



HIGH COURT OF ANDHRA PRADESH
THURSDAY ,THE TWENTIETH DAY OF OCTOBER
TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION NO: 4822 OF 2012

Between:

1. Nagaram Primary Agricultural Co-operative Society Rep. by its President,
M. Nagabhushana Rao, S/o. Sessaiah
Bellamvaripalem, Nagaram Mandal, Guntur Dist.,
Peddavaram, Nagaram Mandal,
Guntur District.

...PETITIONER(S)

AND:

1. The Asst. Commissioner of Labour - 1 15/1 Arundelpet,
Deputy Commissioner Office Complex,
Guntur, Guntur District.
2. Peeta Venkateswarlu S/o. Pitchaiah
Lakshmi Cheruvu,
Cherukupalli Village P.O. & Mandal,
Guntur District.

...RESPONDENTS

Counsel for the Petitioner(s): V N ANAGANI

Counsel for the Respondents: GP FOR LABOUR

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No.4822 of 2012 & C.C.No.1171 OF 2010

Between:

Nagaram Primary Agricultural Cooperative Society,
Guntur District

.....Petitioner

AND

The Assistant Commissioner of Labour-I,
Guntur and another

.....Respondents

DATE OF JUDGMENT PRONOUNCED:**20.10.2022**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J



* **THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

+ **WRIT PETITION No.4822 of 2012 & C.C.No.1171 OF 2010**

% 20.10.2022

Nagaram Primary Agricultural Cooperative Society,
Guntur District

....Petitioner

Versus

\$The Assistant Commissioner of Labour-I,
Guntur and another

.....Respondents

! Counsel for the Petitioner: Sri V.N. Anagani

^ Counsel for the respondent No.2: Sri Peeta Raman

< Gist :

> Head Note:

? Cases Referred:

¹ (2005) 1 SCC 536

² (2007) 2 SCC 138

³(2008) 10 SCC 1

⁴.(2002) 2 SCC 228

⁵ (2002) 3 SCC 228

⁶ (2001)2 SCC 646

⁷ (1995) 2 SCC 326

⁸ (2005) 1 SCC 536

⁹ (2001) 5 SCC 570

¹⁰ (2017) 13 SCC 414

¹¹ (1998) 8 SCC 1

¹² (2021) 6 SCC 771

¹³ (2002)3 SCC 228

¹⁴ [1995] 2 SCC 326

¹⁵ [2001] 2 SCC 646



THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.4822 of 2012 & C.C.No.1171 OF 2010

COMMON JUDGMENT:-

1. Heard Sri V.N. Anagani, learned counsel for the petitioner and Sri Peeta Raman, learned counsel for the respondent No.2.
2. The petitioner Nagaram Primary Agricultural Co-operative Society, Guntur (for short, "the Nagaram PACS") has filed this writ petition under Article 226 of the Constitution of India challenging the order dated 20.10.2005, passed by the Assistant Commissioner of Labour-I, Guntur in S.A.No.1 of 2005 in the Application of the 2nd respondent-Peeta Venkateswarlu. The prayer in the writ petition reads as under:

"...it is prayed that this Hon'ble court may be pleased to issue writ, order or direction more particularly one in the nature of writ of certiorari calling for the records and set aside the order dated 20.10.2005 passed by the Assistant Commissioner of Labour-1, Guntur in S.A.No.1 of 2005, and be pleased to pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case."

3. The 2nd respondent-Peeta Venkateswarlu was appointed on 19.07.1979 as Secretary under Half a Million Job program by the Chairman, Appointment Committee of Paid Secretaries, constituted under Cadre Scheme of the Guntur District Cooperative Central Bank Limited, Tenali and was posted at Rajavolu Primary Agricultural Society (for short, "the Rajavolu



PACS”), Repalli. He was later allotted Dhulipudi Primary Agricultural Cooperative Society, Guntur (in short “Dhulipudi PACS”).

4. The 2nd respondent was placed under suspension on the allegations of misappropriation of the funds of the Dhulipudi PACS vide Rc.No.2/1997 dated 14.07.1997 against which he filed appeal which was dismissed by the Divisional Cooperative Officer. The 2nd respondent filed W.P.No.16303 of 1999, which was withdrawn by him on 17.04.2021. Vide resolution dated 26.05.2001, 2nd respondent was directed to join the duty pursuant to which he joined on 27.05.2001. The 2nd respondent, thereafter, made representation to the 1st respondent to pay subsistence allowance from the date of suspension to the date of reinstatement upon which the Dhulipudi PACS passed resolution dated 31.05.2001 for payment and the 2nd respondent received some amount out of the amount claimed by him, on 29.03.2001 but the rest amount was not paid. He filed W.P.No.18998 of 2003 which was disposed of finally on 09.09.2004 directing for payment of subsistence allowance for the suspension period as per the resolution dated 31.05.2001 but granting liberty to file appeal before the competent authority with respect to the remaining amount.



5. The 2nd respondent filed S.A.No.1 of 2005, under Section 51 of the A.P. Shops and Establishment Act, 1988 (in short “A.P.S & E Act, 1988”) for a direction to Dhulipudi PACS to pay the outstanding amount with interest @ 18% p.a with all consequential benefits.

6. During pendency of S.A.No.1 of 2005, the Dhulipudi PACS, was merged with Nagaram PACS on 25.07.2005 by the order of the Registrar of A.P. Cooperative Societies, under Section 15-A(2) of the A.P. Cooperative Societies Act, 1964 (for short, “the Act, 1964).

7. The case of the 2nd respondent in S.A.No.1 of 2005 is that Sri P. Sudhakar the Ex-President of the Dhulipudi PACS and Ex-Part time person incharge of Nagaram PACS filed counter affidavit admitting his claim and submitting that the necessary directions be given to the District Cooperative Officer, Guntur, the concerned officer to accord permission to the General Manager, Guntur District Cooperative Central Bank Limited, to advance the funds to the Society to enable the Chairperson to pay the requisite amount to the 2nd respondent.

8. The Authority under the A.P. Shops and Establishment Act, 1988/the Assistant Commissioner of Labour-I, Guntur, the 1st respondent in short “the Authority” vide impugned order dated 20.10.2005 allowed S.A.No.1 of 2005, directing the respondent



therein i.e Chairperson, Dhulipudi PACS to deposit an amount of Rs.1,99,824/- by demand draft within specified time.

9. The Authority, filed CrI.M.P.No.1324 of 2007 on the file of the II Additional Munsif Magistrate, Repalli, under Section 51(4)(b) of the A.P.S. & E Act, 1988, for recovery of the amount under order dated 20.10.2005 as if it was a fine.

10. On receipt of the notice in CrI.M.P.No.1324 of 2007, the petitioner Nagaram PACS appeared and contested the proceedings inter alia on the ground that the Dhulipudi PACS merged with Nagaram PACS on 25.07.2005. On the date of the order dated 20.10.2005 Dhulipudi PACS was no more in existence which was a dead entity and as such the order dated 20.10.2005 was null and void. Further, the Nagaram PACS was not impleaded in S.A.No.1 of 2005 and was not given any opportunity of hearing.

11. The II Additional Munsif Magistrate, Repalli vide order dated 18.10.2007 dismissed the CrI.M.P.No.1324 of 2007, holding that the order dated 20.10.2005 was void abinitio and was not executable.

12. The 2nd respondent filed Criminal Revision Case No.117 of 2008, under Sections 397/401 of the Code of Criminal Procedure, 1973, (in short "Cr.P.C") which was allowed by this Court vide judgment dated 31.12.2009 setting aside the order



dated 18.10.2007 and directing the Magistrate to recover the amount as 'fine' under Section 421 Cr.P.C and pay the same to the 2nd respondent.

