

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM

THE HON'BLE Mr. JUSTICE K.RAVICHANDRABAABU

W.P.No.2103 of 2018

and

W.M.P.No.2616 of 2018

K.Madhu

... Petitioner

Vs.

1. The Deputy Registrar of
Co-operative Societies,
Dharmapuri Region,
Dharmapuri.

2. The Inquiry Officer/Cooperative Sub Registrar,
KK.25, Mothur Primary Agricultural Cooperative
Credit Society Ltd.,
Mothur Post, Karimangalam Taluk,
Dharmapuri District.

... Respondents

This writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order dated by the 1st respondent in his proceedings Na.Ka.No.1286/2018 Sa.Pa.2, dated 07.04.2017 under Section 87 of Tamilnadu Cooperative Societies Act, 1983 and quash the same as contrary to law.

For Petitioner : Mr.R.Thamaraiselvan

For Respondents : Mr.L.P.Shanmugasundaram

Special Government Pleader

(Co.op.)

O R D E R

The petitioner is aggrieved against the surcharge order passed by the first respondent under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983.

2. Heard both sides.

3. Though several grounds are raised as against the impugned order, on merits, this Court is inclined to set aside the order only on the ground that the same was passed against the petitioner without furnishing him the enquiry report, so as to

enable him to submit his explanation, based on such enquiry report. When the first respondent has relied on such enquiry report to pass the present impugned order, non-furnishing of the same to the petitioner amounts to violation of principles of natural justice. This Court has already considered the very same issue and found that the action of the concerned respondents therein cannot be sustained.

4. Learned counsel appearing for the respondents, based on instructions, submitted that the enquiry report was not furnished to the petitioner because he has not sought for the same.

5. Needless to say, when the first respondent wants to rely upon the enquiry report to pass the present impugned order, it is for him to furnish a copy of such report to the petitioner and seek for his explanation, if any. Without doing so, the first respondent has proceeded to pass the order based on such enquiry report, which in the considered view of this Court, cannot be sustained solely on the ground of violation of principles of natural justice. Therefore, without going into the merits of the matter as well as the reasons set out in the impugned order and giving any findings or view on the same, the Writ Petition is allowed and impugned order of the first respondent is set aside. Consequently, the matter is remitted back to the first respondent for passing fresh orders on merits and in accordance with law, after furnishing a copy of the enquiry report to the petitioner. The petitioner should also be given an opportunity to furnish the explanation based on such enquiry report. The whole exercise shall be done by the first respondent within a period of four weeks from the date of receipt of a copy of this order.

6. Before concluding the matter, it is to be stated at this juncture that though this Court has repeatedly held in several cases that without furnishing the enquiry report to the concerned delinquent no final order can be passed by the concerned authority, it is a matter of fact that several writ petitions are being filed before this Court raising the very same ground. Needless to say that the concerned top officials of the respondent Department shall take note of several orders passed by this Court, out of which, one was reported in 2017(1) CTC 258 (C.Kamaraj v. The registrar of Cooperative Societies) and issue general circular indicating the procedure to be followed before passing the final order including the issuance of the enquiry report to the concerned delinquent etc., in order to avoid unnecessary litigations arising out of the very same ground in all those cases.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

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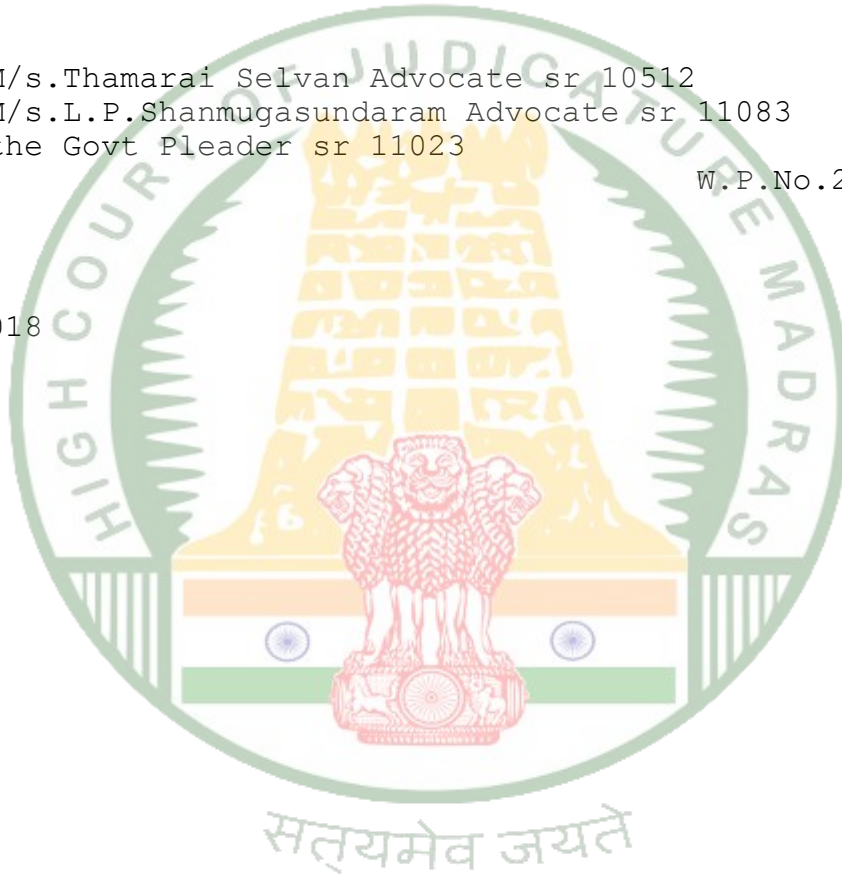
Sub Assistant Registrar

vsi

+1 cc to M/s.Thamarai Selvan Advocate sr 10512
+1 cc to M/s.L.P.Shanmugasundaram Advocate sr 11083
+1 cc to the Govt Pleader sr 11023

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