



C.R.P.No.512 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 23.03.2023	Orders Pronounced on 20.12.2023
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THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.512 of 2020
and C.M.P.No.2745 of 2020

P.Anandam

..Petitioner

Vs.

- 1.The Deputy Registrar of
Co-operative Societies (Housing),
Tanjore,
Tanjore District.
- 2.Thiruturaipoondi Taluk Co-operative
Housing Society, SAHSG 95,
rep. by the Special Officer,
Thiruthuraipoondi,
Thiruvarur District.
- 3.A.Jothikumar
- 4.R.V.Ramanathan
- 5.K.Muruganandam
- 6.A.Sivaramalingam
- 7.G.Tamilarasi
- 8.N.Mohandas

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree dated 29.03.2019 made in



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C.M.A.No.21 of 2017 passed by the learned Principal District Judge / Special Tribunal for Co-operative cases, Thiruvarur, confirming the surcharge order dated 18.09.2015 made in Tha.Va.3/2015 (Na.Ka.No.2666/1999 sa.pa.) passed by the 1st Respondent by allowing the Civil Revision Petition.

For Petitioner : Mr.N.Manoharan

For Respondents

For R1 : Mr.V.Jeevagiridharan

Additional Government Pleader

For R3 to 8 : Given up

ORDER

This Civil Revision Petition had been filed under Article 227 of the Constitution of India, seeking to set aside the order of dismissal of the Statutory Appeal under the Co-operative Societies Act in C.M.A.No.21 of 2017 dated 29.03.2019, which was dismissed by the learned Principal District Judge, Thiruvarur, as Special Appellate Tribunal for Co-operative Cases.

2. Mr.N.Manoharan, learned Counsel for the Revision Petitioner submitted his arguments.



3. Surcharge order was passed against the employees of the Society by the 2nd Respondent. Except this petitioner, others had not challenged it before the Co-operative Societies Special Appellate Tribunal. The Petitioner was a Special Officer of the 2nd Respondent Society for a period of eight months from 30.08.1995 to 15.04.1996 he was Special Officer of the 2nd Respondent, Thiruthuraipoondi Taluk Co-operative Housing Society (SAHSG 95), Thiruthuraipoondi, Thiruvarur District. He was also acting as Special Officer for more than eight Societies including the 2nd Respondent Society. In addition to that he was acting as a Deputy Registrar of Co-operative Societies. Therefore, it was humanly impossible for him to check and verify each and every document and also to supervise day to day activities of the eight Societies including the 2nd Respondent Society.

4. The day to day affairs of the respective Co-operative Society are carried out by the Secretary R.V.Ramanathan and the Clerk A.Sivaramalingam of the 2nd Respondent Society. The Petitioner had no occasion to minutely cross check or physically verify each and every entries made daily in the course of the regular business affairs of the 2nd Respondent Society. The Secretary of the Society is the Chief Executive Officer of the Society as per the



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by-law. The affairs and administration of all the Societies were individually taken care of by the Secretary, who is the paid officer under Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983. Enquiry was ordered under Section 81(1) of the Tamil Nadu Co-operative Societies Act, 1983. The enquiry report is dated 31.05.2000, after four years after the transfer of the petitioner from Tanjore. Based on the enquiry report dated 31.05.2000, a show cause notice was issued to the Petitioner on 29.01.2001. It was challenged before this Court in W.P.No.23976 of 2001. Thereafter, show cause notices were issued to the petitioner for which the petitioner had offered explanation dated 25.05.2015.

5. It is the contention of the learned Counsel for the Petitioner that based on the finding of the enquiry officer under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. The 1st Respondent herein had issued surcharge proceedings. The 1st Respondent as surcharge officer ought to have held independent enquiry by recording evidence of the witnesses and permitting the delinquents to cross-examine the witnesses by furnishing documents of the enquiry report to the delinquents.



6. Here, the 1st Respondent had without holding independent enquiry as required under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, had relied on the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, and proceeded without holding independent enquiry and imposed surcharge penalty on the Petitioner.

7. The explanation offered by the Petitioner for the surcharge proceedings was also not considered. The 1st Respondent had accepted the enquiry report filed under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, and proceeded to pass surcharge order. The surcharge proceedings passed by the 1st Respondent is without applying the principles of natural justice. The 2nd Respondent did not choose to let in oral or documentary evidence to substantiate the allegations levelled against the Petitioner.