13. The Nagaram PACS has filed this writ petition challenging the order dated 20.10.2005 passed in S.A.No.1 of 2005.

14. Sri V.N. Anagani, learned counsel for the petitioner submitted that in view of Section 15-A(3)(ii) of the A.P. Cooperative Societies Act, 1964, on passing of an order of amalgamation by the Registrar of the Cooperative Societies under Section 15-A(2), the registration of every amalgamated society shall stand cancelled, where upon such society shall cease to exist as a corporate body. As such on 25.07.2005 on passing of the order of amalgamation by the Registrar, amalgamating Dhulipudi PACS with Nagaram PACS, the registration of Dhulipudi PACS stood cancelled and Dhulipudi PACS ceased to exist as a corporate body. The order dated 25.10.2005 in S.A.No.1 of 2005 was passed against a non-existing body which cannot be made binding on the petitioner Nagaram PACS. He placed reliance on the judgment of the Hon'ble Apex Court in **Government of Orissa vs. Ashok Transport Agency and others**¹ to contend that after amalgamation, Nagaram PACS, was necessary party to be

¹ (2005) 1 SCC 536



impleaded and in its absence no order could be passed against non-existing Dhulipudi PACS.

15. Sri V.N. Anagani next submitted that in S.A.No.1 of 2005 a forged counter affidavit of the then incharge Sri P. Sudhakar was got filed, admitting the liability like a thirty party affidavit which was not even informed to the petitioner society in the letter dated 25.8.2005 of Sri P. Sudhakaar.

16. Sri V.N. Anagani further submitted that even by taking recourse to Section 15-A(7) of the Act, 1964 the impugned order dated 25.10.2005 cannot be made binding on the petitioner Nagaram PACS as Section 15-A(7) is about the liabilities of existing entity on the date of amalgamation whereas the order dated 25.10.2005 was passed after amalgamation, without impleading the petitioner as party.

17. Sri Peeta Raman, learned counsel for the 2nd respondent submitted that Dhulipudi PACS was merged with the petitioner Nagaram PACS. Sri P. Sudhakar, person incharge of the petitioner Nagaram PACS filed counter affidavit and in view thereof the petitioner is deemed to be impleaded in S.A.No.1 of 2005. The claim of the 2nd respondent was admitted and as such the order dated 20.10.2005 is binding on the petitioner, and in view of Section 15(7) of the Act, 1964 the petitioner



Nagaram PACS was liable for payment of the amount under the order dated 20.10.2005.

18. Sri Peeta Raman further submitted that the order dated 20.10.2005 was not challenged by filing appeal which attained finality under Section 53(2) of the A.P. Shops and Establishment Act, 1998.

19. Sri Peeta Raman further submitted that the counter filed in S.A.No.1 of 2005 was not forged and in the letter dated 25.08.2005 of P. Sudhakar, the Person incharge of the petitioner Nagaram PACS, categorically admitted that he attended the hearing before the authority on 23.08.2005. Consequently, the plea that the counter was not filed or was forged cannot be raised. He further submitted that this plea, that the counter was not filed as also the plea that the petitioner Nagaram PACS was not party, were raised in CrI.M.P.No.1324 of 2007. However, the order dated 18.10.2007 of the Magistrate was set aside in CrI.R.C.No.117 of 2008 vide judgment dated 31.12.2009, with direction to execute the order dated 20.10.2005 in S.A.No.1 of 2005, which judgment dated 31.12.2009 has become final. He placed reliance on the judgments in the case of **U.P. Gram Panchayat Adhikari**



Sangh and others vs. Daya Ram Saroj and others² and **Official Liquidator vs. Dayanand and others³** in support of his contentions.

20. In reply Sri V.N. Anagani submitted that in the judgment of this Court in Crl.R.C.No.117 of 2008 dated 31.12.2009 Section 15-A(3) of the Act, 1964, escaped consideration. It has no binding effect. He contended that a decision which falls in rule of sub-silentio or per incuriam, does not carry any binding precedent.

He placed reliance in **Abdul Rasak and others vs. Kerala Water Authority and others⁴**.

21. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

22. In view of the rival submissions, the following points arise for consideration and determination by the court:

1. Whether in S.A.No.1 of 2005 any counter affidavit was filed by the petitioner admitting the claim of the 2nd respondent?
2. Whether the petitioner can be bound by counter affidavit dated 23.08.2005 in S.A.No.1 of 2005 filed by P. Sudhakar admitting the claim of the 2nd respondent?

² (2007) 2 SCC 138

³ (2008) 10 SCC 1

⁴ (2002) 2 SCC 228



3. Whether the impugned order dated 20.10.2005 in S.A.No.1 of 3005 is binding and final against the petitioner?

4. The effect of the judgment dated 31.12.2009 by this Court in CrI.R.C.No.117 of 2008 on the present petition?

23. The facts on which there is no dispute between the parties are:

i) that the Dhulipudi PACS was merged with Nagaram PACS by order of the Registrar dated 25.07.2005 during pendency of S.A.No.1 of 2005,

ii) that the petitioner Nagaram PACS was not party in S.A.No.1 of 2005.

iii) any notice of S.A.No.1 of 2005 was not issued to the petitioner Nagaram PACS by the authority.

Point Nos.1 and 2:

24. It is disputed by the petitioner that any counter affidavit was filed by the petitioner society in S.A.No.1 of 2005. The contention of the 2nd respondent is that the counter affidavit was filed by P. Sudhakar the person in-charge of the petitioner society on 23.08.2005.

25. In this petition, this Court vide order dated 20.09.2010, directed the Principal Senior Civil Judge, Guntur to record a finding as to whether the then President Sri P. Sudhakar filed a counter affidavit in S.A.No.1 of 2005 and if so whether he received any notice from the 1st respondent-Assistant Commissioner of Labour-I before filing the counter affidavit.



26. The order dated 20.09.2010 passed by this Court in W.P.No.4822 of 2012 reads as under:

“The only controversy in this case is as to whether the then President of the petitioner Society i.e. Nagaram Primary Agricultural Cooperative Society, Bellamvaripalem, Nagaram Mandal, Guntur District filed any counter/affidavit before the authority under the A.P.Shops and Establishments Act, 1988 and the Assistant Commissioner of Labour-1, Guntur. Respondent No.2 hereinfiled S.A.Case No.1 of 2005 against Dhulipudi Primary Agricultural Cooperative Society, Nagaram Mandal, Guntur District for recovery of subsistence allowance for the period from 01.05.1997 to 31.05.2001. The said society has since been merged with the petitioner Society.

The petitioner contends that it was not even a party before the authority and no counter-affidavit was filed and the matter was proceeded as though such a counter-affidavit was filed. Respondent No.1 proceeded on the assumption that the counter was filed and the petitioner herein is represented. To clear this doubt, this Court proposes to direct an enquiry into the matter.

Hence, the learned Principal Senior Civil Judge, Guntur is directed to issue notices to the parties concerned and record a finding as to whether the then President, Sri P. Sudhakar, Assistant Registrar-I, Sub-Divisional Cooperative Office, Marispeta, Tenali, Guntur District, filed a counter-affidavit in S.A.Case No.1 of 2005 and if so, whether he has received any notice from respondent No.1 before filing the counter-affidavit. It shall be open to the parties to adduce evidence.



The findings shall be returned to this Court, within a period of two months from the date of receipt of a copy of this order.”

27. In compliance, the Principal Senior Civil Judge, Guntur submitted his report dated 01.12.2010.

28. This Court considering the report dated 01.12.2010 and for the reasons recorded, passed the interim order dated 14.12.2010 as under:

“The learned IV Additional Senior Civil Judge, FAC Principal Senior Civil Judge, Guntur filed a report, dated 01.12.2010. A perusal of the record and the depositions recorded therein discloses that P. Sudhakar, who is now working as Assistant Registrar of the Cooperative Society at Tenali, Guntur District, deposed as a witness and stated that he entered appearance on behalf of the petitioner herein in the proceedings pending before the Assistant Commissioner of Labour. **By that time, he was working as person-in-charge of that society. This Court is unable to understand as to how he entered appearance and filed a counter-affidavit, stating no objection for deposit of the amount, when the petitioner herein was not a party to S.A.No.1 of 2005 before the Assistant Commissioner of Labour at Guntur.**

The learned counsel for the petitioner seeks time to implead Sri P. Sudhakar, Assistant Registrar of the Cooperative Society at Tenali, Guntur District.

