



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. (MD) No. 2568 of 2022

M.Krishnamoorthi

... Petitioner

Vs.

1. The Regional Joint Registrar of Co-operatives Societies,
Integrated Multi Co-operative Buildings,
Annavaasal Road,
Near District Collectorate,
Pudukkottai - 622 002.

2. The Deputy Registrar of Co-operative Societies,
Integrated Multi Co-operative Buildings,
Annavaasal Road,
Near District Collectorate,
Pudukkottai - 622 002.

3. The Sub Registrar / Administrator,
No.7, Keeranoor Primary Agricultural
Co-operative Credit Society,
Keeranoor Post, Kulathur Taluk,
Pudukkottai - 622 002.

4. The President,
No.7, Keeranoor Primary Agricultural
Co-operative Credit Society,
Keeranoor Post, Kulathur Taluk,
Pudukkottai - 622 002.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the fourth respondent to disburse the amount of Rs.7,60,205/- with accrued interest to the petitioner which was deducted from his retirement benefits in connection with 2/3rd contribution of other two employees in the surcharge proceedings order passed by the second respondent in Na.Ka.913/2018/rg dated 04.01.2019 and reduce the charged interest from 18% to any reasonable interest rate in respect of petitioner's 1/3rd contribution and refund the same to the petitioner.

For Petitioner : Mr.S.Karthikeyan
For Respondents : Mr.P.Thilak Kumar
Government Pleader
Assisted by
Mr.M.Ramesh

Government Advocate for R1 to R3



O R D E R

The Writ of Mandamus has been filed to direct the fourth respondent to disburse the amount of Rs.7,60,205/- with accrued interest to the petitioner which was deducted from the retirement benefits in connection with 2/3rd contribution of other two employees in surcharge proceedings order passed by the second respondent in proceedings dated 04.01.2019.

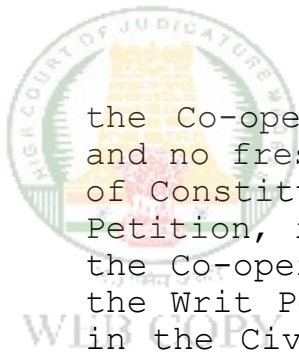
2. The surcharge proceedings were initiated against the petitioner along with other employees of the fourth respondent Co-operative Society under Section 87 of the Tamil Nadu Co-operative Societies Act. The Competent Authority / Deputy Registrar of Co-operative Societies has passed the final order in surcharge proceedings on 04.01.2019.

3. The learned counsel appearing for the petitioner made a submission that the petitioner has filed an appeal before the Co-operative Tribunal under Section 152 of the Tamil Nadu Co-operative Societies Act and the said appeal is pending. Under these circumstances, the petitioner states that pursuant to the surcharge order, the amount had been recovered from his terminal benefits.

4. The learned counsel appearing for the petitioner made a submission that the surcharge proceedings initiated against the three employees recovering the entire amount from the terminal benefits is improper. Thus, the petitioner filed the present Writ Petition.

5. Since surcharge proceedings were initiated and the final order has been passed under Section 87 of the Tamil Nadu Co-operative Societies Act, rightly the petitioner preferred an appeal under Section 152 of the Act before the Co-operative Tribunal. However, no interim order was passed in the appeal and non granting of interim order in the Civil Miscellaneous Appeal would not provide another cause of action for the writ petitioner to file a Writ Petition under Article 226 of the Constitution of India. In the event of no interim order, the authorities are empowered to implement the surcharge order in the interest of public and in the interest of the Society. If at all any dispute arises in respect of the quantum of amount to be recovered from the employee, he has to approach the Co-operative Tribunal for adjudication and filing a Writ Petition is not in consonance with the established principles.

6. The petitioner cannot dissect the cause of action. If such dissection is permitted, it will lead to multiplicity of proceedings. Once the appeal under Section 152 of the Act is preferred, then all ancillary or additional grievances with reference to the surcharge proceedings are to be sought for before



the Co-operative Tribunal in the Civil Miscellaneous Appeal filed and no fresh Writ Petition needs to be entertained under Article 226 of Constitution of India. In the event of entertaining a fresh Writ Petition, it will paralyze the proceedings already instituted before the Co-operative Tribunal under Section 152 of the Act. Pendency of the Writ Petition will be cited as a reason for getting adjournment in the Civil Miscellaneous Appeal. The learned Principal Judge may not be in a position to dispose of the appeal. Such a trend of protraction and prolongation of the issue can never be encouraged by the Writ Court. Contrarily, an aggrieved person is always at liberty to approach the Court, in which, the appeal is filed and pending. This being the factum established, the present Writ Petition filed against the recovery proceedings is not entertainable.

7. This apart, the petitioner was an employee of the Co-operative Society and the Co-operative Society is not a State within the meaning of Article 12 of the Constitution of India. Thus, without exhausting the statutory remedy, the Writ Petition cannot be entertained as per the principles laid down by the larger bench of this Court in the case of Marappan Vs. The Deputy Registrar of Co-operative Societies reported in 2006 (4) CTC 389. Thus, even on this ground, the Writ Petition is not maintainable. For all these reasons, the petitioner has to redress his remedy in the manner known to law.

8. Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (AD-I)

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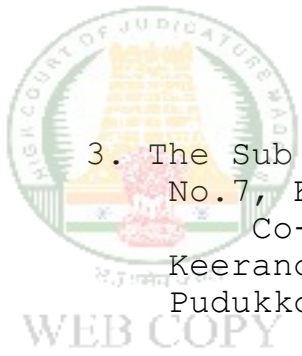
/ /2022

Sub Assistant Registrar(CS)

vji

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+1 CC to M/s.SPL GP (SR-5341[F] dated 10/02/2022)

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SMV(CO)

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