



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.1936 of 2022

The Park Town Co-operative Wholesale Stores Ltd.
Rep. by its Managing Director
G-133, 1st Main Road,
Anna Nagar (East)
Chennai – 600 102.

... Petitioner

Vs.

1.M.Alagusundaram

2.The Deputy Registrar of Co-operative
Societies (Non-Credit)
Kuralagam,
Chennai – 600 108.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the impugned judgment and decree in C.M.A.No.54 of 2016 dated 17.08.2017 passed by the Presiding Officer / Chief Judge, Special Tribunal for Co-operative Cases, Small Causes Court at Chennai.

For Petitioner

: Mr.G.Thangavel

For R1

: Mr.P.Anbarasan

For R2

: Mr.V.Jeevagiridharan
Additional Government Pleader



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ORDER

The civil revision petition is filed to set aside the order passed in C.M.A.No.54 of 2016 dated 17.08.2017.

2. The revision petitioner is a Co-operative Society, which is registered under the Tamil Nadu Cooperatives Societies Act, 1983. A Statutory enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act was ordered by the competent authority, to conduct an enquiry into the affairs of the Cooperative Society. In such circumstances, the final report in a Statutory enquiry under Section 81 of the Act shall be the basis for initiation of threefold actions by the competent authorities.

3. Disciplinary proceedings against the employees may be initiated for the misconduct, lapses, irregularities, illegalities, etc. Criminal Case can be filed before the Commercial Crime Investigating Wing of the Police Department for prosecution of the offenders and surcharge proceedings can be initiated under Section 87 of the Tamil Nadu Cooperative Societies Act to recover the financial loss occurred on account of such irregularities and illegalities. All the threefold actions can be initiated simultaneously against all



the person or persons, who all are involved in such irregularities or illegalities.

One action is not a bar for the other action and all the threefold actions are the scope of the proceedings, which are distinct and different. Thus, the authorities competent are empowered to initiate all the three actions simultaneously.

4. In the present case, surcharge proceedings are initiated under Section 87 of the Act. Notice was issued under Section 87 (1) of the Act. An enquiry was conducted by the competent authority namely Deputy Register of the Cooperative Society, who in turn, passed final orders under Section 87 of the Act on 08.01.2016.

5. Challenging the said final order passed under Section 87 of the Tamil Nadu Cooperative Societies Act, an Appeal lies before the Special Tribunal for Cooperatives Cases constituted under Section 152 of the Act, which was preferred by the contesting respondents herein.



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6. Unfortunately, the Appeal under Section 152 of the Act was filed without impleading the revision petitioner Cooperative Society as a party. Non-impleadment of the Cooperative Society in the Appeal before the Cooperative Tribunal is vital and it vitiates the entire proceeding, since they are the necessary party to the Appeal, more so, the financial irregularities and illegalities occurred in the revision petitioner / Cooperative Society.

7. When the revision petitioner / Cooperative Society is an aggrieved person and the surcharge proceedings are initiated to recover the loss occurred in the petitioner / Cooperative Society, there cannot be an Appeal without impleading the aggrieved Cooperative Society in favour of whom the surcharge proceedings are initiated under Section 87 of the Act. It goes to the route of the matter. The Society is not a formal party they are the necessary party and more so, aggrieved person in the eye of law. That being the factum, the Cooperative Tribunal also failed to notice this, which will hit the principles of *Audi Alteram Partem* and passed an order against which the present revision petition is filed.

8. This Court is not inclined to go into the merits of the case at this point



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of time, since the order passed by the Cooperative Tribunal is a nullity and considered as a invalid order in the eye of law, in view of the fact that the aggrieved person / necessary party i.e., the revision petitioner herein has not been afforded with an opportunity, as they are not impleaded in the Appeal Proceedings.

9. In view of the facts and circumstances, the order dated 17.08.2017 passed in C.M.ANo.54 of 2016 is set aside and consequently, the petitioner / Society is at liberty to institute further proceedings for the purpose of execution of the surcharge proceedings passed under Section 87 of the Act.

10. With this liberty, the Civil Revision Petition stands allowed. No costs.

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Jeni
Index : Yes
Speaking order
Neutral Citation : Yes



To

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1. The Chief Judge/ Presiding Officer,
Special Tribunal for Cooperative Cases,
Small Causes Court,
Chennai.

2. The Deputy Registrar of Co-operative
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S.M.SUBRAMANIAM, J.

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