

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.38419 of 2003

R.270, Punganoor Primary Agricultural
Co-operative Bank Ltd. rep. by its
Secretary in-charge, Punganoor
Trichy District.

.. Petitioner

Vs.

1.The Principal District Judge
Trichy.

2.A.Abdul Jabbar

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for the records of the 1st respondent made in C.M.A.No.136 of 1999 dated 13.08.2003, quash the same and confirm the order passed by the Deputy Registrar of Co-operative Societies, Trichirappalli made in Na.Ka.No.10026/1994, dated 19.05.1999.

For Petitioner : Mr.M.S.Palaniswamy

For R2 : Mr.J.Ramakrishnan

सत्यमेव जयते
O R D E R

Writ Petition is filed challenging the judgment of the 1st respondent made in C.M.A.No.136 of 1999 dated 13.08.2003, quash the same and confirm the order passed by the Deputy Registrar of Co-operative Societies, Trichirappalli, made in Na.Ka.No.10026/1994, dated 19.05.1999.

2.The petitioner is challenging the judgment of the 1st respondent allowing the appeal and setting aside the order passed in surcharge proceedings by the Deputy Registrar of Co-operative Societies. Surcharge proceedings were initiated against the 2nd respondent, who is the Special Officer of the petitioner society, for causing loss to the petitioner society.

In surcharge proceedings, it was held that the 2nd respondent along with one Veerappan, who was Secretary of the petitioner society was responsible for the loss caused and they were directed to pay a sum of Rs.30,474.85 jointly or severally together with interest at the rate of 21%. The 2nd respondent filed C.M.A.No.136 of 1999 before the 1st respondent challenging the order of the Deputy Registrar of the Co-operative Societies passed in the surcharge proceedings, raising various grounds on merits. The 1st respondent not considering the appeal filed by the 2nd respondent on merits, allowed the same on the ground that the petitioner society did not file any document to show that the Deputy Registrar of Co-operative Societies obtained extension of time before expiry of six months as contemplated under Section 87 of the Tamil Nadu Co-operative Societies Act. Against the said judgment, the present writ petition is filed.

3.The learned counsel appearing for the petitioner society contended that the 1st respondent failed to consider that the Deputy Registrar of the Co-operative Societies sought for extension of time and the Joint Registrar of Co-operative Societies by his proceedings dated 31.03.1999, granted extension of time for three months. The Deputy Registrar of Co-operative Societies passed orders on 19.05.1999 well within the extension of time. The learned counsel appearing for the petitioner further contended that the period mentioned in Section 87 of the Tamil Nadu Co-operative Societies Act, for completion of the enquiry proceedings is not mandatory and it is only directory and prayed for allowing the writ petition.

4.Per contra, the learned counsel appearing for the 2nd respondent contended that the Deputy Registrar of Co-operative Societies, the surcharge proceedings officer failed to complete and pass orders within the time limit and also failed to obtain extension of time. The judgment of the 1st respondent allowing the appeal on this ground is valid and prayed for dismissal of the writ petition.

5.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 2nd respondent and perused the materials available on record.

6.From the judgment of the 1st respondent, it is seen that the 1st respondent has allowed the appeal on technical ground that the surcharge proceedings was not completed within time limit and the petitioner society has not filed any document to show that the extension of time has been obtained from higher authority within the stipulated time. The 1st respondent failed to see that the time limit fixed in Section 87 of the Tamil Nadu Co-operative Societies Act is not mandatory and it is only directory. The Division Bench of this Court in para-11 to 13 of

the judgment reported in 2008 (8) MLJ 231 (S.V.K.Sahasramam v. Deputy Registrar of Co-operative Societies, Tiruvannamalai Circle, Tiruvannamalai and others) held that this Court in number of judgments have held that failure to complete surcharge proceedings within time extended will not vitiate the order. Paragraphs 11 to 13 are extracted hereunder:

"11. We are constrained to hold that even though no appeal has been taken to us from the said judgments, yet having regard to the well settled legal position which has been referred to hereinabove, the finding of the learned Judges in these two judgments that the period of six months in the second proviso to Section 87 of the said Act is mandatory is not a correct finding in law. We find that even though before the learned Judge of the writ Court those two judgments of the learned single Bench were cited, the learned Judge of the writ Court was not swayed by those two decisions and came to a correct finding, relying upon the well settled proposition laid down by the Supreme Court as pointed above hereinabove.