8. *Prima facie*, the order passed by the 1st Respondent is not in line with the settled position of law. The 1st Respondent ought to have followed the mandate of Section 87(4) of the Tamil Nadu Co-operative Societies Act, 1983, before deciding the surcharge penalty. The failure to follow the mandatory



provision would vitiate the entire surcharge order as held in **2012 (1) CWC 794** and **2014 (2) CWC 615**.

9. The word 'willfulness' under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, imported pre-meditation or knowledge and consciousness that an injury or loss was likely to result from the act done or from the omission to act. In order to constitute willful negligence, the act done or omitted to be done must involve such reckless disregard of duty as to imply bad faith (**1994 Supp. 3 SCC 134**).

10. Admittedly, the 1st Respondent or the learned Special Tribunal had rendered finding that the Petitioner had committed an act of willful negligence. Unless the Respondents have produced evidence in support of the loss caused by willful negligence of the Petitioner, the Petitioner cannot be held liable for the alleged entries.

11. The duties and the responsibilities have been fixed on the Secretary of the Society by name R.V.Ramanathan and clerk A.Sivaramalingam and this Petitioner had no occasion to minutely cross check or physically verify each and every entries made daily in the course of regular business affairs of the



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Society. The Secretary of the Society is the Chief Executive Officer of the Society as per the by-law. The 1st Respondent has failed to consider the vouchers, work orders and the recovery actions before fixing the surcharge penalty.

12. Admittedly, the entire loans paid to the loanees named in the surcharge were not recovered, but the State Government had sanctioned a sum of Rs.3.10 crores to give waiver of loans incurred. In fact, all the loan dues were given credit 'by adjustment' as could be seen from the receipts stood in the name of the loanees.

13. The 1st Respondent had issued the surcharge notice dated 29.01.2001 under Section 87(1) of the Tamil Nadu Co-operative Societies Act, 1983, against seven employees including one K.Muruganandam, Clerk. However, his name has been conveniently and purposely deleted without assigning any reason or justification in the final order dated 18.09.2015. It would expose distinctive discrimination and unfairness in the enquiry conducted.



14. The entire proceedings initiated from 1999, is vitiated, for violation of the principles of natural justice, non-compliance of the mandatory procedure contemplated under Section 87 of the Act, 1983, for not giving a finding with regard to willful negligence and also on the ground of delay and laches.

15. Any act done in good faith or intended to be done under the Act, 1983 or the Rules framed thereunder, by any officer or servant of the Co-operative Society is protected under Section 176 of the Tamil Nadu Co-operative Societies Act, 1983. In this case, mere delay or inadvertent entries if any, made by the clerical staff have been faulted very seriously.

16. Other five persons who suffered the surcharge order dated 18.09.2015 have admitted their liability and failed to file any appeal before the learned Co-operative Special Appellate Tribunal. That shows that they are the persons fully responsible to meet the loss. The said aspect had not been considered by the learned Special Appellate Tribunal under the Co-operative Societies.



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17. The entire disputed loan have been disbursed only through Account Payee cheques to the members whose names are found place in the surcharge order. Under such circumstances, the Petitioner being the cheque signing authority cannot be mulcted with liability because it is humanly impossible for him to verify each and every transaction in the Society.

18. The Petitioner's position is based on trust, which the department has reposed on the employees of the Society. Hence, the Petitioner being the supervisory authority cannot be held liable for the loss, if any, caused by the conduct of the other regular employees. A Writ petition in 35709 of 2019 has been filed by the Petitioner was dismissed, by granting liberty to file Civil Revision Petition. Therefore, this Petitioner had filed this Civil Revision Petition.

19. The allegation as per the surcharge proceedings that bank accounts were opened fictitiously in the name of members of the Society. Payments withdrawn causing loss to the tune of Rs.10,65,258.65/- along with the Petitioner five others were proceeded.



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20. As per by-law 21(6) of the 2nd Respondent Society one R.V.Ramanathan was the Secretary and paid officer responsible along with five regular employees of the Society.

21. The learned Counsel for the Revision Petitioner invited the attention of this Court to the typed set of papers filed by him, wherein, the list of the beneficiaries had been furnished in Page No.108 of the typed set of papers is the surcharge proceedings wherein, the total loss caused to the Society had been mentioned. Out of Rs.10,65,258.65/-, Rs.7,73,833.65/- was repaid by the members. The Government have waived the balance amount as per the EWS Project-13 by the Government. In principle, the amount had been repaid. Therefore, the charge (allegation goes) the amount given as loans are repaid. Nowhere it is held that the Petitioner had wantonly caused willful negligence. It is not stated anywhere as per the mandate of Section 87 of the Tamil Nadu Co-operative Societies Act, 1983.

