



W.P.No.28493 of 2023 and etc.,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

**W.P.Nos.28493, 14389 and 28497 of 2023 and**  
**C.R.P.Nos.2024 and 2197 of 2023**

**and**

**W.M.P.Nos.28042, 13900, 16250 and 28045 of 2023**  
**and C.M.P.Nos.12664 and 13293 of 2023**

**W.P.Nos.28493, 14389 and 28497 of 2023:-**

|             |                                               |
|-------------|-----------------------------------------------|
| P.Shanmugam | ... Petitioner in <b>W.P.No.28493 of 2023</b> |
| S.Shanthi   | ... Petitioner in <b>W.P.No.14389 of 2023</b> |
| K.Maheswari | ... Petitioner in <b>W.P.No.28497 of 2023</b> |

Vs

1. The Deputy Registrar of Co-operative Societies,  
Omalur Circle,  
Omalur and Post,  
Salem District.
  2. The Administrator,  
S.777, Nangavalli Primary Agricultural  
Co-operative Credit Society Ltd.,  
Nangavalli and Post,  
Salem – 636 454.
- ... Respondents in **all W.Ps**



W.P.No.28493 of 2023 and etc.,

**Prayer in W.P.Nos.28493 and 28497 of 2023:** Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for records pertaining to the Form-8 and 9 notices dated 12.09.2023 issued by the first respondent under Tamilnadu Cooperative Societies Act, 1983 and quash the same.

**Prayer in W.P.No.14389 of 2023:** Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for records pertaining to the Form-8 and 9 notices dated 24.04.2023 issued by the first respondent under Tamilnadu Cooperative Societies Act, 1983 and quash the same insofar as it relates to the immovable properties of the petitioner.

**In all W.Ps**

|                 |                                                   |
|-----------------|---------------------------------------------------|
| For Petitioners | : Mr.S.Kamadevan                                  |
| For R1          | : Mr.M.Rajendran<br>Additional Government Pleader |
| For R2          | : Mr.P.S.Sivasanmugasundaram                      |

**C.R.P.No.2024 of 2023:-**

P.Shanmugam

... Petitioner

Vs

1. The Deputy Registrar,  
O/o Deputy Registrar of Cooperative Societies,  
Omalur Circle, Omalur and post,  
Salem District.
2. The Administrator,  
S 777, Nangavalli Primary Agricultural  
Cooperative Credit Society Ltd,



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Nangavalli and post,  
Mettur Taluk, Salem - 636 454.

3. C.Selvaraj

4. R.Kalaivani

5. Thangavel

6. K.Maheswari

7. A.Vasanthi

8. S.Sekar

... Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, to revise the judgment and decree passed in CMA (CS) No.28 of 2019 dated 26.10.2022 on the file of the Special Tribunal for Co-operative cases (Principal District Judge, Salem) confirming the surcharge award passed by the Deputy Registrar of Co-operative Societies, Omalur Circle, Omalur, Salem District in Na.Ka.1473/2017/Sa.Pa dated 09.07.2018.

|                |                                                          |
|----------------|----------------------------------------------------------|
| For Petitioner | : Mr.S.Kamadevan                                         |
| For R1 and R2  | : Mr.M.R.Gokul Krishnan<br>Additional Government Pleader |
| For R3 to R8   | : Notice served<br>No appearance                         |

**C.R.P.No.2197 of 2023:-**

K.Maheswari

... Petitioner

Vs



W.P.No.28493 of 2023 and etc.,

1. The Joint Registrar,  
O/o Joint Registrar Of Co-Operative Societies,  
Salem Region,  
Collector Office Buildings, 4<sup>th</sup> Floor,  
Salem-I.
2. The Deputy Registrar,  
O/o Deputy Registrar of Cooperative Societies,  
Omalur Circle, Katcheri Road,  
Omalur and post,  
Salem District.
3. The Administrator,  
S 777, Nangavalli Primary Agricultural  
Cooperative Credit Society Ltd,  
Nangavalli and post,  
Mettur Taluk, Salem - 636 454.
4. C.Selvaraj
5. R.Kalaivani
6. P.Thangavel
7. S.Sekar
8. A.Vasanthi

