

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22-09-2017

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.36168 of 2016

And

WMP No.31125 of 2016

B.Kandasamy

... Petitioner

Versus

1. The Joint Registrar of Co-operative Societies,  
Villupuram District.
2. Mr.K.V.Purushothaman,  
Domestic Enquiry Officer/CSR (Retired),  
Nolambur and Post,  
Tindivanam Taluk,  
Villupuram District.
3. The President,  
Nolambur Primary Agricultural Co-operative  
Credit Society,  
Nolambur and Post,  
Tindivanam Taluk,  
Villupuram District.
4. The Secretary,  
Co-operative Food and Consumer  
Protection Department,  
Secretariat,  
Fort St. George,  
Chennai-600 009.

(R-4 impleaded as per order of  
Court dated 22.9.2017 made  
in WMP No.2251 of 2017)

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the enquiry report dated 6.9.2016 VUVA.1/2016 passed by the second respondent based on the third respondent issuing show cause notice dated 23.9.2016 and when the President himself facing surcharge proceedings under Section 87(1) of the Act, for the same charges as well as criminal proceedings and quash the same

and drop the charges framed by the President.

For Petitioner :Mr.R.Karunagaran

For Respondents :Mr.L.P.Shanmugasundaram,  
Special Government Pleader(Co-operatives).

#### ORDER

The show cause notice issued by the Management of the third respondent-Co-operative Society, in proceedings dated 23.9.2016, is under challenge in this writ petition.

2. The writ petitioner was holding the post of Secretary of the third respondent-Co-operative Society and on account of certain irregularities into the affairs of the Co-operative Society, a show cause notice was issued to the writ petitioner by the President of the Co-operative Society, in proceedings dated 23.9.2016.

3. On perusal of the impugned show cause notice, it is clear that an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, was conducted and a report was submitted by the Enquiry Officer on 6.9.2016 and based on the report, a show cause notice was issued to the writ petitioner by the Management of the Co-operative Society, seeking his explanations/objections, within a period of 15 days from the date of issue of the show cause notice. Instead of submitting his explanations/objections, the writ petitioner moved this writ petition under Article 226 of the Constitution of India.

4. A show cause notice can be challenged by way of a writ petition only on exceptional circumstances. If a show cause notice was issued by the incompetent authority having no jurisdiction or allegation of mala fides are raised or if the show cause notice was issued in violation of statutory rules, then a writ can be filed. Even in case of raising allegations of mala fides, the authority against whom such an allegation was raised, is to be impleaded as party respondent in the writ proceedings in his personal capacity.

5. Further, the writ petitioner, being an employee of a Co-operative Society and, the show cause notice issued also by the Management of the Co-operative Society, no writ can be entertained against the show cause notice, unless, it is established that the said show cause notice was issued without jurisdiction or by an incompetent authority or it was issued on mala fides. Even in case of alleged mala fides, the authority against whom such an allegation was raised, is to be impleaded as party respondent in the writ proceedings in his personal capacity. In the absence of any one of these legal grounds, no writ can be entertained at the stage of show cause notice

because show cause notice is nothing but an opportunity provided to the delinquents to submit their statement of defence/explanations/ objections to clear their stand. Thus, the writ petition cannot be entertained both on the ground that the same is not maintainable as the Co-operative Society is not a State within the meaning of Article 12 of the Constitution of India as well as the order challenged is also a show cause notice issued against the writ petitioner.

6. The learned counsel appearing for the writ petitioner made a submission that the writ petitioner has preferred a revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act on 5.10.2016. However, without considering the merits of the matter, the first respondent-Joint Registrar of Co-operative Societies is directed to consider the revision petition filed by the writ petitioner on 5.10.2016 and pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

Svn  
To

1. The Joint Registrar of Co-operative Societies,  
Villupuram District.
2. Mr.K.V.Purushothaman,  
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Tindivanam Taluk, Villupuram District.
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Tindivanam Taluk,  
Villupuram District.

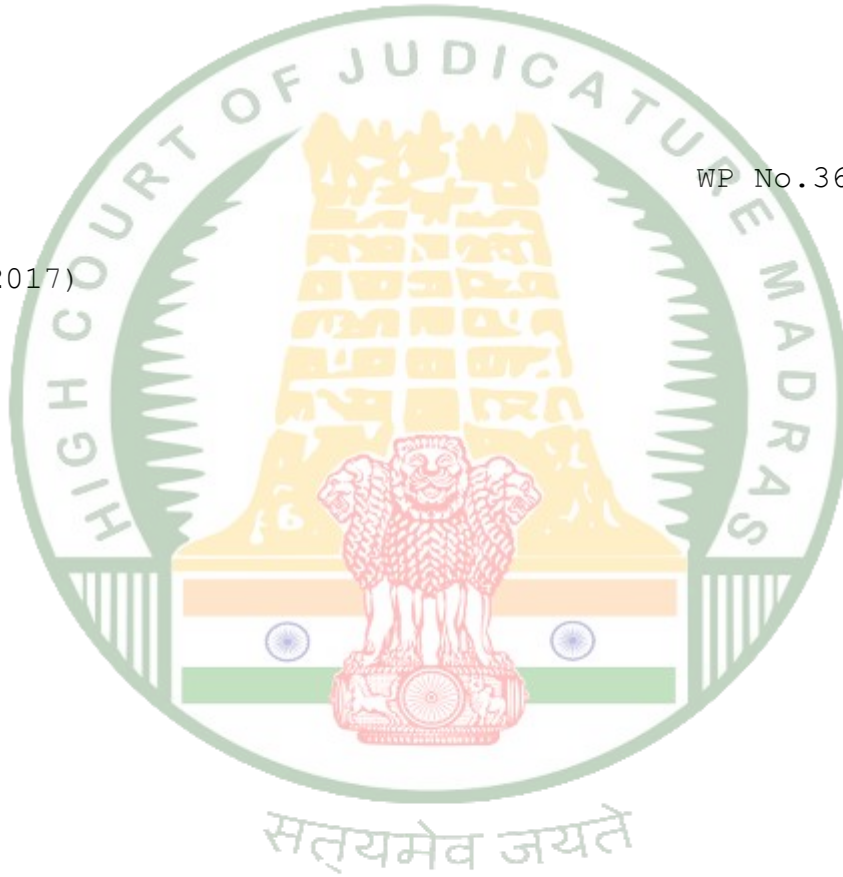
4. The Secretary,  
Co-operative Food and Consumer  
Protection Department,  
Secretariat,  
Fort St. George,  
Chennai-600 009.

+1 Cc to Govt. Pleader sr 70823.

+1 Cc to Mr.L.P. Shanmuga Sundaram, Advocate sr 70760.

SJ(CO)  
SP(07/11/2017)

WP No.36168 of 2016



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