This Court finds that a close scrutiny is needed as to the manner in which the petitioner was fastened with liability to pay amount to a person, who was not its employee. There shall be interim stay of all further proceedings in pursuance of the order, dated 20.10.2005 in S.A.No.1 of 2005 passed by respondent No.1 herein, including execution thereof. Post on 27.12.2010.”



29. A perusal of the order dated 14.12.2010 shows that this Court observed that the Court was unable to understand as to how Sri P. Sudhakar entered appearance and filed a counter affidavit stating no objection for deposit of the amount, when the petitioner herein was not a party to S.A.No.1 of 2005 before the Assistant Commissioner of Labour-I, Guntur. This court further observed that a close scrutiny is needed. This Court stayed all further proceedings pursuant to the order dated 20.10.2005 including its execution.

30. The 2nd respondent filed Writ Appeal No.81 of 2011 against the interim order dated 14.12.2010 which was dismissed granting liberty to the 2nd respondent to file vacate application.

“This writ appeal is filed against an ad-interim direction which according to the learned counsel for the appellant is not sustainable. Regard being had to the fact that the direction is yet to be made absolute, we are of the opinion that ends of justice would be met by permitting the appellant to file a vacate petition to be listed week following next with a request to the writ court to consider it for disposal. Needless to say that nothing prevents the writ court to dispose of the writ petition itself at the earliest. Disposed of.”

31. The 2nd respondent filed an application being W.V.M.P.No.168 of 2012 for vacation of the stay order dated 14.12.2010 passed in the writ petition.



32. The 2nd respondent also filed contempt case C.C.No.1171 of 2010 with respect to the order dated 31.12.2009 passed in CrI.R.C.No.1178 of 2006.

33. This Court passed common order dated 25.04.2012, in the writ petition on stay vacate application and in C.C.No.1171 of 2010, that it would not be appropriate to consider the application for vacation of the stay order and instead the writ petition and the contempt case both deserve to be heard and disposed of. The order dated 25.04.2012 reads as under.

“W.V.M.P.No.168 of 2012

The writ petition questions the order of authority under the Shops and Establishments Act and by two detailed order passed by this court, dated 20.09.2010 and 14.12.2010, **this Court has seriously doubted the procedure followed by the Authority under the Shops Act while passing the impugned order. It is also recorded by this Court that a close scrutiny is needed as to the manner in which liability is fastened on the petitioner to pay the amount to a person who is not its employee.**

Learned counsel for the contesting respondents has filed the present vacate stay petition on 10.03.2011, which was heard by another learned Judge on 24.02.2012 in part. Later, it was released from the list of his Lordship on 15.03.2012 and appeared before this Court on 28.03.2012 and listed today for further hearing. The contempt case, which is tagged on with this matter, arises out of CrI.R.C.No.117 of 2008 decided by this Court on 31.12.2009, however, in view of the latter order passed by this Court in this writ petition, the interim stay is operating since 14.12.2010 and unless the main writ petition is heard, as observed by this Court noted above, at this distance of time it would not be appropriate to consider the application for



vacation of stay and in stead the writ petition and the contempt case both deserve to be heard and disposed of.

The W.V.M.P is, accordingly, disposed of.

In view of the ensuing vacations, it is not possible to spend much time on these matters

List these matters immediately after Summer Vacation, 2012. Liberty to the learned counsel for the vacate petitioner to request for early disposal of the matter after vacation.”

34 The 2nd respondent filed W.A.No.1086 of 2012 which was dismissed on 05.09.2012 holding that it was rightly held by the learned single Judge that the controversy between the parties required determination only in the main writ petition.

35. The order dated 05.09.2012 in W.A.No.1086 of 2012 reads as under:

“The 1st respondent herein filed W.P.No.4822 of 2012 seeking a Certiorari to call for the records relating to the order dated 20.10.2005 passed by the Assistant Commissioner of Labour-I, Guntur in S.A.No.1 of 2005 and to quash thesame.

By order dated 14.12.2010, a learned Single Judge of this Court granted interim stay of the order challenged in main writ petition observing as under:

“This Court finds that a close scrutiny is needed as to the manner in which the petitioner was fastened with liability to pay amount to a person, who was not its employee. There shall be interim stay of all further proceedings in pursuance of the order, dated 20.10.2005 in S.A.No.1 of 2005 passed by respondent No.1 herein including execution thereof.”



Aggrieved by the same, the appellant herein, who is respondent No.2 in the writ petition filed W.V.M.P.No.168 of 2012. After hearing both the parties, the learned Single Judge declined to vacate the interim order observing that unless the main writ petition is heard, it would not be appropriate to consider the application for vacation of stay and instead the writ petition and the contempt case both deserve to be heard and disposed of. Accordingly, there was a direction to list the writ petition immediately after Summer Vacation, 2012. The learned counsel for the vacate stay petitioner/appellant herein was also granted liberty to make a request for early disposal of the matter immediately after Summer Vacation, 2012.

The said order dated 25.04.2012 passed in WVMP No.168 of 2012 is under challenge in this appeal before us.

Having heard the learned counsel for both the parties, we do not

find any justifiable reason to interfere with the order under appeal. As rightly held by the learned Single Judge, the controversy between the parties requires determination only in the main writ petition.

Accordingly, the Writ Appeal is dismissed. However, there shall be a direction to the Registry to post W.P.No.4822 of 2012 for hearing in terms of the order under appeal for final hearing without having regard to the subsequent order dated 27.6.2012. No costs.”

36. The aforesaid orders dated 14.12.2010 and 25.04.2012 in the present writ petition were passed after the decision dated 31.12.2009 in CrI.R.C.No.117 of 2008.



37. I have also gone through the proceedings of the Principal Senior Civil Judge, Guntur, on record along with report dated 01.12.2010, submitted pursuant to the order of this Court dated 20.09.2010.

38. The court considers it appropriate to reproduce the relevant part of the deposition of P. Sudhakar on examination as witness No.1, in the proceedings before the Principal Senior Civil Judge, Guntur as witness No.1:

“I received a notice from Asst. Commissioner of Labor (R1) on 20.06.2005 to submit my answer. I filed my counter affidavit in S.A.No.1 of 2005 on 23.08.2005 in reply to the said notice I received. I brought the counter affidavit copy dated 23.08.05 and filing it today. It is document No.1. I have also submitted a letter to my superior officers immediately after filing my counter affidavit. I am also submitting the said letter dated 25.08.2005 to the court. It is document No.2.

Readily I am not having copy of the notice received from Asst. Commissioner of Labor on 29.06.2005. It must be in the records of Nagaram Primary Agricultural Cooperative society.”

39. From the statement of P. Sudhakar, reproduced above, three relevant facts become evident:-

i) he received notice from the Assistant Commissioner, Labour on 20.06.2005 to submit reply,



ii) he filed counter affidavit on 23.08.2005 (document No.1), and
iii) he submitted letter dated 25.08.2005 (document No.2) to his superior officer.

40. Sri B. Yesudas, the then Assistant Commissioner of Labour, was examined as witness No.4 in proceedings before the Principal Senior Civil Judge, Guntur. His deposition is as under:

“CHIEF EXAMINATION:

I have been working as Asst. Commissioner of Labour, Guntur, since 23-10-2008. I received summons to appear before this Court to produce relevant record pertaining to S.A.No.1/05 on the file of Asst. Commissioner of Labour-I, Guntur.

In April, 2008, there was restructure of department. In the said restructure, the post of Labour Officers – I & II at Guntur was abolished. A post of Asst. Commissioner of Labour, Tenali, was established. The area relating to Dhulipudi and Nagaram are now in the jurisdiction of Asst. Commissioner of Labour, Tenali. The record relating to S.A.No.1/05 was sent to Asst. Commissioner of Labour, Tenali, on its establishment.