22. The learned Counsel for the Revision Petitioner relied on the ruling reported in **2016 (4) L.W. 452** in the case of ***S.Ramadevi Vs. The Special***



Officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellore District &

Others, wherein, it is stated as follows;-

“ 25. The third and the last plea is actually the most crucial as to whether the appellant could be said to have acted with willful negligence. In this behalf, the learned counsel for the appellant has relied upon two judgments of this Court in S.Subramanian Vs. The Deputy Registrar of Co-operative Societies (Housing), Cuddalore & Others, 2002-3-LW. 185, and K.Ajay Kumar Gosh and Others Vs. Tribunal for Co-operative Cases, (2009) 4 MLJ 992, to contend that when requirements of Section 87 had not been satisfied, which warrants initiation of surcharge proceedings, the liability cannot be fastened. There has to be willful and wanton premeditation with a view to cause loss to the assets of the Society and “mere negligence cannot be a ground for surcharge and it must be willful negligence or intentional negligence and not mere carelessness or intention or inadvertance or a single lapse by oversight”. We extract the observations in the case of K.Ajay Kumar Gosh, supra, as hereunder:

19. A detailed discussion has been made by making reference to various judgments on this aspect in another judgment reported in Sathyamangalam Cooperative Urban Bank Ltd. Vs. Deputy Registrar of Cooperative Society and



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Another, (1980) 2 MLJ 17, it is held thus:

“The degree of negligence that is contemplated under Section 71(1) of the Tamil Nadu Cooperative Societies Act is not mere negligence, but wilful negligence. The word 'wilful' has not been defined in the Act. 'Wilfulness' or 'wantonness' imports pre-meditation or knowledge and consciousness that an injury or loss is likely to result from the act done or from the omission to act. It imports a constructive intention as to the consequences which, entering into the wilful act, the law imputes to the offender and in this way a charge, which otherwise would be mere negligence, becomes by reason of a reckless disregard of probable consequences, a wilful wrong. The act done or omitted to be done must be intended or must involve such reckless disregard of security and right as to imply bad faith. In examining whether there is wilful negligence, it has to be seen first whether the person concerned is guilty of negligence and if so, whether the said wilful negligence is the proximate cause of the injury or loss sustained.

20. In the light of the decisions referred to above, it is clear that to pass surcharge order under Section 87 of the Act, appellants should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man under those existing circumstances. In the absence of such categorical finding by the Respondents, it is not possible to mulct the appellants with the loss caused to the Society.”



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26. *We are, thus, of the view that as the legal principles are quite settled, we have to only look into the application of the same in the facts of the present case. We are of the view that the appellate authority was right in coming to the conclusion that there is no willful negligence in the case of the appellant and this aspect has really not even been seriously touched upon by the learned Single Judge. Merely because loss is caused would not suffice. The appellant is not the beneficiary. There is no such wilful negligence attributed to her. This is apparent from even the enquiry report, which we have referred to aforesaid. Mere use of the words “negligence and careless with selfish motive for gain” would not suffice when actually the facts do not make out such a case. Thus the surcharge officer certainly fell into an error in imposing the liability on the appellant. The enquiry report discussed aforesaid itself shows that it is the third respondent who is found to have taken advantage of the situation in seeking to obtain illegal gain for himself. The pay bill was prepared by the third respondent in the computer and the abstract of the department wise pay bill alone used to be furnished to the Accountant and the Chief Accountant (appellant) and signatures obtained. Thus, both of them had been signing on the department wise*



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pay bill abstract without seeing the pay bills. The third respondent / Mr.A.Kabali, thus, took advantage of the fact that it was not possible for others to verify the cheques and test the salary list which was running into 300 pages. It is in these circumstances that the fourth respondent has been exonerated of the liability even though the abstract pay bill was required to be verified by him as an Accountant and he alone was supervising each and every matter. The cheques signed by the appellant are actually in the nature of counter-signature and the Accountant himself had been exonerated. Merely because the appellant was the head of the department, the liability could not be fastened on her as no case of willful negligence is made out.”

