IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.4973 of 2017

R.Saravanan .. Petitioner

-vs-

1. The Deputy Registrar of Co-operative Societies (Full Additional Charge) Dharmapuri

2. T.T.14, Dharmapuri District Central Co-operative Bank Employees Co-operative Thrift and Credit Society Ltd., rep.by its Administrator Dharmapuri .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Na.Ka.3558/2016 sa.pa2 dated 19.09.2016, consequential enquiry notice in Na.Ka.3558/2016 sa.pa2 dated 10.02.2017, quash the same in so far as petitioner is concerned and direct the first respondent not to precipitating any penal action under the criminal law against the petitioner in respect of the issue covered by surcharge notice, which would be violation of Article 14 and 21 of the Constitution of India.

For Petitioner :: Mr.M.S.Palaniswamy

For Respondents:: Mr.V.Selvaraj
Additional Government Pleader for R1
Mr.L.P.Shanmughasundaram for R2



ORDER

The petitioner, having been issued with the show cause notice dated 19.9.2016 under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, alleging loss of Rs.3,90,000/-, to submit his explanation within fifteen days from the receipt of the said notice as to why steps should not be taken to recover the same, has brought this writ petition, on the ground that when similar and identical notices dated 19.9.2016 issued to several other elected board of directors, namely, M/s D.V.Mathaiyan, Ameer John, T.K.Sampathkumar, A.Munusamy, K.N.Senthilkumar, T.Malliga, K.S.Mathammal were challenged in W.P.No.43913 of 2016, this Court, by order dated 6.1.2017, finding that there was no loss caused to the society and consequently the elected board of directors had also not exceeded the ceiling limit prescribed for the grant of loan as per the then bye-law No.40 fixing Rs.5,00,000/-, which has been subsequently enhanced to Rs.7,00,000/- by an amendment, has come to the conclusion that the question of issuing the show cause notice had not arisen, as there was no irregularity committed either in the grant of loan within the ceiling limit of Rs.7,00,000/- or in the recovery process, as the amounts were paid back by the borrowers with interest.

2. Adding further, Mr.M.S.Palaniswamy, learned counsel for the petitioner submitted that the first respondent ought not to have issued the consequential enquiry notice dated 10.2.2017 to the petitioner, more particularly, when this Court in W.P.No.43913 of 2016 filed by M/s D.V.Mathaiyan, Ameer John, T.K.Sampathkumar, A.Munusamy, K.N.Senthilkumar, T.Malliga, K.S.Mathammal, had already quashed both the show cause notice dated 19.9.2016 and the consequential enquiry notice dated 2.12.2016 issued in respect of similarly elected board of directors, by order dated 6.1.2017. Therefore the petitioner has been compelled to come to this Court.

3. Heard the learned Additional Government Pleader for the first respondent and the learned counsel for the second respondent.

4. It is not in dispute that in W.P.No.43913 of 2016 dated 6.1.2017, this Court has already held that the allegation contained in the show cause notice dated 19.9.2016 that the elected board of directors, by following both the then existing bye-law No.40 fixing a maximum limit of Rs.5,00,000/- for granting the loan, which has been enhanced to Rs.7,00,000/- by the subsequent amendment, has not exceeded the limit, therefore, the basic allegation for issuance of the show cause notice against the elected board of directors is untenable. Secondly, all the borrowers had also repaid the loan amounts along with interest. Hence there was no loss caused to the society. When these are all the admitted facts, it is not known how the consequential notice of enquiry dated 10.2.2017 came to be issued to the petitioner. Thirdly, when this Court had already passed a speaking order on 6.1.2017 in W.P.No.43913 of 2016 filed by M/s D.V.Mathaiyan, Ameer John, T.K.Sampathkumar, A.Munusamy, K.N.Senthilkumar, T.Malliga, K.S.Mathammal, the first respondent, in all fairness, should have dispensed with the issuance of the consequential notice dated 10.2.2017 to the petitioner. In any event, since this Court had already found that there was no breach of the bye-law No.40 for granting the loan beyond the ceiling limit of Rs.7,00,000/-, more particularly, when the loan was granted to the extent of Rs.3,90,000/-, and that the entire loan amount was also repaid

to the society along with interest by the borrowers, the question of issuing the consequential notice for enquiry does not arise. Therefore, the writ petition stands allowed and the impugned notice is set aside. Consequently, W.M.P.Nos.5213 and 5214 of 2017 are closed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ss
To

1. The Deputy Registrar of Co-operative
   Societies (Full Additional Charge)
   Dharmapuri

2. The Administrator
   T.T.14, Dharmapuri District Central
   Co-operative Bank Employees Co-operative
   Thrift and Credit Society Ltd.,
   Dharmapuri

+1cc to M.S.Palanisamy,Advocate for the petitioner sr.12880

+1cc to Government Pleader sr.13577

+1cc to M/s.L.P.Shanmugasundaram,for R2 sr.13104

W.P.No.4973 of 2017

kj(co)
ss(3/4/2017)