

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.02.2019

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4563 of 2019

P.Parameshwari

..Petitioner

vs

1.ZC 27 The Nagakudayan Primary Agricultural
Cooperative Credit Society Ltd.,
Represented by its President
Nagakudayan Post,
Nagapattinam District.

2.The Deputy Registrar of Cooperative Societies,
Office of the Deputy Registrar of Cooperative Societies
Nagapattinam.

3.The Joint Registrar of Cooperative Societies
Office of the Joint Registrar of Cooperative Societies,
No.303.306 Third floor
Collectorate, Nagapattinam.

..Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorarified
Mandamus, to call for the records relating to the impugned
letter dated 13-10-2017 issued by the 1st respondent society
demanding the Surcharge penalty of Rs. 80550/- together with
interest from the petitioner and quash the same as illegal,
arbitrary, unconstitutional against Rule of law and against the
principles of Natural justice and consequently direct the 1st
respondent to disburse the terminal monetary benefits of
petitioner's deceased husband to petitioner forthwith.

For Petitioner : Mr.S.Giritharan
For Respondents : Mr.D.Venkatachalam
Additional Government Pleader
(Cooperatives)

O R D E R

The order dated 13.10.2017, informing the writ petitioner
that the husband of the writ petitioner, who was holding the

Post of Secretary, committed an act of misappropriation of the funds of the Cooperative Society and therefore, his portion of the share is to be recovered from the terminal benefits, which all are due to the deceased employee.

2.The said information provided to the writ petitioner, stating that Rs.80,550/- to be deducted from the dues of the deceased employee, the petitioner has come forward by way of the present writ petition.

3.First of all, the impugned communication dated 13.10.2017, would not constitute a cause of action for the writ petitioner to file the present writ petition.

4.This apart, the petitioner has to exhaust the remedies available under the provisions of the Tamil Nadu Cooperative Societies Act. Cooperative Society, is not a "State" within the meaning of Article 12 of the Constitution of India. Cooperative Society became a "State", if the funding of the Government or its organization crosses the 50% and the administrative control vests with the Governmental authorities, then the Cooperative Society became the "State" within the meaning of Article 12 of the Constitution of India. If there is no financial assistance or control by the Governmental authorities, in respect of administration and other business activities of a Cooperative Society, the writ cannot be entertained in view of the fact that it will not go under the definition of "State" under Article 12 of the Constitution of India.

5.This being the principles to be followed, this Court is of an opinion that the 1st respondent Cooperative Society is funded by its members. Elected Board is administering the affairs of the society. Bylaws and other business transactions are done by the Elected Board as well as by the employees appointed by the Board.

6.This being the factum, no writ petition can be entertained. However, the writ petitioner has to approach the competent authority for the purpose of redressal of her grievances. If at all, a surcharge proceedings is initiated pursuant to the enquiry conducted under Section 81 of the Act, the writ petitioner is at liberty to approach the Cooperative Tribunal concerned for the purpose of challenging the surcharge order passed under the provisions of the Tamil Nadu Cooperative Societies Act. However, the present writ petition cannot be entertained as the same is not maintainable. The writ petitioner is at liberty to approach the competent authorities in the manner known to law.

7.With these observations, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr. S.Giritharan, Advocate, S.R.No.14699

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PA (CO)
GN(14/03/2019)

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