

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.36850 of 2004

The Secretary,
S.607, Namakkal Agricultural
Producers'Co-operative Marketing
Society Ltd., Namakkal,
Namakkal District.

.. Petitioner

vs.

1. The Principal District Judge,
Namakkal, Namakkal District.

2. V.Pandian

3. S.Ravichandran

4. A.Ponnusamy

5. The Deputy Registrar of
Co-operative Societies,
Namakkal, Namakkal District.

... Respondents

Writ Petition filed under Article 226 of the
Constitution of India, praying for issuance of a Writ of
Certiorari, calling for the records of the first respondent's
order made in C.M.A.(C.S) No.30 of 2002 dated 12.07.2004 and
quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : R1 Court

No appearance for R2 to 4

Mr.V.Selvaraj,
Addl. Govt. Pleader for R5

ORDER

This writ petition has been filed to set aside the
order of the first respondent made in C.M.A.(C.S) No.30 of 2002
dated 12.07.2004.

2. Brief facts of the case is as follows :

The petitioner was the Secretary of the Society. The respondents 2 to 4 are the employees of the society. The Society sells the agricultural produce of the member farmers, by way of public auction or through tender. The society owns a godown for the purpose of storing the cotton and other products, brought by the member farmers for auctioning. Subsequent to auction, the successful bidder will pay the bid amount and take delivery of the cotton. Till then, the petitioner society is the custodian of the cotton entrusted by the farmers. The respondents 2 to 4 were working as watchmen in the petitioner society, of the cotton stored in the yard. Whiles, it was found that some cotton has been stolen by the watchmen. On 25.07.1996, the respondents 2 to 4 were called upon to explain as to why they have caused loss to the society to a tune of Rs.2,39,955.15, by committing theft. On receipt of the same, respondents 2 to 4 appeared in person before the enquiry officer, gave confession statements and paid a sum of Rs.60,375/-, Rs.60,475/- and Rs.30,000/- respectively. On the basis of the enquiry report dated 04.04.1997 surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983 were initiated and orders were passed on 28.05.1998. Challenging the said order, respondents 2 to 4 filed appeal before the 1st respondent in C.M.A (CS) No.30 of 2002. The 1st respondent Tribunal, considering the contention of the respondents 2 to 4, held that there is violation of principles of natural justice and that sufficient opportunity has not been granted to the respondents 2 to 4 to cross examine the witnesses as requested by them vide their letter dated 27.09.1997. It is also held that there is no specific complaint against the respondents 2 to 4, towards the loss sustained by the Society. Further, it is observed by the Tribunal that the society has not incurred any actual loss in this regard and that the resultant loss was only to the members, who have not been compensated by the society. Hence, the appeal filed by the respondents 2 to 4 were allowed on 12.07.2004 and the order passed by the 5th respondent is set aside. Challenging the said order passed by the Tribunal, the petitioner society has filed the present writ petition before this Court.

3. The learned counsel for the petitioner society would submit that the respondents 2 to 4 have indulged in theft during March 1995. During enquiry, the respondents 2 to 4 have paid part amount to the petitioner society. The balance amount of Rs.89,105.15, with interest, has not been paid by the respondents 2 to 4 and hence further action under section 87(1) of the Act, was initiated against them. According to the petitioner, the Tribunal has not appreciated the petitioner's case that the respondents 2 to 4 have admitted their theft and had paid part amount and that the society is held responsible

for the act of theft and loss is sustained to the society. These aspects were not considered by the Tribunal and so the order passed by the Tribunal is liable to be set aside.

4. Considered the submission made by the learned counsel for the petitioner and the learned Additional Government Pleader for the 5th respondent and perused the material available on record.

