

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.6.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.10330 of 2017
and W.M.P.No.11262 of 2017

V.K.Sekar
S/o.V.Krishnasami,
258 Nadu Theru Kudiyiruppu Village,
Panruti Taluk,
Cuddalore District ...PETITIONER

Vs.

- 1 The President
Cuddalore Cooperative Primary Agricultural &
Rural Development Bank Ltd.,
No.E.1138, Semmandaldam Cuddalore- 607 001
- 2 The Secretary,
Cuddalore Cooperative Primary Agricultural &
Rural Development Bank Ltd.,
No.E.1138, Semmandaldam Cuddalore- 607 001
- 3 The Secretary
State of Tamil Nadu Cooperative Food and
Consumer Protection Department,
Fort St. George, Chennai-09. ...RESPONDENTS

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of declaration, declaring that the loan obtained by the petitioner under simple mortgage deed dated 10.10.2002 stands discharged as per G.O.Ms.No.70 dated 13.5.2006.

For Petitioner : No appearance

For Respondents 1 &2: Mr.L.P.Shanmugasundaram

For Respondents 3 : Ms.T.Girija, G.A.

O R D E R

According to the petitioner, petitioner borrowed loan of Rs.3,67,000/- from the respondent society for the purpose of purchasing tractor for agriculture purpose by executing mortgage deed in favour of the society. Petitioner has to repay the loan amount by way of 60 instalments. Due to successive suffering from floods and drought, the petitioner was unable to pay the debts. Under these circumstances, the Government passed G.O.Ms.No.70, dated 13.5.2006, Co-operative, Food & Consumer Protection (CCI) Department whereunder the State Government waived all loans due upto 31.3.2006. There are no conditions laid down. The petitioner made representation to the second respondent on 21.3.2017 for waiver of loan and cancel the mortgage deed. Since no order has been passed on the said representation, the petitioner has filed the present writ petition for declaration, declaring that the loan obtained by the petitioner under simple mortgage deed dated 10.10.2002 stands discharged as per G.O.Ms.No.70 dated 13.5.2006.

2 The learned Government Advocate submits that the petitioner is not at all entitled to avail the benefit under G.O.Ms.No.70, dated 13.5.2006. In support of his contentions, the learned Govt. Advocate also brought to the notice of this Court the order passed by this Court in S.Ranganathan vs. The State of Tamilnadu and four others (W.P.(MD) No.8936 of 2006, dated 21.2.2007) wherein this Court held as under:

''6. This Court considered the arguments of both the counsel and perused the materials on record. The petitioner has made an application, dated 23.2.2002 to avail loan enclosing the project report, wherein it is stated that the Tractor cum Compressor is used for blasting the rock and to assist blue metal units. It is further stated by him that in and around the areas of Thirumayam, Keeranur, Pudukottai lot of quarrying operations are going on, hence, the said machineries be used for that purpose. It is to be remembered that the project report is filed only for the purpose of satisfying the Bank to show the way in which the said machineries be used and ensure repayment. Considering the petitioner's application and project report, the first respondent has sanctioned the loan. Admittedly, the petitioner also paid monthly instalments as per the arrangements made with the fifth respondent. In the meantime,

G.O.Ms.No.70 dated 13.5.2006 issued by the first respondent prompted the petitioner to make use of G.O.Ms.No.70 for the purpose of waiving the balance loan and he has made a representation dated 23.6.2006 to the 5th respondent requesting it to waive the entire loan. The copy of the said representation was sent to the Hon'ble Chief Minister of Tamilnadu and also the respondents herein. In the said representation, the petitioner consciously mentioned that the loan is coming under the Non Farm category. As rightly pointed out by the learned counsel for the 5th respondent, the petitioner has availed the loan under the Non Farm Sector namely blasting rocks, and for quarrying operations. The documents produced by both sides also disclose the petitioner availed the loan under Non Farm sector. The publication issued by the 3rd respondent which is available in page No.2 of the typed set of the petitioner, not covering the Tractor and Compressor of course, it covers tractor alone.'

3 Further, this Court in L.Elumalai vs. State of Tamilnadu (W.P.No.8178 of 2010 dated 26.7.2010) held as under:

'10. That apart, the petitioner in his additional reply affidavit has stated that several persons who have obtained loan from the respondent Bank were given benefit of waiver of loan. The names of the persons who availed such loan and who were benefited under the said Government order are set out in the additional affidavit. To this, the learned Government Advocate on written instruction has submitted that no agriculturists who have purchased Tractor-cum-Dozer have availed waiver of loan in any Bank in Tamilnadu.

11. Thus, there is categorical assertion on the side of the third respondent that no person availed loan under the non-farm sector was given the benefit of waiver of loan.

12. In view of the above stated position, I am of the considered view that the petitioner cannot be granted any of the relief which was sought for in this writ petition. Hence, the writ petition stands dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

4 Further, this Court in a batch of cases in V.K.Sekar and 10 others vs. State of Tamilnadu and 2 others (W.P.No.18445 of 2012, etc., dated 26.7.2010) held as under:

''3. Whether the loan obtained by the petitioners comes within the purview of Government order or not, in the normal circumstances, the petitioners should have made a demand on the Society, failing which, they should have raised an Arbitration under Section 90 of the Tamilnadu Co-operative Societies Act, before the jurisdictional Deputy Registrar. Even if their claim was negatived by the Arbitrator, the said Act also provides for further appeal to the Co-operative Tribunal under section 152. Therefore, in the normal circumstances, the writ petitions filed by the petitioners ought not to have been entertained. Assuming, they had the benefit of earlier orders passed by this Court, now, that the Government has clarified the applicability of Government order not being available to them, there is no case made out to entertain the present writ petitions. All the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.''

The above decision is applicable to the facts and circumstances of the present case.

5 In view of the above legal position, whether the petitioner has obtained loan for the agriculture purpose or not is to be decided only by the competent authority namely, Deputy Registrar of Cooperative Society, the remedy available under the Tamilnadu Cooperative Societies Act. Hence, the writ petition is not maintainable. However, it is open to the petitioner to approach the Deputy Registrar of the Second respondent society.

6 Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1 The President
Cuddalore Cooperative Primary Agricultural &
Rural Development Bank Ltd.,
No.E.1138, Semmandaldam Cuddalore- 607 001
- 2 The Secretary,
Cuddalore Cooperative Primary Agricultural &
Rural Development Bank Ltd.,
No.E.1138, Semmandaldam Cuddalore- 607 001
- 3 The Secretary
State of Tamil Nadu Cooperative Food and
Consumer Protection Department,
Fort St. George, Chennai-09.

+1cc to Mr.R.Gururaj, Advocate, S.R.No.41894

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.42146

+1cc to the Government Pleader, S.R.No.42075

W.P.No.10330 of 2017

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SR(CO)
RS(27/06/2017)



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