

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM

THE HONOURABLE Dr. Justice G.JAYACHANDRAN

W.P.No.16112 of 2019
and M.P.Nos.15869 and 5870 of 2019

1. V.Anand
2. Manjula
3. Manjula
4. T.Shankar
5. K.Rajendran
6. U.Venkatesh
7. Krishnappa

... Petitioners

vs.

The Joint Registrar of Cooperative Societies
Krishnagiri Region
Krishnagiri District.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the order passed by the respondent in Na.Ka.2106/2018 SaPa dated 26.04.2019, quash the same.

For Petitioners: Mr.M.S.Palaniswamy

For Respondent : Mr.D.Venkatachalam
Additional Government Pleader

O R D E R

The prayer in the writ petition is for issue of a Writ of Certiorari calling for the records of the order passed by the respondent in Na.Ka.2106/2018 SaPa dated 26.04.2019 and to quash the same.

2. The grievance of the petitioners is that, without following the due process of law, as contemplated under Section 81 of the Tamil Nadu Cooperative Societies Act, the Board was superseded by the respondent vide order dated 26.04.2019, which is impugned in this writ petition. The learned counsel appearing for the petitioners would contend that under procedure contemplated under Section 81 of the Tamil Nadu Cooperative Societies Act, the Registrar of the Cooperative Societies is

bound to furnish copy of the enquiry and give an opportunity to the members to rectify the defects pointed out in the enquiry report. Whereas, without affording such opportunity, the respondent has passed the impugned order. The learned counsel would draw the attention of this Court to Section 81 (3) and (6) and Rule 104 of the Co-operative Societies Act and Rules respectively which enlist the powers of Registrars and procedure to be followed when an enquiry is conducted under Section 81 of the Tamil Nadu Cooperative Societies Act. Though the learned counsel heavily relied upon Section 81 of the Tamil Nadu Cooperative Societies Act, the impugned order has been passed not under Section 81 but under Section 88 of the Tamil Nadu Cooperative Societies Act, after issue of notice dated 13.03.2019 this order has nothing to do with the enquiry, which is contemplated under Section 81 of the Tamil Nadu Cooperative Societies Act. The show cause notice issued by the Joint Registrar dated 13.03.2019 has been issued pursuant to the power conferred under Section 88 of the Tamil Nadu Cooperative Societies Act. The prime allegation made in that show cause notice is that the Board, which has assumed office on 11.08.2018, was not properly functioning and discharging its duty, particularly, it has not extended crop loan to its members and no steps have been taken to pay salary to its staff. It has not taken measures to develop the Society and had rendered the society to become defunct. Section 88 of the Tamil Nadu Cooperative Societies Act reads as follows:-

"88. Supersession of board - (1) Where the board of any registered society

(i) is of persistent default in managing the affairs of the society in accordance with the provisions of this Act, the rules or the bye-laws; or

(ii) is of negligence in the performance of its duties; or

(iii) has committed any act prejudicial to the interests of the society or its members; or

(iv) there is stalemate in the constitution or functions of the board;"

3. In this case, when the Registrar has issued the show cause notice dated 13.03.2019 and called for the explanation from the members, they have participated in the enquiry proceedings and given their respective explanation. After explanation, the impugned order dated 26.04.2019 has been passed. It is specifically stated that when the President was intimated about the interim enquiry report under Section 81 of the Tamil Nadu Cooperative Societies Act, regarding irregularities in the society, the President received the interim report on 04.10.2018, but has not taken action against the staff, except one Venkatesan. Whereas the explanation given by the President is that he did not receive the interim report under Section 81 of the Tamil Nadu Cooperative Societies Act and

therefore he was not able to take action against the erring staff. When a question was posed to the learned counsel appearing for the petitioner that if the President has not received the interim report of Section 81 enquiry, how he was able to take action against Venkatesan alone. The learned counsel would reply that he has acted suo motu and the action taken against Venkatesan has nothing to do with the alleged interim report under Section 81 of the Tamil Nadu Cooperative Societies Act.

4. The learned Additional Government Pleader for the respondent submitted that there were complaints against the members for misappropriation. Hence a criminal case was registered and some of the staff were arrested and the entire issue was put to public notice. Therefore it cannot be said that the petitioner was not aware of the enquiry initiated. Further, he also submitted that the President himself is one of the delinquents in the enquiry and his property was attached and he cannot claim ignorance of the enquiry report.

