

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 04/09/2014

DATED: 07/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.15769 of 2014

&

M.P.No.1 of 2014

E.2576, Poovalai Primary Agricultural
Co-operative Credit Society Ltd.,
Rep. by its President,
Poovalai Post, Chidambaram Taluk,
Cuddalore District.

...Petitioner

Vs.

The Joint Registrar of Co-operative Societies,
Cuddalore Region,
Cuddalore.

...Respondent

PRAYER: Writ Petition is filed under Article 226 of the
Constitution of India for a Writ of Certiorari, to call for the
records of the respondent in notice in Na.Ka.No.2553/2014
Thu.Va.Th.1, dated 14.05.2014 and quash the same.

For Petitioner : Mr.Pitty Parthasarathy &
Mr.G.Ethirajulu

For Respondent : Mrs.T.P.Savitha
Government Advocate

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O R D E R

The petitioner submits that he is the elected President
of the Poovalai Primary Agricultural Co-operative Credit Society.
He assumed Office on 15.05.2013. The petitioner submits that after
assuming office, he received a communication dated 03.05.2013 from
the respondent. The respondent therein directed the administrator
to re-convey the property belonging to the society S.No.2, in

Puduchatram, a hamlet in Alamelumangapuram Village, to one Chandramohan, son of Venkatakrishnan. He gathered from the communication that Venkatakrishnan, since deceased, borrowed a sum of Rs.26,170.50/- on 27.01.1973 on the security of his land above mentioned. Venkatakrishnan created an equitable mortgage of his properties measuring 9.89 acres. He died on 03.05.1977 during the subsistence of the mortgage. He further submits that the Society had filed an ARC for recovery of the sum borrowed and obtained the award in its favour. Then, it seems that the Society filed an EP and brought the property of Venkatakrishnan for auction. Since there were no bidders the property was purchased by the Society as a set off for the E.P. amount. Consequent to the purchase, the society took possession of the property as per Law, mutation of records has been effected and the society is in possession and enjoyment of the property for the past 41 years. The society is paying the kist to the Government and has leased out the land to a self help group.

2. The petitioner further submits that 41 years after Venkatakrishnan's son, by name V.Chandramohan is alleged to have filed a petition under Section 131 of the Tamil Nadu Co-operative Societies Rules before the then Administrator of the Society for re-conveyance of the property above mentioned. The order further states that the administrator of the society passed resolution No.1, dated 28.06.2011 for re-conveyance and forwarded it to the Deputy Registrar of Co-operative Societies, Chidambaram. The petitioner further submits that no records are available with the Society to confirm and verify the statement made in the order cited above. The present Secretary of the Society does not co-operate and will not oblige him by producing the file. The order dated 03.05.2013 does not mention the ARC No, the date of award, the copy of the award, details of execution petition, the date of auction, the amount for which the auction was confirmed, the date of conveyance etc. The order is bereft of facts and states only the amount borrowed and the expenses incurred by the Society and the interest. The total amount given in the order is Rs.2,42,500.50/-. This figure is at variance with the earlier stated figure in the body of the order viz., Rs.2,20,000/-. This amount of Rs.2,20,000/- is alleged to have been deposited by Chandramohan to the Society. The date of deposit was not mentioned. The date of application by Chandramohan before the administrator and the application itself are not available with the Society. If it is available, it ought to have found a place in the order. The respondent herself states that the above said facts were informed by the Secretary and the then Administrator of the Society. Mystery surrounds the entire event and the genuineness of the proceedings is itself under suspect.

3. The petitioner further submits that in the same order at a later stage, the respondent states that she went through the prayer in the petition and the documents available in the Society. The respondent contradicts herself at every stage in the order. The respondent states that power is vested in her for re-conveyance in the Tamil Nadu Co-operative Societies Act and she is ordering the same on the recommendation made by the then Administrator and the Deputy Registrar, Chidambaram. No independent investigation and application of mind is evident from the order. The petitioner further submits that a property purchased by the Society in the year 1973 is ordered to be re-conveyed by the respondent after receiving the sale price then paid with an interest at a flat rate of 18%. The Society has been in possession of the property for more than 41 years. Under the Indian Limitation Act, if no period of limitation is fixed in the Act, Article 137 will apply and the limitation period is 3 years. The order passed by the respondent is against law. Further, the Registrar of Co-operative Societies, Chennai issued Circular No.1/87, dated 09.01.1987 limiting the period for re-conveyance to 6 months from the date of sale. The respondent is bound by the circular and cannot disregard the circular and pass an order of re-conveyance against the direction given in the circular. The re-conveyance order by the respondent is against the rule of perpetuity also. The petitioner further submits that the property is worth more than Rs.60 lakhs in the open market. A factory is coming adjacent to the property. Property values have escalated multi fold in the recent times. The Society cannot be deprived of the gain it will make by selling it in the open market. The petitioner further submits that a petition dated 06.11.2013 has been sent to the Chief Ministers Cell, Chennai, The Chief Secretary, Chennai, District Collector, Cuddalore, Superintendent of Police, Cuddalore etc. His petitions has angered the respondent and she, through the Deputy Registrar of Co-operative Societies, Chidambaram, had it ordered for inspection under Section 82 of the Tamil Nadu Co-operative Societies, Act. One Madavi CSR was appointed as Inspection Officer. She issued summons dated 03.02.2014 to the petitioner, directing him to appear before her on 07.02.2014. On that day, the petitioner was made to give a statement without the help of the records. Later, the petitioner understands that his statement was recorded by Madavi after she has submitted her report on 25.12.2013. The inspection report dated 25.12.2013 is not a only report submitted by Madavi. It could be seen from the records that another report dated 25.02.2014 was also submitted by her. The copies of the two reports are not served on him.