9. P.Shanmugam

... Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, to revise the judgment and decree passed in CMA(CS) No.42 of 2019 dated 11.10.2022 on the file of the Special Tribunal for Cooperative Cases (Principal District Judge, Salem) confirming the surcharge award passed by the Deputy Registrar of Co-



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operative Societies, Omalur Circle, Omalur, Salem District in  
Na.Ka.1473/2017/Sa.Pa dated 09.07.2018.

For Petitioner : Mr.P.Ganesan  
For R1 to R3 : Mr.M.R.Gokul Krishnan  
Additional Government Pleader  
For R4 to R9 : Notice served  
No appearance

### **COMMON ORDER**

W.P.Nos.28493, 14389 and 28497 of 2023 have been filed  
challenging the Form 8 and 9 notices dated 12.09.2023 and 24.04.2023,  
issued by the first respondent, thereby issued auction notice in order to  
execute a surcharge order.

2. C.R.P.No.2024 of 2023 has been filed to revise the judgment  
and decree passed in CMA (CS) No.28 of 2019 dated 26.10.2022 on the  
file of the Special Tribunal for Co-operative cases (Principal District  
Judge, Salem), thereby dismissed the appeal, confirming the surcharge  
award passed by the Deputy Registrar of Co-operative Societies, Omalur  
Circle, Omalur, Salem District in Na.Ka.1473/2017/Sa.Pa dated  
09.07.2018.



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3. C.R.P.No.2197 of 2023 has been filed to revise the judgment and decree passed in CMA(CS) No.42 of 2019 dated 11.10.2022 on the file of the Special Tribunal for Cooperative Cases (Principal District Judge, Salem), thereby dismissed the appeal, confirming the surcharge award passed by the Deputy Registrar of Co-operative Societies, Omalur Circle, Omalur, Salem District in Na.Ka.1473/2017/Sa.Pa dated 09.07.2018.

4. The petitioner in C.R.P.No.2024 of 2023 was elected as one of the Board of Directors of the second respondent Society in the year 2013 and also was functioned as President from 09.05.2013 to 21.08.2017. Thereafter, he was also appointed as an Administrator to administer the affairs of the second respondent Society.

5. The petitioner in C.R.P.No.2197 of 2023 was appointed as Sales woman of a PDS ration shop being run under the control of the third respondent Society in the year 1994. Thereafter, she was posted as Attender and promoted to the post of Clerk in the year 2016.



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6. While being so, on certain allegations, an enquiry was ordered under Section 81 of the Tamil Nadu Co-operative Societies Act, 1993 (herein after called as “the Act”) by the Deputy Registrar of Co-operative Societies, Salem. The enquiry was conducted and on the strength of the enquiry report, surcharge proceeding was initiated as contemplated under Section 87 of the Act by the Deputy Registrar of Co-operative Societies, Salem. The Deputy Registrar of Co-operative Societies, Salem passed a surcharge order dated 09.07.2018, thereby calculated that both the petitioners in C.R.P.Nos.2024 and 2197 of 2023 and five others are liable to pay a sum of Rs.4,91,84,961.85/- with interest at the rate of 14.5% jointly or severally and also directed to recover the said amount as contemplated under Section 87 of the Act. Aggrieved by the same, both the petitioners in C.R.P.Nos.2024 and 2197 of 2023 preferred civil revision petitions separately and both were dismissed by the Principal District Judge, Special Tribunal Co-operative cases, Salem. Aggrieved by the same, the present Civil Revision Petitions.