Since summons were issued to me therefore, I secured the record relating to Peeta Venkateswarlu from the Asst. Commissioner of Labour, Tenali, in S.A.No.1/05. I am deposing on the basis of record.



I am herewith filing the notice issued on 17.6.05 to the Chair Person, Dhulipudi PACS, Dhulipudi. It is document No.3. The notice was received by the Chair Person, Dhulipudi PACS, Dhulipudi on 20.06.05. The copy of it is, **document No.4**. The counter affidavit dt.23.08.05 filed by the Chair Person is also filed herewith. **It is document No.5.”**

41. From the statement of witness No.4, it is evident that the notice was issued to the Chairperson, Dhulipudi PACS on 17.06.2005 (document No.3) and was received by him i.e P. Sudhakar on 20.06.2005.

42. The counter affidavit dated 23.08.2005 filed on behalf of the respondent in S.A.No.1 of 2005, on record, is under the signatures of P. Sudhakar in which after the ‘respondent’ at the place of signatures, chair person Nagaram PACS is written by hand.

43. The Respondent in S.A.No.1 of 2005 was Dhulipudi PACS and not the petitioner Nagaram PACS.

44. A perusal of the counter affidavit filed by P. Sudhakar further shows that the claim of the 2nd respondent was admitted, as P.Sudhakar stated that the necessary direction may be given to the concerned, to accord permission to the General Manager, Guntur District Cooperative Central Bank Limited, Guntur, to advance necessary funds to pay the subsistence allowance to the second respondent.



45. The letter dated 25.08.2005 on record by P. Sudhakar to the Divisional Cooperative Officer, Tenali (as referred in his statement as witness No.1) is also reproduced as under:

“From
Sri.P. SUDHAKAR,
Chair person
Nagaram PACS and
Sub Divl.Co.Op. Officer

To
The Divl.Co.op.Officer
Tenali.

Letter dt. 25-08-2005

Sir,

- Sub: P.a.C.S. Dhulipudi PACS (merged with Naagaram PACS) – Payment of sussistance allowance to Sri P. Venkateswarlu, Secretary – Status report submitted to issue direction to the Chairperson – Reg
- Ref: 1. Rc.No. 1/97, dt. 14-07-97 of the President, Dhulipudi PACS.
2. Proc. Rc No. 3502/97, dt. 9-04-98 of the Divisional Co-Operative Officer, Tenali.
3.W.P.No. 16575/98 before the Hon'ble A.P. High Court.
4. Rc.No. 3463/97c2, dt. 25-2-98 of the District Co-operative Officer., Guntur.
5. Rc.No. 168797c2, dt. 25-2-99 of Deputy Registrar of Co-operative Societies, Tenali
6. Resolution, dt. 18-6-99 of the Managing Committee, Dhulipudi PACS.
7. W.P.No. 16303/99 before the APHC, Hyderabad.
8. Rc. NO. 1687/47c2, dt. 29-11-2000 Deputy Registrar of Co-operative Societies, Tenali.
9. Letter dt. 18-1-2002 of the Secretary.
10. Legal Notice, dt. 29-10-2002 of Dasari Nageswara Rao, Advocate, Repalle.
11. W.P.No. 18998/03 before the APHC, Hyderabad.
12. SA 1/05 before the Assistant Commissioner of Labour-1, Guntur Circle.
13. Noticer in SA 1/05, dt. 29-6-2005 of the Assistant Commissioner of Lagbour-1, Guntur.

I submit that in the reference 1st cited that the president of Dhullipudi PACS kept Sri P. Venkateswarlu, Secretary of the Society under suspension. Sri. R. Venkateswarlu challenged these order s before the Deputy Registrar of Co-operative Societies, Tenali on 14-8-97 to set aside the order of the President. In the ref 2nd cited the Deputy Registrar of Co-operative Societies, Tenali ordered that the suspension of the secretary is irregular and reinstated the Secretary.

The President of the society filled a revision petition before the JR/DCO, Guntur u/s 77 of the APCS Act 7 of 1954 praying to set aside the orders of the D.R. of C.S. Tenali in the reference 2nd Cited. The JR/DCO, Guntur dismissed the revision petition of the President on 16-11-1998. The



secretary of the PACS requested the President to reinstate him as secretary. Since the president has not reinstated Sri.P. Venkateswarulu as secretary he preferred a W.P. in the reference 3rd cited for implementation of the orders of the Deputy Registrar of Co-operative Societies. Tenali in the reference 2nd cited. The Hon'ble High Court of A.P., Hyderabad issued interim orders on 18-9-98 to reinstate the secretary into service as secretary of the society. The President of the society failed to implement the orders of the Hon'ble High Court of A.P.

Meanwhile an enquiry u/s. 51 of the APCS Act was ordered and completed. The JR/DCO, Guntur in the reference 4th cited requested the Divisional Co-operative Officer, Tenali to initiate action against Sri. P. Venkateswarlu u/s 60(1) OF THE APCS Act 7 of 1964. The Deputy Registrar of Co-operative Societies, Tenali in the reference 5th Cited directed the President to suspend the secretary for a period of 3 months.

The President of Dhulipudi PACE has kept the Secretary under occupation w.e.f 18-6-99 as per the resolution of Managing Committee dt. 18-6-99 in the reference 6th cited. The secretary of the society requested the president to pay the subsistence allowance as per the provision of APCS Act and Rules and as per the provisions of A.P.S.E. Act. Since his request was not considered the secretary filed a W.P. in the reference 7th cited High Court issued an interim direction on 3-8-99 in W.P. No. 16303/99 that the secretary shall be paid subsistence allowance in accordance with the rules.

The President of the said society paid an amount of Rs. 20,000/- to the secretary as 25-8-99 by way of cheque in these circumstances the Deputy Registrar of Co-operative Societies, Tenali in the reference 8th cited superseded the Managing Committee of the society and appointed the PPIC to manage the affairs of the society. The secretary and for payment of subsistence allowance. The PPIC reinstated the secretary and paid an amount of Rs. 10,000/- on 29-3-2001 and Rs. 66,528/- on 6-6-01.

In the reference 9th cited the secretary of the society requested the Division co-operative Officer, Tenali to accord permission to PIC to pay the subsistence allowance and arrear salaries to the secretary. Since the secretary has not been paid the subsistence allowances as requested in the reference 9th cited he issued legal notices to all the concerned in the reference 10th cited to take immediate action to pay the subsistence allowances as requested by the secretary in the reference 9th cited.

In the reference 11th cited the secretary filed a W.P.No. 18998/03 before the Hon'ble High Court of A.P., Hyderabad for getting his subsistence allowance, But the W.P. dismissed on 9-9-04 with a liberty to the petitioner to approach the concerned authorities for getting his subsistence allowance as the High Court is not the proper forum.

Since Sri. P. Venkateswarlu, Secretary of the society preferred an appeal in the reference 12th cited before the Assistance Commissioner of Labour - 1, Guntur circle for payment of subsistence allowance and made the Chairperson of Dhulipudi PACS Ltd, Dhulipudi as respondent.

In the reference 13th cited the Assistance Commissioner of Labour-1, Guntur circle issued notice to the Chairperson, Dhulipudi PACS Ktd., Dhulipudi for hearing on 23-8-2005. Since the society merged with Nagaram PACS Ltd. The responsibilities of the erstwhile Dhulipudi PACS devolved upon Chairperson of Nagaram PACS. The Sub. Divisional Co-operative Officer, Repalle attended for hearing before the ACL - 1, Guntur circle on 23-8-05. Since he happened to be the Chairperson of Nagaram PACS.

The authority u/s. 48 of A.P.S.E. Act. 1968 orally instructed the Chair person of Nagaram PACS that it is the mandatory to pay the



subsistence allowance to the secretary for _____ period and if it is not paid as per the provision of Sec. 40 of A.P.S.E. Act, 1988. Further, I submitted that the case was came to final stage and the learned authority u/s. 48 of the A.P.S.E. Act 1988 may be given judgment accordingly.

