



WP(MD)No.22482 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **29.11.2023**

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THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

W.P.(MD)No.22482 of 2021

S.P.N.Jansi

...Petitioner

/Vs./

- 1.The State of Tamil Nadu,
Rep by its Secretary,
Department of Food and Co-Operation,
Secretariat,
Fort St.George,
Chennai -9.
- 2.The Registrar,
Office of the Registrar of Co-Operative Societies,
N.V. Natarajan Maaligai,
170, Periyar EVR High Road,
Kilpauk, Chennai - 10.
- 3.The Deputy Registrar of Co-Operative Societies,
(Agro Engineering Services),
(Full and Additional Charges),
Chepauk, Chennai 600 005.

...Respondents

PRAYER:- Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 3rd respondent herein to restore the petitioner's Society namely Kanyakumari Agro Engineering and Service Co-operative Society Ldd, KM-74 in the light of the Sec.142 of the Tamil Nadu Co-operative Societies Act, 1983 within the time period stipulated by this Court.



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For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.A.K.Manikkam

Special Government Pleader

ORDER

This writ petition has been filed for issuance of writ of mandamus, directing the third respondent to restore the society named Kanyakumari Agro Engineering and Service Co-operative Society Limited in line with Section 142 of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter referred to as “Act” for brevity).

2. The case of the petitioner is that Kanyakumari Agro Engineering and Service Co-operative Society Limited (hereinafter referred to as ‘Society’ for the sake of brevity) was a registered society under the Act. The Registrar of the Society had reported to the Government that this Society was not functioning for many years and most of the staff are working without salary for a long time. The Government after noting that the society is not effectively functioning, in the interest of public, in exercise of powers conferred under Section 182 (1) of the Act directed the concerned authority to initiate proceedings under Section 137 of the Act for winding up the society.



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3. In line with the above direction issued by the Government, the third respondent through proceedings dated 20.02.2020 directed the Society to be wound up with immediate effect in accordance with Section 137 (2) of the Act. After this order was passed, a representation was made seeking for revival of the Society. Since the same was not acted upon, the present writ petition has been filed.

4. The third respondent has filed a counter affidavit. In the counter affidavit, the third respondent has given reasons as to why a decision was taken to wind up the Society. The third respondent has further stated that there is no question of restoring the Society and that if the Society is aggrieved by the winding up order, they can only work out their remedy under the Act by filing an appeal before the concerned authority under Section 152(2) of the Act. Hence, the third respondent has sought for dismissal of this writ petition. For proper appreciation, the relevant portion in the counter affidavit is extracted hereunder:-

“11. It is humbly submitted that, before adverting to the various contentions of the Petitioner in his affidavit, I would submit that this writ petition is not at all maintainable for the following reasons:-

(a) The writ petition herein is liable to be rejected for having not exhausted the remedial provisions already available



in the Tamil Nadu Cooperative Societies Act 1983 and the Tamil Nadu Cooperative Societies Rules 1988.

(b) The attitude of the petitioner society is unlawful, in not having handed over charge for over 21 months to the lawful appointee viz. liquidator of the society, without any judicial orders for stay of the proceedings in challenge.

(c) The functioning of the society has not been proved in terms of the explanation given under Section 137(2) of the Tamil Nadu Cooperative Societies Act 1983.

(d) The petitioner society has approached this court on misrepresentation of the fact as contained in the Act for restoration.

(e) The illegal battle of the petitioner society is to perpetuate its activities in violation of the bylaw provisions which the Department is not expected to accept.

(f) The illegal battle of the petitioner society is not in the public interest rather it is in the individual's interest only in as much as neither he has not chosen to elicit the opinion of all the members on rolls as on date nor allowed the Registrar of Agro Engineering Services to ascertain the status through the individual member's representations if any by communicating a copy of the show cause notice to all of them as required in the provisions of the said Act.

(g) The non-viability of the petitioner society is well established by its continued working in cumulative loss due to lack of any Government concessions enjoyed previously in securing work orders.

(h) The action of the petitioner society in not having handed over charge is to be construed as a criminal misconduct



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in having not allowed the Liquidator appointed by the Government to discharge his duties as per Rule 114 of the Tamil Nadu Cooperative Societies Rules 1988.

(i) In the absence of any statutory appeal filed before the Registrar of Agro Engineering Services so far under section 152 (2) of the Tamil Nadu Cooperative Societies Act 1983, the petitioner stand to lose the opportunity by virtue of Limitation applicable.

(j) Restoration of the affairs of the petitioner society is permissible only if the Registrar considers the proposal of the Liquidator through a General Body resolution of the members at the end of the process of the society liquidation for final closure by him and not on the resolution of the board of directors functioning violating the bylaw provisions relating to the registered objects of the society as per section 142 of the Tamil Nadu Cooperative Societies Act 1983.

(k) The respondents 1 and 2 are not the parties connected to the issue.”

5. Heard Mr.S.Rajasekar, learned counsel appearing for the petitioner and Mr.A.K.Manikkam, learned Special Government Pleader appearing for the respondents.

6. In the considered view of this Court, the respondents have taken a decision to wind up the Society and the reasons as to why such a decision was taken are explained in the counter affidavit filed by the third respondent. In



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view of the same, the Society has to necessarily work out their remedy by filing an appeal before appropriate authority as provided under the Act. Without exercising this right, there is no question of directing the respondents to restore / revive the Society in line with Section 142 of the Act.

7. In view of the above, liberty is granted to the Society to work out the appeal remedy before the concerned authority in line with Section 152(2)(a)(v) of the Act. Except giving this liberty, no further orders can be passed in this writ petition. This writ petition is disposed of. No costs.

29.11.2023

NCC : Yes/No
Internet :Yes/No
Index :Yes/No
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N.ANAND VENKATESH, J.

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Order made in
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