5. Be that as it may, the proceedings issued by the Joint Registrar vide show cause notice dated 13.03.2019, the interim enquiry initiated by the Registrar under Section 81 of the Tamil Nadu Cooperative Societies Act is not the subject matter. It is for a different reason the Registrar has initiated proceedings under Section 88 of the Tamil Nadu Cooperative Societies Act for supersession of the board. That proceedings have culminated in passing of the impugned order dated 26.04.2019.

6. This Court has to only decide whether that superseded order dated 26.04.2019 is in accordance with law and whether this Court can decide it when there is an alternative remedy of preferring an appeal before legal forum under Section 152 of the Tamil Nadu Cooperative Societies Act.

7. The learned counsel for the petitioners would submit that even if there is an alternative remedy if it touches upon the fundamental right of the individual, the Court can exercise its power under Article 226.

8. This Court has no doubt in that proposition of law. But, this Court is unable to find any gross infraction of the fundamental right or colourable exercise of power in the impugned order. In so far as the other findings of the Joint Registrar regarding non payment of salary to the staff and failure to pay the maturity amount to the depositors, these are all factual aspects which can be gone into by the Appellate authority. Therefore, this Court finds that there is no scope for interference under Article 226 and hence the writ petition is dismissed with liberty to the petitioners to approach the

Appellate authority. Without influenced by observation made by this Court regarding the merits of the impugned order, the Appellate Authority is requested to decide the appeal independently. No costs. Consequently connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dpq

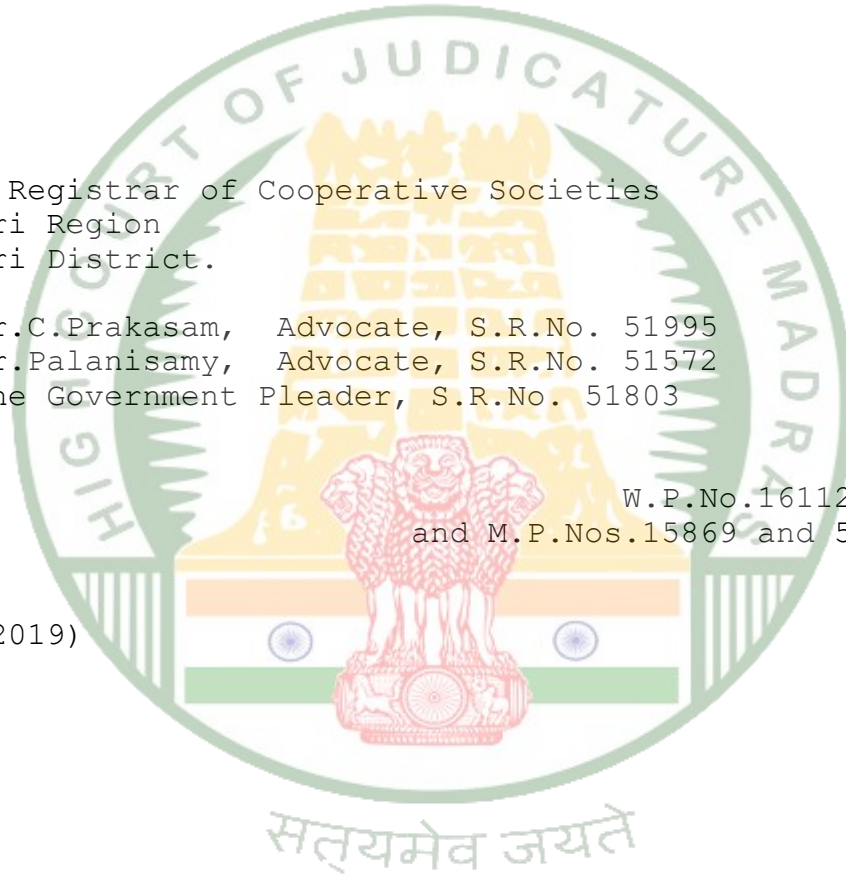
To

The Joint Registrar of Cooperative Societies
Krishnagiri Region
Krishnagiri District.

+1cc to Mr.C.Prakasam, Advocate, S.R.No. 51995
+1cc to Mr.Palanisamy, Advocate, S.R.No. 51572
+1cc to the Government Pleader, S.R.No. 51803

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AD(CO)
GN(25/07/2019)



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