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7. The learned counsel for the petitioners in C.R.P.Nos.2024 and 2197 of 2023 would submit that the petitioners in C.R.P.Nos.2024 and 2197 of 2023 were not served with the enquiry report submitted by the Enquiry Officer under Section 81 of the Act. It caused great prejudice to the petitioners in C.R.P.Nos.2024 and 2197 of 2023 while submitting explanation. The surcharge proceedings initiated by the Deputy Registrar under Section 87 of the Act was without following the procedure as contemplated under Section 87(4) of the Act. Section 87 contemplates (i) any person who is or was entrusted with the organization or management of the society or any past or present officer or servant of the society (ii) such person has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment which is not in accordance with this Act (iii) If the above allegations are supported by relevant materials, the Registrar or any person authorized by him has to frame charges against such person on officer or servant and after giving a



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reasonable opportunity to the person concerned to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest.

8. The above procedures were not followed while passing the Award. Further, Section 87(4) of the Act is very clear that the enquiry which has to be conducted by the surcharge proceedings is not mere formality and there should be full-fledged enquiry and the documents have to be marked and the statements of witness recorded by the Enquiry Officer have to be corroborated with the documents. Whoever made statement before the Enquiry Officer under Section 81 of the Act is subjected for cross examination by the delinquent. The documents which are relied upon and the basis for proving the charges of wilful negligence resulting in loss to the Society should be marked and should form part of the Award. Further, the Deputy Registrar failed to follow any of the Statutory procedures as contemplated under Section 87(4) of the Act. The Deputy Registrar did not even examine any witness in support of the documents which were relied upon based on the enquiry report and also



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in order to substantiate the allegations levelled against the willful negligence of the petitioners in C.R.P.Nos.2024 and 2197 of 2023.

9. Further, the allegation alleged as against the petitioners in C.R.P.Nos.2024 and 2197 of 2023 are that they failed to monitor and supervise the day-to-day affairs of the Board in terms of bye-law 36(1) of the Society. In surcharge proceedings, that the person who was entrusted with the affairs of the Society and due to wilful negligence act, there was a loss caused to the Society and then only surcharge Award could be passed as against the person concerned.

10. The Deputy Registrar of Co-operative Societies filed separate counter and the learned Additional Government Pleader appearing for the respondents 1 and 2 in C.R.P.No.2024 of 2023 and the respondents 1 to 3 in C.R.P.No.2197 of 2023 submitted that the petitioners in C.R.P.Nos.2024 and 2197 of 2023 were given an opportunity of hearing in the surcharge proceedings. However, the persons who were examined in the surcharge proceedings were not appeared for cross examination.



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During the enquiry under Section 80(1) of the Act all the depositors, account holders and beneficiaries made their statements and also produced records. Those statements and records were duly marked in the surcharge proceedings. The petitioners in C.R.P.Nos.2024 and 2197 of 2023 and five others had misappropriated the Society funds to the tune of Rs.4,91,84,961.85/-. In fact, as requested by the petitioners in C.R.P.Nos.2024 and 2197 of 2023, they were permitted to engage their respective counsel in the surcharge proceedings.

11.The petitioners in C.R.P.Nos.2024 and 2197 of 2023 gave their statements and they were permitted to cross examine other persons who deposed before the Deputy Registrar. Therefore, there is no question of violation of principles of natural justice and the procedures as contemplated under Section 87 of the Act were duly followed during the surcharge proceedings.

12. Heard and perused the materials available on records.



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13. A perusal of records, the only point arise in C.R.P.Nos.2024 and 2197 of 2023 is that in the surcharge proceedings, the procedure laid down under Section 87 of the Act is followed or not?

14. As per the provisions under Section 87 of the Act, the Deputy Registrar is expected to record evidence on oath or at least he should receive evidence on affidavit. If any adjudication is made without evidence it is out of surmises and findings are perverse, which cannot be sustained.

