file an appeal before the appropriate forum, if so advised, within a period of two weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petitions are closed. No costs.

6. The Tribunal has to consider the condone delay petition under Section 14 of the Civil Procedure Code when the petitioner is filing an appeal.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. The Deputy Registrar of Co-operative Societies,
Office of the Deputy Registrar,
Jayapuram,
Tindivanam,
Villupuram District.
2. The President,
C.L.Spl.99 Ongur Primary Agriculture Co-operative
Credit Society Limited,
Ongur Village & Post,
Tindivanam Taluk,
Villupuram District.

+2ccs to the Government Pleder, Sr. 50661, 50633
+1cc to Mr.Balan Haridass, Advocate Sr. 49948
+1cc to Mr.L.P.Shanmugasundaram, Advocate Sr. 49988

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SJ(CO)
VR(19/09/2017)