Therefore I request the Divl.Co.Op. Officer, Tenali to accord permission to pay the subsistance allowance the secretary of earstwhile Dlhulipudi PACS now merged with Nagaram PACS or I may be issued suitable Direction in this regard.”

46. A perusal of the letter dated 25.08.2005 shows that there is no reference of filing of the counter affidavit by P. Sudhakar on 23.08.2005 in S.A.No.1 of 2005, although it makes mention of about 13 references. There is also no mention of filing of the counter affidavit by P. Sudhakar in the contents of the said letter. What has been written inter alia is that on the date fixed i.e 23.08.2005, he (P. Sudhakar) attended for hearing before the 1st respondent since he happened to be the chair person of Nagaram PACS Limited in which the Dhulipudi PACS merged. But, filing of the counter affidavit and admitting the claim of the 2nd respondent therein was not communicated to the Divisional Cooperative Officer of the petitioner society.

47. On close scrutiny of the proceedings, this Court is of the definite view that

- i) the notice of S.A.No.1 of 2005 was issued on 17.06.2005 to the respondent in that case i.e., the Dhulipudi PACS through its Chair Person.
- ii) the notice was received by the Chair Person, Dhulipudi PACS i.e., P. Sudhakar on 20.06.2005.



- iii) that the Dhulipudi PACS was merged with Nagaram PACS by order of the Registrar dated 25.07.2005 during pendency of S.A.No.1 of 2005.
- iv) that the petitioner Nagaram PACS was not party in S.A.No.1 of 2005.
- v) any notice of S.A.No.1 of 2005 was also not issued to the petitioner Nagaram PACS by the authority.
- vi) for more than one month i.e prior to 25.07.2005, the date of merger of Dhulipudi PACS into Nagaram PACS, any counter affidavit on behalf of the Dhulipudi PACS, was not filed
- vii) the counter affidavit was filed by P. Sudhakar on 23.08.2005, after the merger of Dhulipudi PACS in the petitioner Nagaram PACS, though now P. Sudhakar was not the person incharge of Dhulipudi PACS, which also ceased to exist, a body corporate on 20.07.2005 and
- viii) in counter affidavit P. Sudhakar admitted the claim of the 2nd respondent.
- ix) the filing of the counter affidavit dated 23.08.2005 was not intimated to the petitioner by P. Sudhakar though he wrote letter dated 25.08.2005 to the Divisional Cooperative Officer of the petitioner Nagaram PACS.
- x) Infact, admitting the claim of the 2nd respondent by P. Sudhakar, was suppressed from the petitioner.
- xi) the proceedings of S.A.No.1 of 2005 were held exparte as nobody appeared before the Assistant Commissioner of Labour after filing of the counter affidavit dated 23.08.2005. Even P. Sudhakar after admitting the claim of the 2nd respondent, did not attend S.A.No.1 of 2005.
- xii) the order dated 20.10.2005 is passed ex party.

48. The Principal Senior Civil Judge, Guntur returned the finding of his enquiry that the Assistant Commissioner of Labour, Guntur issued a notice to Dhulipudi PACS, represented



by its Chair Person on 20.06.2005 and the counter affidavit was filed on 23.05.2005 by the person incharge. Paras 10 and 11 of the report dated 01.12.2010 are being reproduced as under:

“10. After perusing the evidence of witnesses 1 and 4 coupled with document Nos.3 and 4, prove that, the Asst. Commissioner of Labour, Guntur, has issued a notice to Dhulipudi PACS on 20.06.2005. Document No.5 shows that, a counter affidavit was filed on 23.08.2005 by the person-in-charge. Document No.1 is a copy of certified extract issued by Assistant Commissioner of Labour-I, Guntur. It shows that, a certified copy of counter affidavit filed by P. Sudhakar was issued in the year 2007. The endorsement on document No.1 coupled with the evidence of Asst. Commissioner of Labour, Guntur (witness No.4), prove that, the Chair Person, Dhulipudi/Nagaram PACS filed his counter affidavit on 23.08.2005.

11. I submit that, Asst. Commissioner of Labour-I, Guntur, issued a notice to P. Sudhakar, the then person-in-charge of Dhulipudi PACS, and he filed his counter affidavit on 23.08.2005 in response to his notice dated 17.06.2005 received on 20.06.2005.”

49. In view of the close scrutiny made by this Court and for the facts recorded in para 47 in brief though the counter affidavit in S.A.No.1 of 2005 was filed by P. Sudhakar, but the said counter affidavit, cannot be considered as the counter affidavit of the petitioner Nagaram PACS. The admission of P. Sudhakar admitting the claim of the 2nd respondent in the counter affidavit cannot be considered as an admission of the petitioner or binding on the petitioner.



50. The point Nos.1 and 2 for determination are answered accordingly as per para 49.

Point No.3:

51. It is relevant to reproduce Section 15-A of the A.P. Cooperative Societies Act, 1964 as under:

15. (xxxxx)

“[15A.] Identification of viability of societies and consequences thereof: - [(1) Notwithstanding anything in this Act or the rules made thereunder or the bye-laws of the society concerned,] if the Registrar is of the opinion that [in respect of a society or societies in receipt of State aid as specified under Section 43 of the Act] it is necessary to amalgamate or merge any society with any other such society or to divide and restrict or transfer the area of operation of a society or to liquidate a society for any of the following purposes, namely:-

- (a) for ensuring economic viability of any or all the societies concerned ; or
- (b) for avoiding overlapping or conflict of jurisdictions of societies in any area;
or
- © for securing proper management of any society ; or
- (d) in the interest of the co-operative movement in general and of co-operative credit structure in particular in the State taken as a whole ; or
- (e) for any other reason in the public interest,

he may identify the viable and non-viable societies which may be retained or divided with consequential restriction of the area of operation or the transfer of such area or amalgamated or liquidated, as the case may be, and may by a notification to be published in the prescribed manner, specify the area of operation of each such society or societies to be retained, divided or amalgamated with any other society indicated in the said notification and invite objections or suggestions from the societies or any members, depositors, creditors, employees or other persons concerned with the affairs of each such society to be received within twenty-one days from the date of publication of the notification.

Explanation: - For the purpose of this section,-



- (i) the term 'Registrar' means the person on whom the powers of the Registrar under this section are conferred under clause (n) of Section 2.
- (ii) any society may convene the general body meeting within seven days from the date of publication of the notification.
 - (2) The Registrar may, after having considered the matter in the light of any suggestions or objections which may be received by him within the period specified in sub-section (1) and after making if necessary, such modification in the proposal as he may deem fit, make an order and publish it in the prescribed manner ;
 - (3) On making such an order:-
 - (i) the societies affected by the amalgamation shall be deemed to have been amalgamated with the society or societies with which each one is amalgamated ;
 - (ii) the registration of every amalgamated or divided society shall stand cancelled whereupon such society shall cease to exist as a corporate body;
 - (iii) the area added to the area of operation of the society shall be deemed to have been transferred to such society to which it is added ;
 - (iv) the assets of such amalgamated or divided society shall stand transferred to and its liabilities shall devolve on, the society with which it is amalgamated and all immovable properties located in the area transferred shall be deemed to be transferred to the society to which the area is transferred;
 - (v) every member of such amalgamated or divided society and residing in the area so transferred shall be deemed to have been transferred together with his loans, share capital deposits to the society with which it is amalgamated or to which the area is transferred and he shall have the same rights, privileges and liabilities which he has had in the amalgamated or divided society ;
 - (vi) the Committee of the amalgamated or divided society shall stand dissolved and thereupon, the Registrar shall nominate a Committee or appoint a person or persons, wherever necessary to manage the



affairs of such society for a period [not exceeding three months] and arrange for the conduct of elections before the expiry of the term ;

(vii) it shall be competent for the Registrar to allot, by order, employees of such societies which are amalgamated or divided to any society or societies ; and

(viii) notwithstanding anything in this Act or in any other law, or in any contract, award or any other instrument for the time being in force, the provisions of the order of the Registrar under sub-sections (2) and (3) shall be binding on all societies and their members, depositors, creditors, employees and other persons having any rights, assets or liabilities in relation to all or any of the concerned societies ;]

(4) The Registrar may, at any time before the expiration of the period specified in clause (vi) of sub-section (3) arrange for the calling of a general meeting for the election of a new committee in such manner as may be prescribed for every such viable society [x x x].

