

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 17712 OF 2016

ORDER:

The surcharge notice dated 23.04.2016 issued under Section 60(1) of the Andhra Pradesh Cooperative Societies Act, 1964 by the 2nd respondent Deputy Registrar of Cooperative Societies, Chittoor, is challenged in this Writ Petition.

The case of the petitioner is that he worked as a President of the Periambadi PACS (now merged with Yadamari PACS) between 1987 and 1995. The 2nd respondent has issued the demand notice dated 29.06.2013 seeking to auction his immovable property. Then he approached this Court by filing Writ Petition No. 36159 of 2013 and the same is pending. Now, again, the 2nd respondent has issued the impugned notice holding him liable to pay a sum of Rs. 1,91,063.66 ps. This Writ Petition has been filed raising various grounds, which are as under:

a) The respondents failed to conduct any enquiry into the misappropriation if any during the period between 1987-95. As per Section 50 of the APCS Act, the Chief Auditor conducts auditing of the accounts of the society once in a year. Until I remitted my office in 1995 no irregularity was either noticed nor any observation made by the Chief Auditor.

b) The surcharge notice issued on 23.04.2016 for the alleged lapses occurred during 1987-95 is after a lapse of 21 years.

c) The surcharge proceedings were initiated and concluded behind my back in gross violation of principles of natural justice.

d) That the enquiry should be akin to civil Court enquiry by summoning witnesses and subjecting them to cross-examination. It was not followed in this case. I could have been examined in the hospital. No notice served on me calling upon me to render evidence when my son informed the respondents that I am bedridden due to paralysis.

e) The proceedings so undertaken are hopelessly time-barred as the action was initiated after 21 years. The respondents could not have slept for 21 long years.

f) The order passed by the Registrar is open to judicial review under Article 226 of the Constitution of India as the same is not supported by evidence on record.

g) Alternative remedy is no bar when the order is passed in violation of principles of natural justice.

h) As against the same surcharge order this Hon'ble Court by order dated 28.12.2012 in W.P.No. 39978 of 2012 was pleased to grant interim suspension of the surcharge order.

Learned counsel for the petitioner urges that it is totally unreasonable to rake up the issues, which were already settled 21 years back and at any rate, the petitioner, who is a senior citizen,

cannot be subjected to mental agony at this age. He further submits that a copy of the inquiry report was not furnished to the petitioner and no opportunity as such was given to him even during the course of enquiry which was alleged to have been conducted under Section 51 of the 1964 Act.

On the other hand, learned Assistant Government Pleader for Cooperation (Andhra Pradesh) submits that since the petitioner was issued a surcharge notice, it is always open for him to submit his explanation and only after taking the same into account and consideration, the enquiry as mandated under the Act and the Rules made thereunder, will be conducted.

The notice dated 23.04.2016 has been placed on record of the Writ Petition, the operative portion of which reads as under:

“ Therefore, by virtue of powers vested in me, I the Deputy Registrar of Cooperative Societies, Chittoor do hereby issue Surcharge Notice against the above persons responsible as per enquiry report and also the legal heirs of deceased persons, they are called on as to why the said amount should not be recovered from them along with 18% interest. Further, the Chief Executive Officer, Yadamari P.A.C.S. instructed to give deposition on the status of recovery of loan from the member who have accepted and agreed to repay as per enquiry report. The above persons are also instructed to appear before the undersigned on 20.05.2016 at 10.30 A.M. at O/o Divisional Coop. Officer, Chittoor with all material evidences in support of their explanations to the Deputy Registrar of Coop. Societies Office, Chittoor.”

From a perusal of the above-quoted portion, it is clear that the proceedings dated 23.04.2016 is more in the nature of a show cause notice, which attributes mis-utilization of more than Rs.59 lacs by the persons named therein. It is also clear that the said notice was issued based on the enquiry report dated 04.12.2010. So far as the contention of the learned counsel for the petitioner that there is delay in issuing the present notice is concerned, it appears to have occasioned on account of the proceedings which were pending before the A.P. Cooperative Tribunal, Vijayawada in O.A.Nos. 7 of 2013 and 22 of 2014.

In these circumstances, interests of justice would be served, if liberty is given to the petitioner to submit his explanation and

participate in the inquiry that may be conducted by the 2nd respondent, by raising all the grounds including the one raised before this Court, particularly the aspect of limitation. The 2nd respondent is directed to complete the inquiry as expeditiously as possible, in accordance with law, after considering the explanation that may be submitted by the petitioner, duly observing the principles of natural justice.

With this, the Writ Petition stands disposed of. No costs.

Consequently, the miscellaneous Applications, if any shall also stand disposed of.

CHALLA KODANDA RAM, J

07th June 2016

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