

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The Hon'ble MR.JUSTICE R.MAHADEVAN
W.A.Nos.1281, 1207 and 1140 of 2016

C.M.P.No.16603, 14633 and 15449 of 2016

N.Rathinasamy .. Appellant in WA 1281/2016
G.K.Krishnasamy .. Appellant in WA
1207/2016
N.Somasundaram .. Appellant in WA 1140/2016

-vs-

- 1.The Deputy Registrar of Co-op.
Societies, Gobichettipalayam
Circle, Erode to Sathiyamangalam
Main Road, Pudupalayam Post,
Gobichettipalayam - 638 476,
Gobichettipalayam Taluk,
Erode Taluk. ... 1st Respondent in all WAs.
- 2.The Special Officer,
AA 55, Alukuli Primary Agricultural
Co-operative Bank Ltd., Alukuli
Gobichettipalayam Taluk,
Erode District. ... 2nd Respondent in WAs.
1281 and 1207 of 2016
- 2.The Special Officer,
K44, Kothamangalam Primary
Agricultural Co-operative Bank Ltd.,
Kothamangalam, Sathyamangalam
Taluk, Erode District. ... 2nd Respondent in WA.
1140 of 2016

Appeals filed under Clause 15 of the Letters Patent against
the common order dated 01.04.2016 passed in W.P.Nos.33768 of
2013, 33769 of 2013 and 3437 of 2014 on the file of original
side of this Court.

WP.Nos.1281 & 1207/2016, against WP.No.33768 of 2013 and 33769/2013.

Prayer in WP.Nos.33768 and 33769/2013:

Petition filed under Article 226 of the Constitution of India praying to issue writ of Certiorari, to call for the records pertaining to the surcharge order made in Na. Ka. No.2830/2004-Sa.Pa. dated 17.6.2011 on the file of the 1st respondent confirmed in the fair and decretal order dated 3.9.2013 made in C.M.A. (CS) No.3 of 2013 on the file of the learned Principal District Judge (Special Tribunal for cooperative cases) Erode quash the same

WP.Nos.1140/2016, against WP.No.3437 of 2014:

Prayer in WP.Nos.3437/2014: call for the records pertaining to the surcharge order dated 27.1.2009 made in Na. Ka. NO.615/2014/Sa.Pa. passed by the 1st respondent confirmed in the judgement and decree dated 23.11.2012 made in CMA (CS) No.68 of 2010.

For Appellants : Mr.R.Marudhachalamurthy
For Respondents : Mr.L.P.Shanmuga Sundaram
Spl.G.P. For R-1

J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

One more agricultural co-operative bank where fraudulent loans were given to persons for agriculture purpose when they did not even own the land ! The process of finding the guilt of the persons concerned and fixation of liability apart by the adjudicating authority has gone through two further judicial processes including vide the impugned order of the learned Single Judge dated 01.04.2016. This is a third judicial scrutiny sought to be made over the simple issue.

2.We are faced with the personal liability fixed on the President, Secretary and the Clerk of the respective Co-operative Banks.

3.Learned counsel for the petitioners, as before the Courts below, seeks to raise the three-fold submissions once again: (a) the manner in which the enquiry was held is not in conformity with Section 87 (4) of the Tamil Nadu Co-operative Societies Act, 1983; (b) there is no willful negligence on part of the employees; and (c) the levying of interest is a matter of discretion, but has been levied in all the three cases.

4.We have heard the learned counsel for the parties.

5.In our view, the plea of procedure not having been followed as per Section 87 (4) of the said Act is misplaced inasmuch as the same was in accordance with the procedure of the Civil Court which is the mandate. It may be noted that the petitioners chose to appear and disappear in the proceedings, did not mark any document though the Special Officer examined himself and marked 14 documents, did not cross-examine the Special Officer despite several adjournments being granted and it is only on the basis of materials on record that the finding has been reached that crop loans to the tune of Rs.19,44,875/- and Rs.2,86,610/- have been fraudulently advanced.

6.The saddest part of the story is that these are loans meant for the farmers and they are misused, funds being siphoned away not only affecting the farmers but the economy of the country. These are not matters where the issue has to be treated with kid glove. Learned counsel for the petitioner could not say much about the culpability of the President or the Secretary, but submitted that the Clerk concerned was unnecessarily roped in. However, the finding recorded is that the Clerk had manipulated the records along with other staff and entries were made. Thus, the allegation is of falsification of records by the Clerk who was in custody of the records.

7.Qua the issue of interest, one may say, the discretion has been exercised against persons who really misappropriated the amount. We may take note of the fact that as per para 25 of the impugned order, Rs.39,57,512/- is still to be recovered.

8.We are, thus, of the view that there is no merit in the appeals.

9.Writ Appeals are, accordingly, dismissed. No costs. Consequently, connected C.M.Ps. are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To

1.The Deputy Registrar of Co-op.
Societies, Gobichettipalayam
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Erode District.

3.The Special Officer,
K44, Kothamangalam Primary
Agricultural Co-operative Bank Ltd.,
Kothamangalam, Sathyamangalam
Taluk, Erode District.

+3cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.66406 to 66408
+1cc to the Government Pleader, S.R.No.67069

rsk(CO)
md(28/11/2016)

W.A.Nos.1281, 1207 and 1140 of 2016

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