(5) [x x x]

(6) [X X x]

(7) Notwithstanding anything in the Transfer of Property Act, 1882 (Central Act 4 of 1882) or the Registration Act, 1908 (Central Act 16 of 1908) an order issued under this section shall be sufficient conveyance to transfer the assets and liabilities of the society or societies covered by any order passed under sub-section (2) of this section.

(8) No suit or legal proceeding shall be instituted or maintained or continued in any Civil Court in respect of any order made under this section.”

52. Section 15-A of the Act, 1964 provides for identification of viability of Societies and consequences thereof. Sub Section (1) provides that if the Registrar is of the opinion that in respect of a society or societies in receipt of State aid, it is necessary inter alia, to amalgamate or merge any society with any other society



or to divide and restrict or transfer the area of operation of a society or to liquidate a society he may identify the viable and non viable societies which may be, inter alia, amalgamated etc., by notification indicate the same and invite objections or suggestions within a specified period under Sub Section (2). The Registrar may after considering the suggestions or objections if received within the specified period of 21 days as in Sub Section (1), and after such modification in the proposal, if necessary, shall make an order and publish it in the prescribed manner. Sub Section (3) of Section 15-A of the Act, 1964 provides for the consequences that would follow on making of an order under Sub Section (2).

53. Those consequences under Section 15-A(3), inter alia under clauses (i),(ii),iv) and (v) relevant for the present are as under:

(i) that the societies affected by the amalgamation shall be deemed to have been amalgamated with the society or societies with which each one is amalgamated,

(ii) the registration of every amalgamated or divided society shall stand cancelled whereupon such society shall cease to exist as a corporate body;

iv) the assets of such amalgamated or divided society shall stand transferred to and its liabilities shall devolve on, the society with which it is amalgamated and all immovable



properties located in the area transferred shall be deemed to be transferred to the society to which the area as transferred; and v) every member of such amalgamated or divided society and residing in the area so transferred shall be deemed to have been transferred together with his loans, share capital, deposits to the society with which it is amalgamated or to which the area is transferred and he shall have the same rights, privileges and liabilities which he has had in the amalgamated or divided society.

54. Section 15-A (7) provides that notwithstanding anything in the Transfer of Property Act, 1882 or the Registration Act, 1908 an order issued under Section 15-A(2) shall be sufficient conveyance to transfer the assets and liabilities of the society or societies covered by an order passed under Section 15-A(2).

55. The expression 'society' as defined in Section 2(p) means a Cooperative Society registered or deemed to be registered under the Act, 1964. Chapter-II of the Act, 1964, deals with the Registration of the Societies. Section 8 provides for issuance of the Registration certificate. Section 9 provides that the registration of a Society shall render it a body corporate by the name under which it is registered having perpetual success and a common seal and is entitled to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits



and legal proceedings and to do all other things necessary for the purpose for which it is constituted.

56. It is the Registration of a society, that renders it a body corporate by the name under which it is registered and by virtue of it being a body corporate it is entitled to institute and defend suits and other legal proceedings.

57. On passing of an order of amalgamation, the registration of the amalgamated society stands cancelled by operation of law and the amalgamated society ceases to exist as a body corporate.

58. Consequently, on making of an order of amalgamation on 25.07.2005 by the Registrar under Section 15A(2) the amalgamated society i.e Dhulipudi PACS, ceased to be body corporate and inter alia, ceased to be entitled to defend the suit and other legal proceedings. The Nagram PACS in which the Dhulipudi society, was amalgamated, was a necessary party to be impleaded in S.A.No.1 of 2005, as now Nagram PACS was the body corporate with respect to the liabilities, assets etc., of the Dhulipudi PACS, transferred to it under the statutory provisions on and from the date of passing of the order of amalgamation.

59. Further, if any liability was to be imposed, in S.A.No.1 of 2005 and if any order was passed in favour of the 2nd



respondent, entitling him for the amount claimed, the said liability was to go to the petitioner society and for this reason also it was necessary to be made party and provided with the opportunity of hearing, but undisputedly neither the petitioner was made party in S.A.No.1 of 2005 nor any notice of S.A.No.1 of 2005 was issued to it.

60. Sri Peeta Raman, learned counsel for the 2nd respondent submitted that P. Sudhakar, then person-incharge of the Nagram PACS, having filed counter affidavit on 23.08.2005, it shall be deemed that the petitioner society was party in S.A.No.1 of 2005. The aforesaid submission is misconceived and deserves, rejection. The reason firstly is that this court has already recorded above, that the counter affidavit by P. Sudhakar cannot be considered as the counter affidavit of the Nagram PACS petitioner and secondly the service of notice on P. Sudhakar of S.A.No.1 of 2005 was in his capacity as the person incharge of the Dhulipudi PACS prior to amalgamation order. When P. Sudhakar became the Chair Person of the petitioner Nagram PACS, neither the petitioner was made party nor any notice was issued to the petitioner or/and served to P. Sudhakar in the capacity of person in charge of Nagram PACS. The petitioner society cannot be deemed to be party in S.A.No.1 of 2005.



61. In **Abdul Rasak and others vs. Kerala Water Authority and others**⁵, the Hon'ble Apex Court referring to the case of **Agra Development Authority v. Special Land Acquisition Officer**⁶, in which it was held that where land was acquired at the cost of Local Development Authority, a notice to it was mandatory and simply because the local authority was aware of the proceedings and had participated in the meetings where matters as to compensation were discussed, was not a sufficient compliance with Section 50 of the Land Acquisition Act. The Hon'ble Apex Court held that the High Court did not commit error in remitting the reference case to the civil court, consistently with the law laid down by the Constitution Bench in **Utter Pradesh Awas Evam Vikas Parishad v. Gyan Devi**⁷, that Kerala Water Authority, in short KWA, shall have to be impleaded as party to the proceedings before the Civil court from very beginning, a re-trial becomes unavoidable.

62. It is apt to refer paras 8 and 9 of **Abudl Rasak** (supra) as under:

“8. Learned counsel for the claimant-appellants also submitted that Superintending Engineer of the K.W.A. had appeared as a witness in the proceedings before the Civil Court and, therefore, it can be inferred that the Authority was aware of the

⁵ (2002) 3 SCC 228

⁶ (2001)2 SCC 646

⁷ (1995) 2 SCC 326



proceedings and if it did not promptly take steps for impleadment, it should not have been heard to complain before the High Court that it did not have notice of the proceedings and, that it was denied participation in the proceedings before the Civil Court. **It has been held by this Court in Agra Development Authority v. Special Land Acquisition Officer and Ors. MANU/SC/0086/2001 : AIR2001SC992 that where land was acquired at the cost of local Development Authority, a notice to it was mandatory and simply because the local authority was aware of the proceedings and had participated in the meetings where matters as to compensation were discussed, was not a sufficient compliance with Section 50 of the Land Acquisition Act.**

9. In our opinion, the High Court has not erred in taking the view which it has taken and directing the reference cases to be remitted to the Civil Court consistently with the law laid down by the Constitution Bench, as K.W.A. shall have to be impleaded as party to the proceedings before civil court from very beginning a retrial becomes unavoidable.”

63. The liability of Dhulipudi PACS is sought to be imposed against the petitioner after the order of amalgamation taking place during pendency of the case, it was mandatory to issue notice to the petitioner by the authority in S.A.No.1 of 2005.

