

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10..11..2016

C O R A M

The Hon'ble Mr. SANJAY KISHAN KAUL, CHIEF JUSTICE
and

The Hon'ble Mr. Justice R.MAHADEVAN

Writ Appeal No.1234 of 2016 and CMP.No.15942 of 2016

1. The Secretary,
Co-operation, Food and Consumer Protection
Department, Secretariat, Chennai 600 009.

2.The Registrar of Cooperative Societies,
No.170, N.V.Natarajan Maaligai,
E.V.R.High Road, Kilpauk,
Chennai 600 010.

3.The Joint Registrar of Cooperative Societies,
Erode Region, Kanniaya Layout,
Karungalpalayam, Erode 638003.

4.The Deputy Registrar of Cooperative Societies,
Gobi Circle, Bajana Kovil Street,
Gobichettipalayam,
Erode District.

5.The Secretary,
No.A-A-250, Kannapalli PACS Ltd.,
P.K.Pudur, Anthiyur Taluk,
Erode District 638 504.

... Appellants/Respondents

Versus
सत्यमेव जयते

R.Ghunasekaran

...

Respondent/Writ Petitioner

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 26.08.2016 made in W.P.No.29551 of 2016. petition praying to issue a writ of mandamus directing the respondents to consider representation dated 1.8.2016 for Waiver Crop Loan amount sum of Rs.87 000/- based upon G.O.(Ms) No.50 dated 23.5.2016 and G.O. (Ms) No.59 dated 28.6.2016 Co-operation Food and Consumer Protection (CC1) Department.

For Appellants : Mr.S.T.S.Muthy
Additional Advocate General
assisted by Mr.L.P.Shanmugasundaram
Special Government Pleader (Co-op)
For Respondents : Mr.E.C.Ramesh

J U D G M E N T

(Judgment of the Court was delivered by the Honourable The Chief Justice)

The appeal is directed against the impugned order of the learned Single Judge dated 26.08.2016 allowing the writ petition filed by the respondent/original petitioner under Article 226 of the Constitution of India seeking a direction to the appellants to consider his representation dated 01.08.2016 for waiver of crop loan amount of Rs.87,000/- based on G.O.Ms.No.50 (Co-operation, Food and Consumer Protection (CCI) Department) dated 23.05.2016 and G.O.Ms.No.59 (Co-operation, Food and Consumer Protection (CCI) Department) dated 28.06.2016.

2. The respondent claimed himself to be a 'small farmer' owning 3 acres of land and thus sought the benefit of the crop loan as per the said Government Orders. It is the case of the respondent that his father owned 11.5 acres of land comprised in S.No.230/1 and 234/1 bearing Patta No.1278 at Kannapalli Village, Anthiyur Taluk, Erode District. On his demise on 15.11.2011, the mother and sister of the respondent, apart from himself became joint owners to the extent of 9 acres of land - 3 acres each, as the father of the respondent had sold 2.5 acres of land on 10.11.2011.

3.The respondent obtained crop loans from the 5th appellant and cultivated crop, but due to shortage of rainfall, the cultivation failed and he sustained a loss. He sought waiver under the aforesaid Government Orders, but no action was taken.

4. The learned single Judge took note of the fact that the counsel for the appellants before us had relied upon a mortgage deed of the respondent to the extent of 9 acres and thus would not be entitled to the benefit, as he would not come under the definition of either a 'small farmer' or a 'marginal farmer'. However, the learned single Judge relied upon the legal heirship certificate dated 05.12.2011 for the purposes of the devolution of the estate of 3 acres to each to the 3 parties, which would entitle him to fall under the category of a 'small farmer' owning the land to the extent of 2.5 to 5.0 acres, and thus, a direction was made to waive the loan amount.

5. The submission of the learned Additional Advocate General appearing for the appellants is that firstly, no writ petition would be maintainable against the Co-operative Society in view of the Full Bench decision of this court in K. Marappan vs. The Deputy Registrar of Co-operative Societies (2006(4) CTC 689). Secondly, the prayer in the writ petition was only for a direction to consider the representation dated 01.08.2016 for waiver of crop loan and not for the court itself to waive the loan. Thirdly, on the factual aspect, it was stated that the legal heirship certificate dated 05.12.2011 could not alone be the document for succession to the property, especially when the respondent had earlier mortgaged 9.17 acres of land for loans availed for the previous years. The land holding certificate dated 11.05.2015 issued by the Village Administrative Officer, Kannapalli Village, counter-signed by the respondent had declared and certified that the respondent was holding 9.17 acres of land and it is on that basis that the same extent of land had been recorded in the loan ledger pertaining to the respondent. Thus, learned Additional Advocate General seeks to submit that a Government Order which is applicable solely on the basis of size of the land holding for classification as farmers for the benefit of waiver cannot be utilised to give concession to the respondent, when his own say is that he is the owner of 9.17 acres land and has executed a registered mortgage deed dated 08.12.2012 vide Document No. 1568/2012/SRO Ammapettai, in favour of the 5th appellant for securing the loans at that stage. None of the other so called legal heirs being his mother and sister has signed the mortgage deed. The non-encumbrance certificate issued for the period from 08.06.2012 to 09.05.2012 by the Registration Department on 11.05.2015 also reflects the same position.

6. We have heard the learned counsel for the parties and perused the records.

7. It is not in issue that the benefit of the Government Orders is available only to the farmers as 'marginal farmers', if the land holding is 2.5 to 5.0 acres. That is the only criteria. Thus, for the respondent to be so eligible, the land holding necessarily must be less than 5 acres.

8. The documents referred to in the grounds of appeal show that the respondent has been availing loans for years 2012-2013, 2013-2014 and 2014-2015. While seeking loans for all these years, he had stated that he was holding land to the extent of 9.17 acres. The other documents substantiating the land holding of the respondent of 9 acres are the land holding certificate dated 11.05.2015 and that is being so recorded in

the loan ledger pertaining to the respondent. The respondent also gave collateral security and executed a registered mortgage deed on 08.06.2012 for the loan availed of in respect of 9 acres of land and the non-encumbrance certificate also pertaining to the 9 acres of land. It is not the case of the respondent that subsequently, there has been some other document by which there has been division of the 9 acres of land.

9. Another aspect to be taken into account is that it is the plea of the appellants that if respondent had applied loan for 3 acres of land, his maximum entitlement was Rs.76,500/- and not the loan availed of Rs.87,000/-.

10. We are thus of the view that the impugned order passed by the learned single Judge cannot be sustained for the aforesaid reasons and is set aside.

11. However, considering the predicament of the respondent as a farmer who may have suffered as a consequence of scanty rainfall and keeping in mind the limited plea made in the original writ petition of consideration of the representation dated 01.08.2016, the appellants/authorities may examine the case of the respondent whether some benefit can be extended in any manner under any policy in existence, keeping in mind the factual situation.

12. The appeal is allowed in the aforesaid terms, leaving the parties to bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

ksr

To

1. The Secretary,
Co-operation, Food and Consumer Protection
Department, Secretariat, Chennai 600 009.

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P.K.Pudur, Anthiyur Taluk,
Erode District 638 504.

+1cc to Mr.E.C. Ramesh , Advocate, S.R.No.65096
+1cc to Mr.L.P. Shanmuga Sundaram, Advocate, S.R.No.64744
+1cc to the Government Pleader, S.R.No.64976

sai (CO)

md(28/11/2016)

W.A. No.1234 of 2016

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