15. It is relevant to extract the provisions under Section 87(4) of the Act as follows:-

*“ (4) The Registrar or the person authorised by him shall, when acting under this section, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:*

*(a) summoning and enforcing the attendance of any person and examining him on oath;*

*(b) requiring the discovery and production of any documents;*

*(c) reception of evidence on affidavits;*

*(d) requisitioning any public record from any court or office,*

*(e) issuing commission for examining of witnesses.”*



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16. Thus, it is clear that the surcharge proceedings under Section 87 shall be initiated on the basis of an audit under Section 80, or enquiry under Section 81 or inspection or investigation under Section 82, or inspection of books under Section 83, or winding up of the Society. Therefore, for initiation of surcharge proceedings under Section 87 of the Act, the report submitted under Section 80 or Section 81 or Section 82 or Section 83 is the foundation for enquiry. The actual adjudication happens only in the surcharge proceedings. Therefore, it mandates that before making an order, reasonable opportunity should be given to the person concerned. Only in the surcharge proceedings, the witnesses are examined and documentary evidence are tendered and the persons against whom the surcharge proceeding has been initiated is allowed to cross examine the witness, if he/she so wishes and also to let evidence on his/her side, both oral and documentary. Further, the Officer, who conducts surcharge proceeding shall have all the powers of the Civil Court in respect of matters enumerated therein such as, summoning and enforcing attendance of any person and examine him on oath; requiring the discovery and production of any document; reception of evidence on



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affidavits; requisitioning any public record from any Court or office and issuing commission for examining of witnesses.

17. A perusal of the surcharge Award dated 09.07.2018 passed by the Deputy Registrar of Co-operative Societies revealed that there were 7 charged officials. Based on the enquiry report submitted under Section 81 of the Act, the surcharge proceeding was initiated as against all 7 charged officials of the Society. There were 16 items of losses to the Society. In the surcharge proceedings under Item 1 of the loss, 25 documents were produced, the statements of 8 depositors were produced which were recorded before the Enquiry Officer in the enquiry under Section 81 of the Act. Under Item No.2, 28 documents were produced and the statements of 10 depositors were produced which were recorded before the Enquiry Officer in the enquiry under Section 81 of the Act. Under Item No.3, 15 documents were produced and the statements of 4 depositors were produced which were recorded before the Enquiry Officer in the enquiry under Section 81 of the Act. Under Item No.4, 36 documents were produced and the statements of 17 depositors were produced which were



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recorded before the Enquiry Officer in the enquiry under Section 81 of the Act. Under Item No.5, 7 documents were produced and the statements of 2 depositors were produced which were recorded before the Enquiry Officer in the enquiry under Section 81 of the Act. Under Item No.6, 7 documents were produced and the statements of 2 depositors were produced which were recorded before the Enquiry Officer in the enquiry under Section 81 of the Act. Under Item No.7, 34 documents were produced and the statements of 36 depositors were produced which were recorded before the Enquiry Officer in the enquiry under Section 81 of the Act. Under Item No.8, 106 documents were produced and the statements of 52 depositors were produced which were recorded before the Enquiry Officer in the enquiry under Section 81 of the Act. Under Item No.9, some documents were produced. Under Item No.10, 2 documents were produced. Under Item No.11, 62 documents were produced and the statements of 23 borrowers by pledging their jewels were produced which were recorded before the Enquiry Officer in the enquiry under Section 81 of the Act. Under Item No.12, 1 document was produced and the statements of 8 depositors were produced which were recorded before the



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Enquiry Officer in the enquiry under Section 81 of the Act. Under Item No.13, 36 documents were produced and the statements of 13 borrowers by pledging their jewels were produced which were recorded before the Enquiry Officer in the enquiry under Section 81 of the Act. Under Item No.14, 2 documents were produced. Under Item No.15, 6 documents were produced and the statements of 17 administrative members of the Society were produced which were recorded before the Enquiry Officer in the enquiry under Section 81 of the Act. Under Item No.16, no document was produced. During the surcharge proceedings all the charged officials were examined.