64. In **Government of Orissa vs. Ashok Transport Agency and others**⁸, upon which learned counsel for the petitioner placed reliance the Hon’ble Apex Court held that the Corporation and the State of the Orissa should have been impleaded in the suit prior to the decree, on the terms of the

⁸ (2005) 1 SCC 536



amalgamation order. The Corporation was afforded opportunity of hearing after setting aside the order impugned in the appeal therein.

65. The S.A.No.1 of 2005 could not be proceeded any further against the respondent therein, Dhulipudi PACS after it ceased to be a body corporate.

66. The order dated 20.10.2005 is sought to be enforced against the petitioner on the ground of amalgamation of Dhulipudi PACS in the petitioner Nagram PACS in view of Section 15A(3) and (7) of the Act, 1964, though the petitioner was not party in S.A.No.1 of 2005. The Dhulipudi PACS which was party respondent ceased to exist as body corporate on 25.07.2005. The order dated 20.10.2005 therefore was against an entity which ceased to be a body corporate. In other words if the respondent had been an individual, natural person, the order was against a dead person.

67. In **Amba Bai and others vs. Gopal and others**⁹, in which the Hon'ble Apex Court held in para 9 as under:

"9. In Bibi Rahmani Khatoon Vs. Harkoo Gope AIR 1981 SC 1450, this Court held at page 1453 at para 10 as under:-

"The concept of abatement is known to civil law. If a party to a proceeding either in the trial court or any appeal or revision dies

⁹ (2001) 5 SCC 570



and the right to sue survives or a claim has to be answered, **the heirs and legal representatives of the deceased party would have to be substituted and failure to do so would result in abatement of proceedings. Now, if the party to a suit dies and the abatement takes place, the suit would abate. If a party to an appeal or** revision dies and either the appeal or revision abates, it will have no impact on the judgment decree or order against which the appeal or revision is preferred. In fact, such judgment, decree or order under appeal or revision would become final."

68. In **Gurnam Singh (dead) through legal representatives and others vs. Gurbachan Kaur (dead) by legal representatives**¹⁰, the Hon'ble Apex Court held that the judgment passed in favour and also against the dead persons is a nullity. It was further held that the fundamental principle of law that a decree passed by the court if it is a nullity, its validity can be questioned in any proceeding including in execution proceedings or even in collateral proceedings, whenever such decree is sought to be enforced by the decree holder, for which the reason is that the defect of this nature affects the very authority of the Court in passing such decree and goes to the root of the case. The Hon'ble Apex Court applied this principle to that case of a decree being nullity on the settled principle of law that the decree passed by a Court for or against a dead person is a "nullity".

¹⁰ (2017) 13 SCC 414



69. It is apt to reproduce paras 15 to 17 and 21 of **Gurnam Singh (dead)** (supra) as under:

“15. The question, therefore, is whether the impugned judgment/order is a nullity because it was passed by the High Court in favour of and also against the dead persons. In our considered opinion, it is a nullity. The reasons are not far to seek.

16) It is not in dispute that the appellant and the two respondents expired during the pendency of the second appeal. It is also not in dispute that no steps were taken by any of the legal representatives representing the dead persons and on whom the right to sue had devolved to file an application under Order 22 Rules 3 and 4 of the Code of Civil Procedure, 1908 (for short, ‘the Code’) for bringing their names on record in place of the dead persons to enable them to continue the lis.

17) The law on the point is well settled. On the death of a party to the appeal, if no application is made by the party concerned to the appeal or by the legal representatives of the deceased on whom the right to sue has devolved for substitution of their names in place of the deceased party within 90 days from the date of death of the party, such appeal abates automatically on expiry of 90 days from the date of death of the party. In other words, on 91st day, there is no appeal pending before the Court. It is “dismissed as abated”.

21. It is a fundamental principle of law laid down by this Court in Kiran Singh’s case (supra) that a decree passed by the Court, if it is a nullity, its validity can be questioned in any proceeding including in execution proceedings or even in collateral proceedings whenever such decree is sought to be enforced by the decree holder. **The reason is that the defect of this nature affects the very authority of the Court in**



passing such decree and goes to the root of the case. This principle, in our considered opinion, squarely applies to this case because it is a settled principle of law that the decree passed by a Court for or against a dead person is a “nullity” (See-N. Jayaram Reddy & Anr. Vs. Revenue Divisional Officer & Land Acquisition Officer, Kurnool, (1979) 3 SCC 578, [Ashok Transport Agency vs. Awadhesh Kumar & Anr.](#), (1998) 5 SCC 567 and [Amba Bai & Ors. Vs. Gopal & Ors.](#), (2001) 5 SCC 570).”

70. In **Gurnam Singh** (supra) the Hon’ble Apex Court further held that the legal representatives of the deceased on whom the right to sue devolved, had the right to question the legality of the order passed against the dead persons on the ground of it a being a nullity. Para 22 is reproduced as under:

“22. The appellants are the legal representatives of defendant Nos. 2 and 4 on whom the right to sue has devolved. **They had, therefore, right to question the legality of the impugned order inter alia on the ground of it being a nullity.** Such objection, in our opinion, could be raised in appeal or even in execution proceedings arising out of such decree. In our view, the objection, therefore, deserves to be upheld. It is, accordingly, upheld.”

71. The principle as laid down in **Amba** (supra) and in **Gurnam Singh** (supra) would equally apply to the present case, in the absence of impleadment of the petitioner Nagram PACS after Dhulipudi PACS ceased to be a body corporate. Consequently, the order dated 20.10.2005 is a nullity in the eyes of law.



72. Sri Peeta Raman next submitted that the order dated 20.10.2005 attained finality. The petitioner did not challenge the same by filing appeal under Section 53(2) of the A.P. Shops and Establishment Act, 1986. Consequently, the same cannot be challenged by way of the writ petition. This submission is also without force and deserves rejection.

73. Section 53 of the Andhra Pradesh Shops and Establishment Act, 1988 reads as under:

“53. Appeal - (1) An appeal against an order dismissing either wholly or in part an application made under sub-section (1) of Section 51 or against a direction made under sub-section (2) or sub-section (3) of that section may be preferred before the authority to be notified by Government within thirty days of the date on which the order or direction was served on the applicant or the employer, as the case may be-

(a) by the employer, if the total sum directed to be paid by way of wages, service compensation and compensation exceeds three hundred rupees; or

(b) by the person who had applied under sub-section (1) of section 51 if the total amount of wages or service compensation claimed to have been withheld from the employee or from the unpaid group to which he belonged exceeds fifty rupees; or

(c) by any person directed to pay a penalty under sub-section (3) of section 51.

(2) Save as provided in sub-section (1) any order dismissing either wholly or in part an application made under sub-



section (1) of section 51 or a direction made under sub-section (2) or sub-section (3) of that section shall be final.”

74. Section 53 of the A.P. Shops and Establishment Act, 1988 provides for the remedy of appeal against an order dismissing either wholly or in part an application made under Sub Section (1) of Section 51. If the appeal is not preferred, the order or direction shall become final and if the appeal is filed the same shall be subject to decision in appeal.

75. The order dated 20.10.2005 is behind the back of the petitioner without notice and in violation of the principles of natural justice. Such an order cannot be held to be binding on the petitioner only because the petitioner did not prefer appeal under Section 53 of the Act, 1988 and challenged the same in the writ petition.

76 It is settled in law that an alternative remedy is not an absolute bar, and in atleast following contingencies the rule of exhaustion of alternative remedy is not attracted:

- i) where the writ petition has been filed for enforcement of any of the fundamental rights
- ii) where there has been violation of the principles of natural justice or
- iii) or where the order or proceedings are wholly without jurisdiction or



iv) vires of an Act is challenged.