23. The learned Counsel for the Revision Petitioner relied on the ruling reported in **1994 Supp (3) SCC 134** in the case of **Pollachi Co-operative Marketing Society Vs. K.N.Valuswami and Others**, wherein, it is stated as follows;-

“ 3. Respondents 1-14 thereupon preferred writ petitions under Article 227 to the Hight Court. The High Court noted that the decree of negligence which was contemplated under Section



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71 of the said Act was willful negligence. The word 'willfulness', it held, imported premeditation or knowledge and consciousness that an injury or loss was likely to result from the act done or from the omission to act. It imported a constructive intention as to the consequence. Quoting an earlier judgment, delivered by Pandian,J. (as he then was) in Sathyamangalam Cooperative Urban Bank Ltd. v. Dy. Registrar of Cooperative Society, it held that to constitute willful negligence, the act done or omitted to be done must involve such reckless disregard of duty as to imply bad faith. The High Court observed that the very approach of the Special Tribunal for Cooperative Cases was wrong as it had posed for answer the following questions. "The main point for consideration would be whether the purchases were effected as per the regulation and whether the subsequent series were done in good faith and in the interest of the Society." the High Court came to the conclusion that the evidence before the Tribunal and the findings arrived at by it on the basis of such evidence did not justify the legal inference that Respondents 1-14 had been guilty of willful negligence.



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4. The High Court was, in our view, right in emphasising that the degree of negligence that had to be established under Section 71 was not mere negligence but willful negligence and that this imported a consciousness that injury or loss was likely to arise from an act of commission or omission. The basis upon which the Tribunal considered the matter was, therefore, erroneous. Once we come to the conclusion that the test applied by the High Court was the right test, we must concur with the High Court in its finding that the evidence did not disclose the legal inference that Respondents 1-14 had been guilty of willful negligence”

24. The learned Counsel for the Revision Petitioner relied on the ruling reported in **2002 (3) L.W. 185** in the case of ***S.Subramanian Vs. The Deputy Registrar of Co-operative Societies (Housing), Cuddalore and Others***, wherein, it is stated as follows;-

“10. G.Ramanujan, J., as he then was in Subbammal alias Rajammal and others V. The President, Tenkasi Cooperative Urban Bank Ltd., Tenkasi through its Special Officer, reported in



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1976 (II) MLJ 460, had also occasion to examine the scope of Section 71 and the proceedings of surcharge. The learned Judge held that unless willful negligence is found or such a finding is recorded, there could be no surcharge proceedings, nor any amount could be recovered from the persons in charge of the administration of the Society. It has been held that if a normal care has been taken by the persons in charge of the Society of day to day administration, they cannot be proceeded or surcharged. The above two decisions have been approved by the Division Bench in Jagannathan Vs. The Deputy Registrar reported in 1999 (2) LW 333.

11. We respectfully agree with the view taken by the two learned Judges as well as the view of the Division Bench in Jagannathan Vs. The Deputy Registrar 1999 (2) LW 333. No other pronouncement of this Court had been brought to our notice taking a contrary view.

12. In the present case it has to be pointed out that no finding has been recorded by the first respondent or by the third respondent to establish that the deficiency had been caused wilfully or deliberately or with a view to cause loss to the



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assets of the Society. Nowhere a finding has been rendered either by the first respondent or by the third respondent in their proceedings that the petitioner is guilty of willful negligence or wantonness, nor it has been recorded that omission or commission on the part of the petitioner is deliberate, reckless or callous or loss has been caused deliberately to the assets of the Society.

13. In the absence of such a finding, as has been consistently held by this Court, that the petitioner is guilty of willful or deliberate negligence or there is intention to cause loss to the assets of the Society, it follows that the impugned surcharge proceedings in so far as the petitioner is concerned are liable to be quashed.

14. In our considered view, the learned single Judge had dismissed the writ petition in limine as set out above without reference to the statutory provisions of the Cooperative Societies Act and the pronouncements and the view of the learned single Judge runs counter to the earlier Division Bench as well as pronouncements of two other learned single Judges of this Court. It is not mere negligence, it must be willful negligence. Further it is not a case of misappropriation even



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according to the respondents. When the requirements of Section 87 had not been satisfied and when the basic requirement of Section 87 which warrants initiation of surcharge proceedings is not satisfied or established on mere assumptions the appellant cannot be fastened with the liability. It has to be pointed out that neither in the show cause notice, nor in the proceedings of the first or third respondent, it has been held that the appellant has acted willfully or wantonly with premeditation with a view to cause loss to the assets of the Society. Mere negligence cannot be a ground of surcharge and it must be a willful negligence or intentional negligence and not mere carelessness or intention or inadvertence or a single lapse by oversight. ”

25. The learned Counsel for the Revision Petitioner also invited the attention of this Court to Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, which reads as follows;-

*“ **87. Surcharge.**__ (1) Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83*



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or the winding up of a Society, it appears that any person who is or was entrusted with the organisation or management of the Society or any past or present officer or servant of the Society 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, the rules or the by – laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the board, Liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the Society by way of compensation in respect to the assets of



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the Society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the person authorised as aforesaid thinks just:

Provided that no action shall be commenced under this sub section after the expiry of seven years from the date of any act or omission referred to in this sub section :

Provided further that the action commenced under this sub section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate.

