IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2015

CORAM:

THE HON'BLE MR.JUSTICE V.DHANAPALAN
and
THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

W.A.No.1205 of 2011

M. Shanmugam ... Appellant/Petitioner in W.P.20801/10 on the file of this court.

Vs.

1. The General Manager,
Indian Bank,
Head Office,
No.66, Rajaji Salai,
Chennai 600 001.

2. The General Manager,
(Divisional Office),
Indian Bank,
510 & 511, Gandhi Road,
Kancheepuram.

3. The Branch Manager,
Indian Bank,
Koovathur,
Cheyyur Taluk,
Kancheepuram District. ... Respondents/Respondents in W.P.No.20801/10 on the file of this court

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 09.02.2011 made in W.P.No.20801 of 2010 filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarifiled mandamus, calling for the records pertaining to the proceedings of the second respondent in REF.COK.REP 104: ADWADR/2008-2009 dated 16.12.2008 and quash the same and consequently direct the respondent to extend the benefit of waiver of entire agricultural loan and Debt Relief Scheme of the Government of Tamil Nadu 2008 to the petitioner.

For Appellant : Mr.G.Muthukrishnan

For Respondents : Mr.R.Krishnasamy
for Mr.B.Murugavel

J U D G M E N T

(Judgment of the Court was delivered by V.Dhanapalan,J.)

Heard Mr.G.Muthukrishnan, learned counsel for the appellant and Mr.R.Krishnasamy, learned counsel appearing for Mr.B.Murugavel, learned counsel for the respondents.

2. This Writ Appeal is directed against the dismissal order dated 09.02.2011 passed by the learned Single Judge in W.P.No.20801 of 2010.

3. According to the appellant/writ petitioner, he is a poor agriculturist possessing 3.50 acres of agricultural land in his Village. For the purpose of purchasing a Tractor to plough the said land, he approached the 3rd respondent/Indian Bank and produced necessary documents in that regard. The Bank sanctioned a sum of Rs.5,00,000/- as loan for the purchase of Tractor at Rs.6.30 lakhs, on payment of excess amount of Rs.1.30 lakhs by the appellant. At the time of sanctioning loan by the 3rd respondent/Bank, an opinion was sought from the Legal Adviser of the said Bank and the legal opinion dated 30.10.2006 opines that the appellant/writ petitioner possessed only 3.50 acres of agricultural land in his Village.

4. The appellant has further averred that during the year 2008, the Government of Tamilnadu announced a Scheme in order to help the small and poor agriculturists by way of a Government Order named as 'Waiver of Agricultural Loan and Debt Relief Scheme, 2008' (hereinafter referred to as 'Scheme'). As per the said Scheme, persons who possessed small extent of land, i.e. within 5 acres of land, are eligible to get the benefit of the Government Order and the said scheme.

5. On coming to know about the said Scheme, the appellant/writ petitioner made a written representation to the 3rd respondent and they in turn advised him to approach the 2nd respondent herein to avail the relief and benefits. Therefore, the appellant made a representation to the 2nd respondent by narrating the entire facts seeking to extend the benefits under the said Scheme and the 2nd respondent, by a letter dated 10.11.2008, informed the appellant that his request will be considered in the near future. Thereafter, the appellant received a letter dated 16.12.2008 from the 2nd respondent, wrongly mentioning that he possessed 7.46 acres and as such, he is not eligible for the benefit of the above said Scheme and Government Order.

6. According to the appellant/writ petitioner, he availed loan from the 3rd respondent Bank as a small farmer and clearly established at the time of availing loan that he possessed only 3.50 acres of land and that name change in the patta of some of the lands sold by him earlier was not effected by the purchaser. As all his efforts to get the relief from the respondent/Bank were in vain, the appellant/writ petitioner approached this Court in W.P.No.20801 of 2010 and this Court by an order dated 09.02.2011 held as follows:

"3. It is not in dispute that the loan of the petitioner will fall under the "investment credit" as the loan was availed for the purchase of tractor.

4. In view of the explanation to the , the petitioner having availed the loan of more than Rs.50,000/- will fall under the category is to be classified as 'other farmer'. The petitioner would not be therefore entitled to debt waiver, as it applies only to the 'small and marginal farmers'.

5. Whereas in the case of 'other farmers', the categories in which the petitioner falls, he is entitled to one time settlement scheme which he is entitled to rebate of 25% of the eligible amount, subject to the condition that the farmer pays the balance of 75% of the eligible amount.

