

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.14290 OF 2007

ORDER:

This Writ Petition is filed with the following relief –

“..... to declare the surcharge orders passed by the 1st respondent, dated 28.01.2005, vide Rc.No.262/2002-C, directing me to pay an amount of Rs.2,27,788/- to the funds of the 2nd respondent, with interest at 12% per annum from 20-5-2000, as confirmed by the Cooperative Tribunal, Warangal, in CTA No.3/2005, dated 28.02.2007, duly received by me, on 11-5-2007, as illegal, arbitrary, and unconstitutional, apart from being violative of principles of natural justice, and against the mandatory provisions under Section 60(1) of A.P. Cooperative Societies Act, and consequently set aside the same; and pass such other order, or orders, as the Hon'ble Court deems fit, proper and appropriate, in the circumstances of the case.”

This Writ Petition is filed challenging the order of the Cooperative Tribunal in C.T.A.No.3 of 2005, dated 28.02.2007 confirming the order dated 28.01.2005 passed under Section 60 of the Cooperative Societies Act directing to recover a sum of Rs.2,27,788/- alleged to have been misutilised by the petitioner. Pursuant to the inspection conducted under Section 52 of the Act, the petitioner, who was the Secretary of the 2nd respondent society, was found to have misappropriated a sum of Rs.2,27,788/- and therefore surcharge proceedings was issued. After enquiry, the competent authority, by an order dated 28.01.2005, found the petitioner misappropriated a sum of Rs.2,27,788/- and

directed to recover the said sum with interest at the rate of 12% p.a. from the date of misappropriation i.e., 20.05.2000.

The contention of the petitioner before the Enquiry Officer is that a sum of Rs.2,27,788/- was alleged to have been paid to one Ch.Ramireddy, the Secretary. The said Ch. Ramireddy deposed before the Enquiry Officer denying the signatures on the vouchers produced by the petitioner. In spite of the said Ch. Ramireddy was made available, the petitioner failed to cross-examine him and thus, the deposition of said Ramireddy about the crucial aspect of payment of Rs.2,21,788/- was unrebutted. The Enquiry Officer also examined contemporaneous vouchers, wherein the signatures of Ch. Ramireddy were affixed, and found on comparison, there was a vast variance between the original signatures and the admitted signatures of Ch. Ramireddy and thereby, came to the conclusion that the crucial five vouchers, under which the salaries were said to have been paid, were not genuine. Further, the petitioner failed to avail the opportunity given to him before the Enquiry Officer. After conclusion of the enquiry, liability was fixed on the petitioner. Even before the Tribunal, except contending that the findings are not correct, practically no effort was made by the petitioner so as to enable the Tribunal to come to a different conclusion. On the other hand, from the re-examination of the material on record, particularly by examining the disputed vouchers with the admitted vouchers, the Tribunal

also came to an independent conclusion that there is no genuineness of payment alleged to have been made to the said Ch. Ramireddy, and that there was in fact misappropriation by the petitioner, as he did not choose to avail the opportunity of cross-examining the said Ch. Ramireddy.

The yet another argument, which was advanced by the petitioner that the surcharge proceedings said to have been preceded with the enquiry under Section 51 of the Act and without there being such enquiry, particularly qua the petitioner, surcharge proceedings could not have been issued also liable to be rejected. It is the specific case of the petitioner that an enquiry ought to have been ordered particularly targeting him rather than discovering the material irregularities in the course of enquiry conducted in relation to the affairs of the society.

Learned counsel for the petitioner Sri Nandigam Krishna Rao, strenuously contends that the findings of fact recorded by the Tribunal are perverse and that the Tribunal failed to take into consideration the legal arguments advanced on behalf of the petitioner. So far as the contention of the learned counsel about the finding, there being no material before this Court to come to a conclusion and the finding of fact not having been shown perverse in exercise of the supervisory jurisdiction under Certiorari, this Court cannot embark upon a roving enquiry, particularly, when the primary and the appellate authority found, as a matter of

fact, that there was misappropriation by the petitioner. Other arguments advanced before the Tribunal hardly merit any consideration. Section 60 of the Act is sufficiently wide permitting initiation of surcharge proceedings even based on the material coming to the notice of the competent authority in terms of enquiry under Section 51 of the Act or inspection under Section 52 of the Act. It may be borne in mind, what is contemplated under the provisions of the Act is initiation of proceedings under Section 60 of the Act with regard to enquiry in relation to the affairs of the Society and not in relation to particular acts of omission and commission by an independent person of the society. It is only under surcharge proceedings the responsibility is fixed on an individual and not in the process of inspection. This aspect of the matter is settled by various judgments of this Court. There are no merits in the writ petition and accordingly it does not deserve any consideration.

This Writ Petition is, therefore, dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall also stand closed.

CHALLA KODANDA RAM, J

Dated:08.09.2016

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