(2) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum ordered under this section to be repaid to a registered Society or recovered as a contribution to its assets may be recovered as if it were an arrear of land revenue and for the purpose



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of such recovery the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by this act.

(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.”*

26. In the typed set of papers at Page No.126 to 130, the receipts for the



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repayment had been recorded. Apart from that the 1st Respondent had not conducted independent enquiry as per the mandate of Section 87(4) of the Tamil Nadu Co-operative Societies Act, 1983.

27. The learned Counsel for the Revision Petitioner relied on the rulings 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 is stated as follows;-

“ 8. A perusal of the award of 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,



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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 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



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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 same time if it is found that it is the ease of no evidence upon which



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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 1st Respondent which came to be confirmed by the Co-operative Tribunal/Principal District court, Erode needs to be interfered with.”

28. The learned Counsel for the Revision Petitioner also invited the attention of this Court that the proceedings of the 1st Respondent under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, which is available in the typed set of papers furnished by the learned Counsel for the Petitioner.

29. The learned Principal District Judge, Thiruvarur, as Special Appellate Tribunal under the Tamil Nadu Co-operative Societies Act, 1983, had failed to appreciate the fact that the 1st Respondent herein as surcharge officer had not conducted independent enquiry by recording evidence and affording opportunity to the delinquents to cross-examine the witnesses. The learned Principal District Judge, Thiruvarur, as Special Appellate Tribunal had



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accepted the finding of the surcharge officer and dismissed the appeal thereby confirming the order passed by the 1st Respondent.

30. The finding of the learned Principal District Judge, Thiruvavarur, dismissing the statutory appeal by the Petitioner under the Tamil Nadu Co-operative Societies Act, 1983, against the order of surcharge passed by the 1st Respondent is against the reported rulings of this Court. Therefore, the learned Counsel for the Revision Petitioner sought to set aside the order of the dismissal of C.M.A.No.21 of 2017 by the learned Principal District Judge as Special Appellate Tribunal of Co-operative, Thiruvavarur, dated 29.03.2019.

31. By way of reply the learned Additional Government Pleader submitted that there are 45 items in which shortcoming were noted by the enquiry officer. Out of 45 items, 9 items were not related to the Petitioner. 36 items are related to the Petitioner. The amount related to the Petitioner is Rs.5,17,453/-. All others were employees of the Society and one other is also a former Special Officer, Thiru. Jothikumar. The details of the surcharge proceedings were furnished in the proceedings of the 1st Respondent, which is found in the typed set of papers furnished by the Petitioner in Page No.108 to



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144. An amount of Rs.7,73,833.65/- was recovered only subsequent to the surcharge proceedings. The petitioner was in charge of eight Societies.

32. The learned Additional Government Pleader invited the attention of this Court to the finding by the learned Principal District Judge, Thiruvavur, in the judgment dismissing the appeal in Paragraph No.51 in Page No.299 to 301 in the typed set of papers, which is extracted hereunder:

“ 50. தனி அலுவலர் என்ற பொறுப்பானது பணப்பரிமாற்றங்களை மேற்பார்வை செய்து, கண்காணிக்கும் பொறுப்பினை உள்ளடக்கியது ; மற்றும் சங்கத்தின் முழு வரவு செலவு பரிமாற்றங்களை முழுமையாக கண்காணிக்கும் பொறுப்பு உள்ளவர். இவ்வாறான கூட்டுறவு சங்கங்களில் ரொக்க பரிமாற்றம் செய்யக்கூடாது என்றும், காசோலைகள் மூலமாக மட்டுமே ரொக்க பரிமாற்றங்கள் செய்யவேண்டும் என்றும், அலுவலகங்களில் அங்கத்தினர்களின் கண்பார்வையில் பரும்படி எழுதப்பட்டு வைத்தால், இவ்வாறான பிரச்சனைகளை கூட்டுறவு சங்கங்கள் சந்திக்க நேரிடாது. தினமும் சங்கத்தின் கணக்கு வழக்குகளை சிறு பணப்பதிவேட்டில் பதிவு செய்து பராமரித்து, அதில் செயலர் மற்றும் தனி அலுவலர் ஆகிய இரண்டு அலுவலர்களும் கையெழுத்திடவேண்டும் என்ற விதிமுறை இருந்தாலும், மேற்படி பிரச்சனைகளில் இருந்து கூட்டுறவு சங்கங்கள் விடுபடலாம்.