4. The petitioner further submits that from the above facts, it is clear that the 82 inspection reports is a stage managed report and no inspection was carried out by Madavi. There

cannot be better evidence to hold the inspection report as false and fabricated. The inspection report is illegally created to victimize him. On the basis of the report submitted by Madavi, the respondent issued a notice dated 14.05.2014, in Na.Ka.No.2553/2014, calling upon him to give his reply to the question as to why the Board should not be superseded under Section 88 of the Tamil Nadu Co-operative Societies Act. The petitioner further submits that the supersession notice was issued by the respondent out of malice and to blackmail him to execute the re-conveyance deed as desired by her. Hence, the petitioner has filed the above writ petition.

5. The respondent has filed a counter affidavit and resisted the above writ petition. The respondent submits that the petitioner has assumed office on 14.05.2013. The respondent further submits that one Thiru.Venkatakrishnan (since deceased) borrowed a sum of Rs.26,170.50 on 27.01.1973 pledging his land as security, in land Survey No.2, Puduchatram, a hamlet of Alamelumangapuram Village, Cuddalore District. He created one equitable mortgage of his properties to the extent of 9.89 acres. The borrower Thiru.Venkatakrishnan died on 03.05.1977, without repaying the loan amount together with interest borrowed from the petitioner's society, that the society has obtained a money decree ARC No.1932/70.70. Then, the Society has filed execution petition No.CEP 1868/71.72 and brought the said property for auction sale. However as there was no bidders, the property was set off to the society for the Execution Petition amount. The society took possession of the property as per law and the property was kept vacant from 28.05.1974 to 05.10.2003 and the lands were maintained by the Santhana Mullai Self Help Group, Mani Kollai Village by lease from 06.10.2003 to 12.07.2007 and renewed for further three years from 13.07.2007 to 26.07.2010 after that, the said Self Help Group handed over the land on lease to the petitioners society on 26.07.2010 and from that date, the land was again kept vacant by the Society till the date of re-conveyance. The respondent further submits that Thiru.V.Chandramohan has filed a requisition petition under Section 131 of the Tamil Nadu Co-operative Societies Rules before the Administrator of the said Society for re-conveyance of the landed property mentioned above and the connected files and records are under the custody of third respondent and there is no evidence that the petitioner has requested the connected records from the third respondent. The Inspection Officer and the Auditor have verified the said records at the time of the visit. The files and records are with the Society.

6. The respondent further submits that the then Administrator of the petitioner's society have passed resolution No.1, dated 28.06.2011 for re-conveyance of the said property after

getting the loan amount with interest and other charges and she has submitted the re-conveyance proposal to the Deputy Registrar of Co-operative Societies, Chidambaram recommending re-conveyance of the said property to Thiru.V.Chandramohan, the legal-heir of the deceased loanee Thiru.V.Venkatakkrishnan. It is further submitted that the petitioner have never requested for seeing the Societies records which is in charge of the Secretary. The copy of re-conveyance proposals filed and minute book were kept in the society's custody and the 82 inspection officers has also inspected above records, besides other records. The respondent further submits that the respondent has never hidden the particulars in the permission for re-conveyance dated 03.05.2013. In the order, the respondent has mentioned the CEP No. and other details mentioning of arbitration No. and award etc were not necessary to mention in the said order dated 03.05.2013 Thiru.V.Chandramohan had deposited Rs.2,20,000/- by a cash challan No.5, dated 08.06.2011 in the petitioner's society. Two years have lapsed, for permission and Thiru.V.Chandramohan had deposited Rs.2,20,000/- by a cash challan No.5, dated 08.06.2011 in the petitioner's society. Two years were lapsed for permission and Thiru.V.Chandramohan has deposited Rs.22,550.50 on 15.02.2013, the date proposal after calculating further interest 15.02.2013 to 09.05.2013 Rs.1,119.50/-. Hence, the difference in the deposit was arrived. The statement of the petitioner that mystery surrounds the entire event and suspicion above the genuineness of the proceedings of the respondent are incorrect.