12. We, therefore, affirm the order of the learned single Judge in this case. We are of the view that in a case where there are allegations of embezzlement and misappropriation of public funds, the members of general public who have been cheated have no control over those who hold the enquiry in respect of the time limit. To hold that such an enquiry which has been continued beyond the time limit is bad would cause great injustice.

13. Therefore, if such enquiry is continued beyond the time limit mentioned in the relevant statute, the said time cannot be held to be mandatory in view of the principles laid down in Montreal Street Railway Company v. Normandi (supra), which has been affirmed by the Supreme Court."

The order passed beyond the period as contemplated in Section 87 of the Tamil Nadu Co-operative Societies Act is not a ground to set aside the order passed in the surcharge proceedings. The above said judgment is squarely applicable to the facts and circumstance of the present case.

7. In view of the above, the impugned judgment dated 13.08.2003 made in C.M.A.No.136 of 1999 is set aside. The appeal is remanded back to the 1st respondent to decide the same afresh on merits and pass orders in accordance with law, within a

period of three months from the date of receipt of a copy of this order.

8.In the result, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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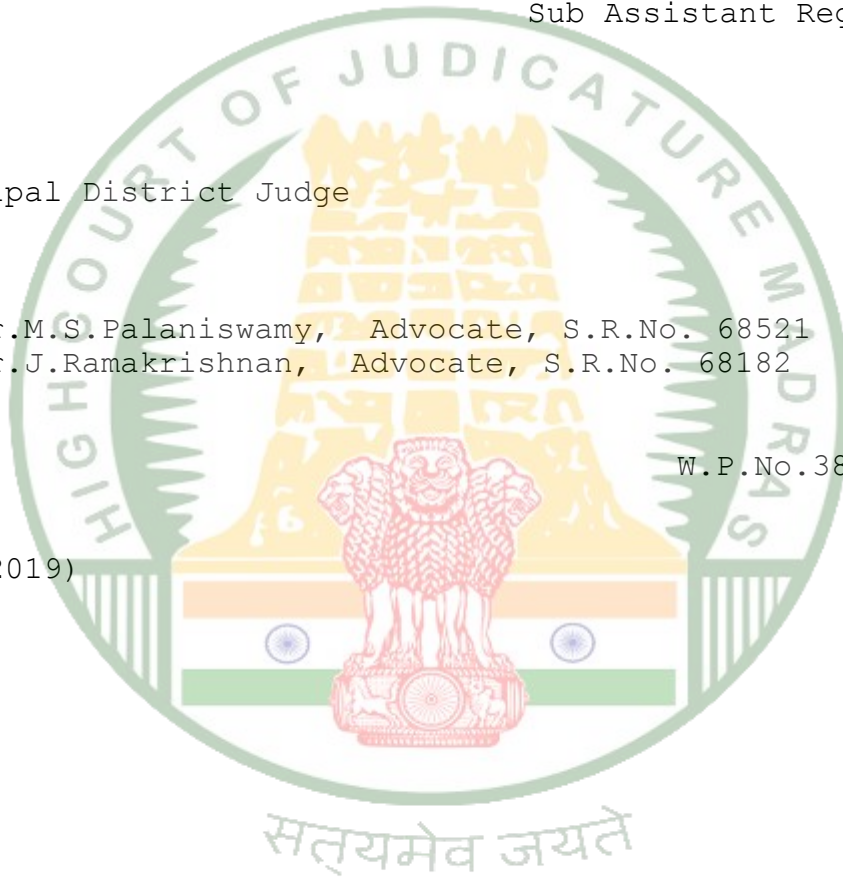
The Principal District Judge
Trichy.

+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No. 68521

+1cc to Mr.J.Ramakrishnan, Advocate, S.R.No. 68182

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GP (CO)
GN (09/10/2019)



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