51. இவ்வழக்கில், தனி அலுவலர் ஆகிய மேல்முறையீட்டாளர் தனது விளக்கத்தில், தான் நிறைய கூட்டுறவு சங்கங்களில் தனி அலுவலராக பொறுப்பில்



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இருந்ததாகவும், தனது பணிச்சுமையின் காரணமாக காசோலைகளில் கையொப்பமிட்டு, சங்க செயலாளரிடம் கொடுத்துவிட்டதாகவுடம், அதே போல அவரால் அடையாளம் காண்பிக்கப்பட்ட நபர்களுக்கு மட்டுமே காசோலைகளில் கையொப்பமிட்டுக் கொடுத்ததாகக் கூறி, அவர் தனது பொறுப்பிலிருந்து விலகிவிட இயலாது. காசோலையில் கையெழுத்திடும் அலுவலர்கள் இருவருமே மேற்சொன்ன வகையில் என்ன விவரங்களுக்காக காசோலை கொடுக்கப்படுகிறது என்பதை பரிசீலனை செய்து, அது சம்மந்தப்பட்ட பதிவேடுகளில் வரவு, செலவு விவரங்களுக்கு ஏற்றாற்போல் பதிவு செய்து வைக்கப்பட்டுள்ளதா என்பதை உறுதி செய்வதும், சரிபார்ப்பதும் அவர்களுடைய அத்தியாவசிய பணியாகும்.

52. எனவே, இதன் அடிப்படையில் ஏற்பட்ட நிதியிழப்பிற்கு, கடன் தொகைக்கான காசோலையில் கையொப்பமிட்டுள்ள வகையில், தனி அலுவலரான, திரு. பி. ஆனந்தம், கூட்டுறவு சார்பதிவாளர் காரணமாகின்றார். மேல்முறையீட்டாளர் தனக்கு எதிராக குற்றம் சாட்டப்பட்ட கடன்கள் சம்மந்தப்பட்ட தொகைகள் வசூலாகிவிட்டதாக தெரிவித்துள்ள போதிலும், அதற்கான ஆவண ஆதாரம் எதனையும் மேல்முறையீட்டாளர் தாக்கல் செய்யவில்லை. சங்க கணக்கில் மேற்படி தொகை நாளது வரையில் செலுத்தப்படாமல் நிலுவையில் இருந்துள்ள வகையில், மேற்கண்ட தொகைகள் சங்கத்திற்கு நிதியிழப்பை ஏற்படுத்தியதை நிரூபணம் செய்வதாக அமைந்துள்ளது. அவ்வாறு நிதியிழப்பு ஏற்பட்டதை உரிய முறையில் கண்காணிக்க தவறிய வகையில், இந்த மேல்முறையீட்டாளர் நிதியிழப்பிற்கு பொறுப்பாகின்றார்.

53. மேல்முறையீட்டாளர் ஒவ்வொரு இனத்தைப்



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பொறுத்தும் தன் மீதான குற்றச்சாட்டிற்கு பதில் அளிக்கையில், தான் தனி அலுவலராக பொறுப்பேற்ற போது சேமிப்பு கணக்கில் வரவு, செலவு செய்ய இயலாமல் முடக்கப்பட்டிருந்தது என்றும், தான் வங்கியின் மேலாளரை அனுகிய போது, அவர் தனி அலுவலர் காசோலைகளில் கையொப்பமிட்டால் மட்டுமே வரவு, செலவு செய்ய அனுமதிக்க இயலும் என்று தெரிவித்த காரணத்தால், தான் காசோலைகளில் கையொப்பமிட்டு கொடுத்ததாகவும், அவ்வாறு கையொப்பமிடும்போது, செயலாளரால் அடையாளம் காட்டப்பட்ட நபர்களுக்கு மட்டுமே காசோலை வழங்கப்பட்டது என்றும், சங்கத்தின் பிரவேச புத்தகம், கடன் பதிவேடு, கடன் பட்டுவாடா பதிவேடு, காசோலை வழங்கல் பதிவேடு ஆகியவற்றை பராமரிக்க வேண்டிய பொறுப்பு சங்க செயலாளர், எழுத்தர் மற்றும் மேற்பார்வையாளர்களுக்கு உரிய பணி என்றும், தான் கூடுதல் பொறுப்பிலிருந்த காரணத்தால், தன்னால் சங்கத்தின் அன்றாட நடவடிக்கைகளை கண்காணிக்க இயலவில்லை என்றும், கூடுதல் பொறுப்பு பணிக்காலத்திற்கு தான் ஊதியம் ஏதும் பெறவில்லை என்றும், எனவே, கூடுதல் பொறுப்பிலிருந்த தன்னை நிதியிழப்பிற்கு பொறுப்பாக்க இயலாது என்பதால், தண்டத்தீர்வை நடவடிக்கையிலிருந்து தன்னை விடுவிக்குமாறு கோரியுள்ளார். எது எவ்வாறாயினும், மேல்முறையீட்டாளர் அங்கத்தினர்களுக்கு கடன் கொடுத்ததாக கூறப்படும் காசோலைகளில் கையொப்பமிட்டுள்ளதை ஒப்புக்கொண்டுள்ளார். அவ்வாறிருக்கையில், மேற்கண்ட கடன் தொகைகள் அங்கத்தினர்களுக்கு உரிய முறையில் பட்டுவாடா செய்யப்பட்டுள்ளதா? அதனை அவர்கள் மீள செலுத்தியுள்ளனரா என்பதை கண்காணிக்க தவறியுள்ள நிலையில், சங்கத்தில் ஏற்பட்டுள்ள நிதியிழப்பிற்கு பொறுப்பாகிறார் என்பதாக இம்மேல்முறையீட்டு நீதிமன்றம் தீர்வு காண்கின்றது. மேல்முறையீட்டாளர் அவரது கண்காணிப்பு பணியை சரிவர நிறைவேற்றாததன் காரணமாக ஏற்பட்ட நிதியிழப்பிற்கு அவர்