7. The respondent further submits that the respondent being the Regional Joint Registrar has Jurisdiction over the Cuddalore District and under his control, 3 Circle Deputy Registrars' are working. The Field Officer and Special Officer / Administrator in the field recommend each of the proposal of the society and the immediate officer who is having jurisdiction over the circle peruses the proposal and if it is found fit, the proposal to the respondent will be recommended. This is the regular procedure adopted in co-operatives. In this case, the Administrator have submitted proposal for re-conveyance of the land as per the requisition of Thiru.V.Chandramohan and have passed Resolution for the re-conveyance of the land to Thiru.V.Chandramohan. It is evident that the entire required certificate and records were furnished by the administrator and checked by the Circle Deputy Registrar, Chidambaram. Powers were confirmed to the Joint Registrar (respondent) to issue re-conveyance order under Rule 131 of the Tamil Nadu Co-operative Societies Act, 1983 as per Government Order 2(D) No.108 and 109 Co-operation, Food and Consumer Protection Department dated 31.03.2005. Accordingly, after the examination of the proposals along with records, the respondent issued proceedings in her

R.C.No.3933/2012, dated 03.05.2013. The order is perfect and according to law. The petitioner has falsely stated that the respondent has not investigated independently. Further, the respondent has issued permission order for re-conveyance of the landed property after getting full settlement. The petitioner's society has not purchased the said land in the auction sale. The Sale Officer has set off the auction sale equal to the amount repayable to the petitioner's Society. No period of limitation is mentioned, hence period of re-conveyance shall be made to the borrower, when they have come forward to settle the loan amount with further interest and other charges. The order of re-conveyance will be made by the respondent and the Indian Limitation Act will not be applicable in this issue.

8. The respondent further submits that the Registrar of Co-operative Societies, Chennai have not issued any period of limitation for the re-conveyance of the landed property to the borrower and hence Cir.No.1/987, dated 09.01.1987 will not be applicable in this issue. The re-conveyance order made by the respondent is according to the law. The statement of the petitioner that the re-conveyance order of the respondent is against law is not sustainable. The respondent further submits that the petitioner has not filed petition dated 06.11.2013 to this Court for redressal. The respondent further submits that the petition, said to have been submitted by the petitioner to the Higher Officials, were suitably answered and report submitted to the Registrar of Co-operative Societies, Chennai. The Registrar of Co-operative Societies, after physically verifying the concerned file at Chennai was satisfied with the reply submitted by the respondent. The respondent further submits that the circle Deputy Registrar, Chidambaram have ordered the inspection of accounts of the petitioner Society under Section 82 of the Tamil Nadu Co-operative Societies Act. The Field Officer Tmt.A.Madhavi was appointed as Inspection Officer in the third respondent Society by the Circle Deputy Registrar, Chidambaram. The Inspection Officer had enquired the petitioner on 13.02.2014 and obtained deposition on 13.02.2014, besides others, and completed the inspection and submitted inspection reports on 25.02.2014 and she has submitted reports for taking surcharge action under Section 87 of the Act and supersession of the Committee under Section 88 of the Act.

9. The respondent further submits that the copy of inspection report was not called for by the petitioner and served to him. The respondent further submits that the Inspection Officer has properly inspected the records of the Society and he had obtained deposition wherever necessary. The petitioner has no right to state that the inspection reports are false and fabricated. The Inspection Officer never created illegal report to victimize the

petitioner. The petitioner clearly knows that he had swallowed the Societies fund and created loss by misappropriation. The respondent further submits that the respondent has issued notice under Section 88 of the Act in her notice dated 14.05.2014, calling upon the explanation to the notice. The petition has received notice along with his other directors and requested time to submit his reply to the notice. The respondent further submits that the notice dated 14.05.2014 served on the petitioner itself a show cause notice calling for his explanations as to why the committee should not superseded. The petitioner requested time for his explanations besides others. The respondent further submits that the supersession notice under Section 88 of the Tamil Nadu Co-operative Societies Act, under I(i)(i) and (ii) of the Section 88 of the newly amended Act. Hence, the respondent entreats the Court to dismiss the above writ petition.

10. The highly competent counsel appearing for the petitioner further submits that one Venkatakrishnan had received a sum of Rs.26,70.50/- as loan from the respondent on 27.01.1973 after mortgaging his landed property to an extent of 9.89 acres. The said Venkatakrishnan had expired on 03.05.1977. Without remitting the principle amount with accrued interest thereon. Hence, the Society had initiated recovery proceedings and obtained favourable award from the competent forum. Pursuant to the said award, E.P. Proceedings have been initiated and the said land had been brought under public auction. There were no bidders who participated in the public auction and therefore, the Society itself adjusted the value of bid to the E.P amount and had taken the property as per law. Subsequently, all the records had been mutated in the name of the Society and the said land was leased to a self-help group. After a lapse of 41 years, the son of the mortgager had claimed re-conveyance of the property under Section 131 of the Tamil Nadu Co-operative Societies Rules.