77. In **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others**¹¹, the Hon'ble Apex Court has held in para No.15 as under:

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

78. In **Radha Krishan Industries vs. State of Himachal Pradesh and others**¹², the Hon'ble Apex Court in para 27 laid down the principles of law that the maintainability of the writ petition under Article 226 of the Constitution of India with respect to the rule of exhaustion of alternative remedy. It is apt to refer Paragraph 27 as under:

¹¹ (1998) 8 SCC 1

¹² (2021) 6 SCC 771



“27. The principles of law which merge are that:

27.1 The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person,

27.3. Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

27.4. An alternate remedy by itself does not divest the High Court of its powers under [Article 226](#) of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under [Article 226](#) of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

79. Besides, considering the seriousness of the matter, this Court entertained the writ petition. In the orders dated



14.12.2010 and 25.04.2012, in the writ petition, this Court specifically observed that a close scrutiny is needed as to the manner in which the liability is fastened on the petitioner. The order dated 14.12.2010 attained finality on the above aspects, as Writ Appeal No.81 of 2011 was dismissed by the Division Bench on 21.02.2011. The order dated 25.04.2012 also attained finality as the W.A.No.1086 of 2012 was also dismissed by the Division Bench of this Court on 05.09.2012. In view thereof also the writ petition is not be dismissed as not maintainable, though it is held that the writ petition is maintainable.

80. Thus, considered on point No.3, it is held that the impugned order dated 20.10.2005 is a nullity. It is not final or binding on the petitioner Nagram PACS.

Point No.4.

81. With respect to the judgment dated 31.12.2009, passed in CrI.R.C.No. 117 of 2008, this Court is of the following view:

- i) The Criminal Revision Case arose out of the order dated 18.10.2007 passed in CrI.M.P.No.1324 of 2007 for recovery of the amount under the order dated 20.10.2005.
- ii).The order dated 20.10.2005 in S.A.No.1 of 2005 was not under challenge, in the Criminal Revision Case.



iii) The order dated 18.10.2007 of the Magistrate in CrI.M.P.No.1324 of 2007 was set aside vide judgment dated 31.12.2009 holding that it is settled law that new plea cannot be allowed to be raised for the first time in Execution proceedings even in civil proceedings. The relevant part is reproduced as under:

“Thus, it has to be seen that the second respondent never claimed before the first respondent that Dhulipudi PACS became a dead legal entity or that it is no more in existence and therefore the second respondent is not liable to pay the arrears to the petitioner. **When the second respondent itself had not taken such a plea before the first respondent authority, the learned Magistrate is not justified in dealing with an issue which was not raised before the first respondent authority. It is settled law that new plea cannot be allowed to be raised for the first time in execution proceedings, even in civil proceedings.**”

iv) The complete provision under Section 15-A of the Act, 1964 was not placed before the court, which is evident from para No.12 of the judgment dated 31.12.2009 that sub section (3) (i) and (ii), providing for the consequences on passing of an order of amalgamation was not considered.

“12. Coming to the effect of merger, the relevant provisions of the A.P. Cooperative Societies Act are as follows:



15-A(2). The Registrar may, after having considered the matter in the light of any suggestions or objections which may be received by him within the period specified in sub-section (1) and after making if necessary, such modification in the proposal as he may deem fit, make an order and publish it in the prescribed manner ;

- (iii) the area added to the area of operation of the society shall be deemed to have been transferred to such society to which it is added ;
- (iv) the assets of such amalgamated or divided society shall stand transferred to and its liabilities shall devolve on, the society with which it is amalgamated and all immovable properties located in the area transferred shall be deemed to be transferred to the society to which the area is transferred;
- (vii) it shall be competent for the Registrar to allot, by order, employees of such societies which are amalgamated or divided to any society or societies ; and
- (viii) notwithstanding anything in this Act or in any other law, or in any contract, award or any other instrument for the time being in force, the provisions of the order of the Registrar under sub-sections (2) and (3) shall be binding on all societies and their members, depositors, creditors, employees and other persons having any rights, assets or liabilities in relation to all or any of the concerned societies ;]

15-A (7) Notwithstanding anything in the Transfer of Property Act, 1882 (Central Act 4 of 1882) or the Registration Act, 1908 (Central Act 16 of 1908) an order issued under this section shall be sufficient conveyance to transfer the assets and liabilities of the society or societies covered by any order passed under sub-section (2) of this section.”

v) If the provisions of Section 15-A(3)(i) & (ii) had been placed before the court and the order dated 20.10.2005



was also under challenge in Crl.R.C.No.117 of 2008.

The position might have been different.

82. In the present writ petition, where there is direct challenge to the order dated 20.10.2005, its validity is open to be considered in the light of the arguments advanced and the statutory provisions, independent of the judgment dated 31.12.2009. The plea which could not be taken in Crl.M.P.1324 of 2007, before the Magistrate as has been held in judgment dated 31.12.2009 and consequently the Magistrate was not justified in delaing with such a plea, can certainly now be taken in this petition when there is challenge to the order dated 20.10.2005. Further, in view of the order dated 14.12.2010 affirmed in W.A.No.81 of 2011 by order dated 21.02.2011 and the order dated 25.04.2012 also affirmed in W.A.No.1086 of 2012 by judgment dated 05.09.2012, this Court considers itself bound by the orders of the Division Bench to make close scrutiny and on such scrutiny to pass orders in accordance with law in the light of the statutory provisions.

83. Sri Peeta Raman placing reliance in the cases of **U.P. Gram Panchayat Adhikari Sangh** (supra) and the **Official Liquidator** (supra) contended that the decision of the Coordinate Bench is binding and in case of any difference of opinion or doubt judicial discipline requires that the matter



should be referred to a larger bench. There is no dispute on the above proposition of law. The court is also not oblivious of the judicial discipline and decorum to be maintained, but for the reasons as in paragraphs 81 and 82 (supra), the question of making reference or not maintaining judicial discipline does not arise. This Court is taking a view in consonance with the statutory provisions with respect to the legality of the order dated 20.10.2005 which was not under challenge in the criminal revision case, following the judgment of the Hon'ble Supreme Court in the cases referred in this judgment, including **Gurnam Singh** (supra). This court considers itself bound by the Division Bench orders in two Writ Appeals which were decided, after the judgment dated 31.12.2009 in CrI.R.C.No.117 of 2005.

84. Point No.(4) is decided as per paragraph 83 (supra).

85. In the result, the writ petition is allowed and the order dated 20.10.2005, passed by the Assistant Commissioner of Labour-1, Guntur in S.A.No.1 of 2005 is quashed with the following directions:

- i) S.A.No.1 of 2005 is restored to the file of the Authority,
- ii) The 2nd respondent shall impleade the petitioner in S.A.No.1 of 2005.



- iii) The Authority shall then proceed to decide S.A.No.1 of 2005 in accordance with law after affording opportunity of hearing to the parties.
- iv) The counter affidavit dated 23.08.2005 filed by P. Sudhakar, shall not be taken into consideration.
- v) The petitioner shall be granted opportunity to file counter affidavit.
- vi) Any material on the record of S.A.No.1 of 2005, brought on record prior to the petitioner's impleadment in support of the claim of the 2nd respondent shall not be used against the petitioner without giving opportunity to the petitioner against the same.

86. Contempt Case No.1171 of 2010 was filed alleging disobedience of the order dated 31.12.2009 in CrI.R.C.No.117 of 2008. The said order was passed arising out of CrI.M.P.No.1324 of 2007 decided on 18.10.2007 by the II Additional Munisiff Magistrate, Repalle giving a direction to the Magistrate to recover the amount as fine under Section 421 Cr.P.C and to pay the same to the 2nd respondent. The proceedings before the Magistrate arose for implementation of the order dated 20.10.2005 in S.A.No.1 of 2005. As the main order dated



20.10.2005 has been quashed in the W.P.No.4822 of 2012 the proceedings of Contempt Case No.1171 of 2010 are also closed.

87. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

Date:20.10.2022

Note:

L.R copy to be marked.

B/o.

Gk



THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.4822 of 2012 & C.C.No.1171 OF 2010

Date:20.10.2022

Gk