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தனியாகவும், கூட்டாகவும் பொறுப்பாகிறார் என்பதாக விசாரனை நீதிமன்றம் / கூட்டுறவு தீர்ப்பாயம் வழங்கிய தீர்ப்பு சரியானது தான், சீரிய பரிசீலனைக்கு பின்னர் எடுக்கப்பட்டது என்பதாகவும், அந்த சீரிய முடிவில் இம்மேல்முறையீட்டு நீதிமன்றம் குறுக்கீடு செய்ய இயலாது என்பதாக இந்நீதிமன்றம் தீர்வு காண்கின்றது.”

33. All the charges are identical. The petitioner has a duty. He had not verified before signing the order whether the person to whom the benefit is given is a genuine and bonafide etc. Therefore, he cannot claim defence that he being in charge of eight Societies at a time was unable to manage everything. All the other amount repaid.

34. Point for consideration:

Whether this Court exercising powers under Article 227 of the Constitution of India has to interfere in the finding of the learned Principal District Judge, dismissing the Co-operative Societies C.M.A.No.21 of 2017 dated 29.03.2019?

35. The learned Counsel for the other Respondents did not come forward to argue the case in spite of grant of repeated adjournments. The submission of the learned Counsel for the Revision Petitioner is found



acceptable on perusal of the surcharge proceedings and on perusal of the judgment of the learned Principal District Judge, Thiruvavur, as Special Appellate Tribunal under the Co-operative Societies Act, 1983.

36. The learned Counsel for the Revision Petitioner relied on the reported rulings in **2016-4-L.W. 452** in the case of ***S.Ramadevi Vs. The Special Officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellore District & Others*** and also relied on the earlier rulings of this Court reported in 2003-3-LW185 in the case of ***S.Subramanian Vs. The Deputy Registrar of Co-operative Societies (Housing), Cuddalore and Others*** and (2009) 4 MLJ 992, in the case of ***K.Ajay Kumar Gosh and Others Vs. Tribunal for Co-operative Cases*** based on which it held as follows;

“ The appellant is not the beneficiary. There is no such willful negligence attributed to her. This is apparent from even the enquiry report, which we have referred to aforesaid. Mere use of words “negligence and careless with selfish motive for gain” would not suffice when actually the facts do not make out such a case. Thus, the surcharge officer certainly fell into an error in imposing the liability on the appellant. The enquiry report discussed aforesaid itself shows that it is



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the third respondent who is found to have taken advantage of the situation in seeking to obtain illegal gain for himself.”

37. Merely because the same is reported in **2010 (4) CTC 13** in the case of ***S.Pichumani and Others Vs. The Deputy Registrar, Cooperative Societies/Arbitrator, Collector Office Complex, Coimbatore 641 018 and Others*** and **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 held as follows;

“..... 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 in as much as the domain of re-appreciation of evidence is not with this Court in this Writ Petition. But, at the 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.”