11. The highly competent counsel appearing for the petitioner further submits that the respondent ordered for re-conveyance against payment of Rs.2,42,500.50/-, but the claimant had deposited only a sum of Rs.2,20,000/-. The Society has been in possession of the property for more than 41 years. As such, the limitation period lapsed as per Article 137. Now, the property is worth about Rs.60,00,000/-. Subsequent to this, the respondent had passed a show-cause notice under Section 88 of the Tamil Nadu Co-operative Societies Act and not under the Section 88 of the newly amended Act. Hence, the highly competent counsel entreats the Court to set-aside the supersession notice passed by the respondent.

12. The highly competent Government Advocate Mrs.T.P.Savitha appearing for the respondent submits that the deceased Venkatakrishnan had mortgaged his property on 27.01.1973 and borrowed a sum of Rs.26,170.50 as loan. The mortgager had expired on 03.05.1977. Subsequently, the Society had initiated arbitration recovery case before the competent forum and obtained award in favour of the Society. Therefore, the execution proceedings had been initiated and the said mortgaged property has been brought on auction, but no bidder had participated. Hence, the property was set-off to the society against the loan amount. Thereafter, the property was kept vacant upto 05.10.2003. Subsequently, the property was leased out to self help group. Thereafter, the self help group handed over the said land to the Society. Now, the subject land is kept vacant. Under the circumstances, the son of the late borrower had made an application under Section 131 of the Tamil Nadu Co-operative Societies Rules before the Administrator. After observing all formalities, the impugned order has been passed against the arrears of loan amount consisting of principal and interest. The same was remitted by Chandramohan, son of Late Venkatakrishnan, who was the mortgager. Therefore, the impugned order passed by the respondent is suitable for execution. Further, the supersession notice issued by the respondent is not about re-conveyance of property, but for the acts of misconduct of the petitioner and it has been issued under Section 88 of the Tamil Nadu Co-operative Societies newly amended Act. Hence, the highly competent Government Advocate entreats the Court to dismiss the writ petition.

13. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side, this Court is of the view that the claimant, viz., Chandramohan, Late Venkatakrishnan had made an application under Section 131 of the Tamil Nadu Co-operative Societies Rules. The same were considered by the respondents and the impugned order was passed, in which, the said land has been re-conveyed in his favour against the payment of Rs.2,42,500.50. If the said land is re-conveyed to the son of the borrower, no one will be prejudiced. This Court is of the further view that the subject land has been brought on public auction but no bidder had participated. As such, the auction proceedings should have been postponed in the interest of borrower / landowner, but the property was set off to the Society against the loan amount which is not fair, as it violates principles of natural justice. This Court is of the further view that from the date of public auction i.e., 28.05.1974 to 05.10.2003, the land was kept vacant. Subsequently, the said land has been assigned to self help group under the lease agreement, which was in force upto 26.07.2010. Subsequently, the land to an extent of 9.89 acres is still vacant. Now, if the said land is re-

conveyed to the said Chandramohan against the loan amount, the welfare of the Society will not be affected. Further, there is no loss to the Society since the Society had received loan amount with accrued interest thereon. Further, the petitioner's agricultural co-operative credit society has been functioning for the welfare of agriculturists. The original borrower (deceased) and his son Chandramohan are involved in agricultural operations. Therefore, the re-conveyance order passed by the respondent is an appropriate one. This Court is of the further view that the Society had not furnished statement of accounts to the legal-heirs of the borrower after public auction. Further, it is seen that the supersession notice was issued under Section 88 of the newly amended section and hence, the notice is sustainable. It is further seen that the petitioner after receiving the notice had requested time for explanation and the petitioner was also aware that the supersession notice was issued on the recommendation of the Inspecting Officer in his report dated 25.02.2014. It is further seen that the petitioner has failed to exhaust Departmental Appeal provisions under Section 153 and 154 of the Tamil Nadu Co-operative Societies Act and as such, he has no case at the stage of notice. Hence, the above writ petition is dismissed. The petitioner is not permitted to file an appeal against this Court's order in order to protect the agriculturist Thiru.V.Chandramohan.

14. In the result, the above writ petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

r n s

To

The Joint Registrar of
Co-operative Societies,
Cuddalore Region,
Cuddalore.

2 CCs to Mr.G.Ethirajulu, Advocate SR.No. 48802

W.P.No.15769 of 2014 & M.P.No.1 of 2014

SVI (CO)PSI (07.10.2015)