18. However, for the first charge, the Officer, who was a Secretary of the Society was not subjected for cross examination by the petitioner in C.R.P.No.2024 of 2023. On the basis of all these documents and the statements of the depositors, borrowers and account holder, the Award has been passed under Section 87 of the Act.

19. Therefore, admittedly, no witness was examined during the



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surcharge proceeding. However, the statements were produced and those who had made statements before the Enquiry Officer under Section 81 of the Act were not subjected for cross examination by the charged officials. Admittedly, no one was examined to prove the documents which were produced to prove the loss to the Society. Therefore, in the surcharge proceeding, the procedure as contemplated under Section 87(4) of the Act has not been followed. The entire surcharge proceeding itself is not in consonance with the procedures as contemplated under Section 87 of the Act.

20. Further, admittedly, during the enquiry under Section 81 of the Act, there was no adjudication process such as examination of witnesses to support or corroborate the documents which were produced in support of the surcharge proceeding. The proceeding under Section 81 of the Act, amounts to an enquiry which can be called a Departmental or Disciplinary Enquiry. It is an enquiry in public interest in order to find out whether the affairs of a Cooperative Society are conducted legally and whether there are financial improprieties in the matter of conduct of its



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affairs. Such an enquiry cannot be *prima facie* compared to an enquiry against any individual employee.

21. The learned counsel for the petitioners relied upon the Judgment of this Court reported in **2012 (1) CWC 794** in the case of ***M.Karuppannan Vs The Deputy Registrar (Dairying), office of the Deputy Registrar (dairying), Erode Taluk and District, Erode 1 and others***, wherein it was held as follows:-

*8. A perusal of the award off the 1st Respondent, would go to show that no evidence, either oral or documentary, was recorded. As has been pointed out by the learned Counsel for the Petitioner under Section 87(4) of the Act, the office, who is holding enquiry under Section 87 of the Act shall have all the powers of a Civil Court while trying a Civil Suit under the Code of Civil procedure and he has got power to enforce the attendance of any person and examine him on oath and also receive evidence on Affidavits. This would clearly indicate that the Enquiry Officer. while holding enquiry under Section 87 of the Act, is to record evidence on oath or at least he should receive evidence on Affidavit from the parties. It is also clear that as per Section 87(4)(e) of the Act, he has got power even to issue commission for examining of witnesses. Under (Section 87 of the Act the authority is directed to adjudicate upon the disputed facts on evidence to-be let in, either oral or documentary evidence, before him. Without the evidences, either oral or documentary, if any*



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*adjudication is made it could surely be stated that it is out of surmise and such finding is perverse, which cannot be sustained in this case, a perusal of the award of the 1st Respondent does not reflect recording of any oral evidence or reception of evidence on Affidavit or production of any documentary evidence. In fact, this Court directed the learned Counsel appearing for the Respondents 1 & 2 to produce the original records to ascertain as to whether the procedure contemplated under Section 87(4) of the Act was, in fact, followed or not. The learned Counsel after referring to the records would submit that the Enquiry Officer perused the report of the auditor. But, no oral evidence was recorded on the side of the 2nd Respondent. Instead, the statements of the Petitioner and the Respondents 3 & 4 were recorded. It is also not on oath as required under Section 87(4)(a) of the Act. Therefore, such statement cannot be treated as oral evidence at all, for want of administration of oath. There was no other evidence recorded and there was no documentary evidence also exhibited. In view of the above position, as rightly contended by the learned counsel for the Petitioner, there can be no difficulty in holding that the adjudication made by the 1st Respondent is perverse as the same has been done on no evidence. For a moment, I want to remind that in Writ jurisdiction, this Court cannot convert itself into either a Court of Appeal or Revision to re- appreciate the evidence and to substitute its own conclusion in the place of the conclusion arrived at by the 1st Respondent is found to be perverse, i.e., bases on no evidence, then, it is for this Court to interfere with the said award. To put it otherwise, if the award has been made on some evidence, this Court will not interfere with the same inasmuch as the domain of re- appreciation of evidence is not with this Court in this Writ Petition. But, at the*