6. The stand of the respondent is that the petitioner was already offered waiver of 25% of eligible amount which he is failed to.

7. The contention of the learned counsel for the petitioner that for the purpose of classification, the petitioner should have been classified as 'small farmer', as the land owned by the petitioner is only 3.5 acres. This contention of the learned counsel for the petitioner cannot be accepted, as the loan advanced to the petitioner fell under "investment plan" for the purpose of which the amount of loan determined the category, and the petitioner falls under the category 'other farmer'.

8. For the reasons stated, there is no merit in the writ petition which is accordingly dismissed. ..."

7. It is the contention of the learned counsel for the appellant that without considering the fact that the appellant comes under the category 'small farmer' and that the loan availed by him is for agricultural purpose, the learned Single Judge dismissed the Writ Petition holding that the appellant comes under the category 'other farmer'.

8. Now, the question that arises for consideration in this Appeal is whether the appellant comes under the category 'small farmer' or 'other farmer'.

9. To examine the same, relevant definitions of the Scheme need to be looked into.

"3.3. 'Investment Loan' means

(a) Investment credit for direct agricultural activities extended for meeting outlays relating to the replacement and maintenance of vasting assets and for capital investment designed to increase the output from the land, e.g., deepening wells, sinking of new wells, installation of pump sets, purchase of tractor/pair of bullocks, land development and term loan for traditional and non-traditional plantations and horticulture; and

(b) investment credit for allied activities extended for acquiring assets in respect of activities allied to agriculture e.g., dairy, poultry farming, goatery, sheep rearing, piggery, fisheries, bee-keeping, green houses and biogas.

3.4. 'Cooperative Credit Institution' means a cooperative society that

(i) provides short-term crop loans to farmers and is eligible for interest subvention from the Central Government; or

(ii) carries on banking activities regulated or supervised by RBI or NABARD; or

(iii) is part of the Short-Term Cooperative Credit Structure or Long-Term Cooperative Credit Structure in a State or Union Territory.

3.5. "Marginal Farmer" means a farmer cultivating (as owner or tenant or share cropper) agricultural land up to 1 hectare (2.5 acres).

3.6. 'Small Farmer' means a farmer cultivating (as owner or tenant or share cropper) agricultural land of more than 1 hectare and up to 2 hectares (5 acres).

3.7. 'Other Farmer' means a farmer cultivating (as owner or tenant or share cropper) agricultural land of more than 2 hectares (more than 5 acres).

Explanation :

...

3. In the case of a farmer who has obtained investment Credit for allied activities where the principal loan amount does not exceed Rs.50,000/- he would be classified as "small and marginal farmer" and, where the principal amount exceeds Rs.50,000/-, he would be classified as 'other farmer' irrespective in both cases of the size of the land holding, if any. "

10. On a reading of the above Definitions, it is clear that the loan availed by the appellant/writ petitioner falls under the category 'Investment credit' and the explanation to the same would read that in the case of a farmer who has obtained Investment Credit for allied activities, where the principal loan amount does not exceed Rs.50,000/- he would be classified as "small and marginal farmer" and where the principal amount exceeds Rs.50,000/-, he would be classified as 'other farmer' irrespective in both cases of the size of the land holding, if any.

11. Taking note of the same, the learned Single Judge dismissed the Writ Petition holding that the loan advanced to the appellant/writ petitioner fell under "investment plan" for the purpose of which the amount of loan determined the category and that the appellant/writ petitioner fell under the category 'other farmer'.

12. In our considered opinion, taking note of the facts and circumstances of the case and the settled legal principles, the Writ Court has rightly concluded that the appellant/writ petitioner comes under the category 'other farmer' and therefore, we have no hesitation to dismiss this Appeal.

Accordingly, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To :

1. The General Manager,
   Indian Bank,
   Head Office,
   No.66, Rajaji Salai,
   Chennai 600 001.

2. The General Manager,
   (Divisional Office),
   Indian Bank,
   510 & 511, Gandhi Road,
   Kancheepuram.

3. The Branch Manager,
   Indian Bank,
   Koovathur,
   Cheyyur Taluk,
   Kancheepuram District.

+ 1 cc to Mr.B. Murugavel, Advocate Sr.6149
+ 1 cc to Mr.G. Muthukrishnan, Advocate Sr.5733

W.A.No.1205 of 2011

JP(CO)
Eu 2.03.15