5. The contention of the learned counsel for the petitioner that the 5th respondent has passed an award to recover a sum of Rs.2,39,955.15, against the respondents 2 to 4, due to the theft committed by them. The society is responsible to pay the said loss to the traders, who lost their cotton in the theft. On perusal of the records, this Court finds that under Section 87 of the Act, if there is any misappropriation, misapplication of funds, fraudulent retainer, breach of trust, wilful negligence or payments which are not in accordance with this Act, the Rules or the Bylaws, the same can be compensated by the concerned employees. It is not the case of the petitioner society that the traders/ farmers who have lost their cotton, in the theft conducted by the employees of the petitioner society, had demanded and proceeded against the society, for recovery of the said amount. It is not stated by the petitioner that on the basis of the demand and payment of the loss to the traders, the petitioner society has paid the said amount and had initiated the surcharge proceedings against the respondents 2 to 4 to recover the compensation of the amount from them, under Section 87 of the Act, in respect of misappropriation and breach of trust on the part of the respondents 2 to 4. Hence, it is clear that the petitioner society has nowhere claimed that to pay the compensation to the traders, proceedings has been initiated under Section 87 of the Act. Hence, the petitioner society has not satisfied the required provisions under Section 87 of the Act. The other reasons discussed by the Tribunal is confirmed. Therefore, there is no error or illegality in the order passed by the Tribunal and hence this Court is not inclined to interfere with the order passed by the Tribunal in C.M.A. (CS) No.30 OF 2002 on 12.07.2004.

6. In view of the above, the writ petition is dismissed. No order as to costs.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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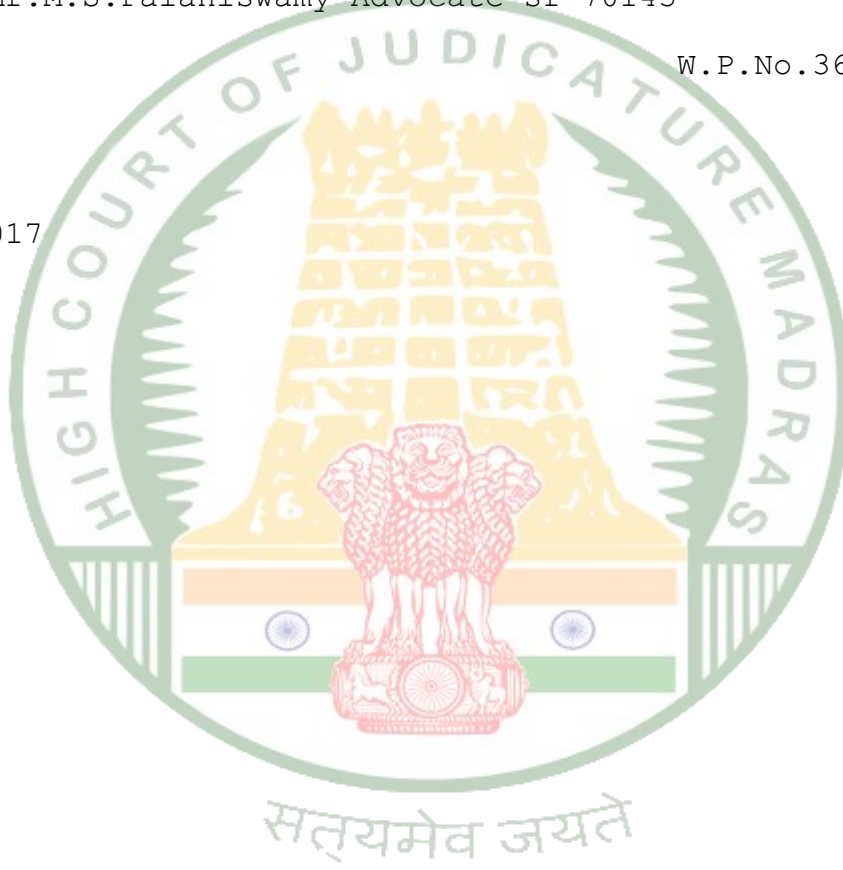
To

1. The Principal District Judge,
Namakkal, Namakkal District.
2. The Deputy Registrar of
Co-operative Societies,
Namakkal, Namakkal District.

+1 cc to Mr.M.S.Palaniswamy Advocate sr 70143

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