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*same time if it is found that it is the ease of no evidence upon which the conclusion has been arrived at, surely, this Court has to interfere with inasmuch as such conclusion is perverse. In this case, as I have, already stated, the conclusion has been arrived at on no evidence and, therefore, the award of the first respondent which came to be confirmed by the Co-operative Tribunal/Principal District Court, Erode needs to be interfered with.”*

22. Further, during the enquiry under Section 81 of the Act, the charged officials shall have no opportunity to cross examine any witness who is examined by the Enquiry Officer. Therefore, the petitioners in C.R.P.Nos.2024 and 2197 of 2023 were deprived of an opportunity to cross examine the witnesses to peruse the documents and let in evidence in the surcharge proceedings. When the statements were obtained from various persons during the enquiry under Section 81 of the Act, behind the back of the charged officials, it cannot be relied on to prove the loss that too without an opportunity to cross examine those persons who made statements.

23. In view of the above, on the sole ground that the surcharge award was not passed in consonance with the procedures as



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contemplated under Section 87 of the Act, the surcharge award cannot be sustained and are liable to be quashed. Accordingly, the Judgment and Decree passed in CMA (CS) No.28 of 2019 dated 26.10.2022 and in CMA(CS) No.42 of 2019 dated 11.10.2022 on the file of the Special Tribunal for Co-operative cases (Principal District Judge, Salem) passed by the Deputy Registrar of Co-operative Societies, Omalur Circle, Omalur and Post, Salem District, are hereby quashed.

24. The matter is remanded back to the Deputy Registrar of Co-operative Societies, Omalur Circle, Omalur and Post, Salem District, for fresh disposal. The Deputy Registrar of Co-operative Societies, Omalur Circle, Omalur and Post, Salem District is directed to follow the procedures as contemplated under Section 87 of the Act by letting in oral and documentary evidence by conducting fresh enquiry and after giving an opportunity to cross examine and hearing of charged officials, pass orders, on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.



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25. It is made clear that the documents and the statements which were produced in the surcharge proceeding can be produced and it should be corroborated by examining the persons who had made statements before the Enquiry Officer under Section 81 of the Act. The charged officials are directed to co-operate for the early disposal of the surcharge proceeding.

26. In view of the quashment of the surcharge award passed by the Deputy Registrar of Co-operative Societies dated 09.07.2018, the Form 8 and 9 notices dated 12.09.2023 and 24.04.2023 issued by the Deputy Registrar of co-operative Societies cannot be sustained and are liable to be quashed. Accordingly, the Form 8 and 9 notices dated 12.09.2023 and 24.04.2023 issued by the Deputy Registrar of co-operative Societies, Salem District, are hereby quashed. After surcharge proceeding, the Society can initiate execution proceeding as against the charged officials to implement the surcharge Award in accordance with law.



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27. Accordingly, C.R.P.Nos.2024 and 2197 of 2023 are allowed.

W.P.Nos.28493, 14389 and 28497 of 2023 are allowed. Consequently, connected Miscellaneous petitions are closed. No costs.

23.09.2024

Internet: Yes

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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**G.K.ILANTHIRAIYAN. J.**

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To

1. The Joint Registrar,  
O/o Joint Registrar Of Co-Operative Societies,  
Salem Region,  
Collector Office Buildings, 4<sup>th</sup> Floor,  
Salem-I.
2. The Deputy Registrar,  
O/o Deputy Registrar of Cooperative Societies,  
Omalur Circle, Katcheri Road,  
Omalur and post,  
Salem District.
3. The Administrator,  
S 777, Nangavalli Primary Agricultural  
Cooperative Credit Society Ltd,  
Nangavalli and post,  
Mettur Taluk, Salem - 636 454.

W.P.Nos.28493, 14389 and 28497 of 2023  
and C.R.P.Nos.2024 and 2197 of 2023

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