Further, in the ruling reported in **1994 Supp (3) SCC 134** in the case of ***Pollachi Cooperative Marketing Society Vs. K.N.Veluswami and Others***, wherein it held as follows;



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“3. Respondents 1-14 thereupon preferred writ petitions under Article 227 to the High Court. The High Court noted that the decree of negligence which was contemplated under Section 71 of the said Act was willful negligence. The word 'willfulness', it held, imported premeditation or knowledge and consciousness that an injury or loss was likely to result from the act done or from the omission to act. It imported a constructive intention as to the consequence. Quoting an earlier judgment, delivered by Pandian,J. (as he then was) in Sathyamangalam Cooperative Urban Bank Ltd. v. Dy. Registrar of Cooperative Society, it held that to constitute wilful negligence, the act done or omitted to be done must involve such reckless disregard of duty as to imply bad faith. The High Court observed that the very approach of the Special Tribunal for Cooperative Cases was wrong as it had posed for answer the following question. “The main point for consideration would be whether the purchase were effected as per the regulation and whether the subsequent series were done in good faith and in the interest of the Society.” The High Court came to the conclusion that the evidence did not justify the legal inference that Respondents 1-14 had been



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guilty of wilful negligence.”

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38. In the light of the above rulings it had been repeatedly held by this Court that mere causing loss by the Society having suffered loss will not be the reason to impose surcharge proceedings. There shall be evidence regarding willful negligence on the part of the officer of the Co-operative Societies or the staff of the Co-operative Societies against whom the surcharge proceedings had been initiated.

39. As rightly pointed out by the learned Counsel for the Revision Petitioner that the 1st Respondent as surcharge officer had not conducted independent enquiry, independent of the preliminary enquiry or fact finding enquiry conducted under Section 81(1) of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, as rightly pointed out by the learned Counsel for the Revision Petitioner that the proceedings of the 1st Respondent imposing surcharge penalty on the Petitioner is vitiated by not adhering the principles of fairness equity and good concious which governs the Civil Court in granting relief. The very same power is available to the enquiry officer both under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, and also the



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surcharge officer under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983.

40. The surcharge officer had mechanically relied on the enquiry findings under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 and imposed the surcharge penalty on the Petitioner ignoring the explanation offered by the Petitioner. It is found acceptable and reasonable that the Petitioner, who had been given the responsibility of eight Co-operative Societies similar to the 2nd Respondent Society cannot be expected to verify each and every document before signing, he has to depend upon his own subordinates. The respective Secretary of the individual Co-operative Society and the Clerk of the Society who has the responsibility of managing day to day affairs of the respective individual Co-operative Societies. Therefore, the explanation offered by the Revision Petitioner as delinquent in the surcharge proceedings to the show cause notice that it is humanly impossible for him to verify each and every document before signing is found acceptable. He has to rely on his own subordinates who are the Secretary of the respective Society and the Clerk of the respective Society who is the paid officer of the individual



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Society.

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41. The 1st Respondent as Surcharge Officer having ignored the well laid out rules regarding surcharge proceedings had imposed penalty ignoring those rules.

42. The Special Appellate Tribunal under the Co-operative Societies Act, the learned Principal District Judge, Thiruvarur, had also ignored the rulings relied by the learned Counsel for the Revision Petitioner and had given a finding confirming the surcharge proceedings passed by the 1st Respondent and dismissing the appeal filed by the Petitioner herein by judgment dated 29.03.2019 in C.M.A.No.21 of 2017.

43. The 1st Respondent having ignored the waiver of loans by the Government also had imposed the surcharge penalty is found unacceptable in the light of the materials available before this Court made available through the typed set of papers which contains the copies of all the proceedings which was placed before the learned Principal District Judge, Thiruvarur, as Appellate Tribunal under the Co-operatives Societies Act.



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44. In the light of the above, the point for consideration is answered in favour of the Revision Petitioner and against the Respondents. This Court has to necessarily interfere with the finding of the learned Principal District Judge, Thiruvavarur, as Special Appellate Tribunal under the Tamil Nadu Co-operative Societies Act, 1983, by setting aside the judgment and decree of dismissal of the Co-operative Societies Civil Miscellaneous Appeal dated 21 of 2017.

45. In the result, this Civil Revision Petition is allowed, the judgment and decree passed in Co-operative Societies C.M.A.No.21 of 2017 dated 29.03.2019, dismissing the Co-operative Societies C.M.A.No.21 of 2017 by the learned Principal District Judge, Tiruvavarur, as Special Appellate Tribunal, under Co-operative Societies Act, 1983, is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

20.12.2023

Index : Yes/No

Neutral Citation Yes / No

Speaking Order/Non-Speaking Order

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To

The Principal District Judge,
Tiruvavarur.

SATHI KUMAR SUKUMARA KURUP., J.

ata

Pre-delivery order made in

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