THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.09.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.22276 of 2016
and
W.M.P.No.19006 of 2016

Ponneri Primary Agricultural Co-operative
Credit Society Limited,
Represented by its President,
Kottamangalam (PO),
Udumalper(Tk),
Thirupur (Dt),
Pin-642 154. ... Petitioner

- Vs -

1.S.Manonmani

2. S.Sathiskumar

3. The Deputy Registrar of
Co-operative Societies,
Dharapuram Circle,
Vasantha Road, Dharapuram (Po),
Tiruppur District,
Pin-638 656.

4. The Special Tribunal for
Co-operative Society Cases /
First Additional District Judge,
Tiruppur (Po & Dt). ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Fourth Respondent Tribunal relating to the Judgment and Decree in C.M.A.No.15 of 2013 dated 18.03.2016 and quash the same.

For Petitioner	:	Mr.P.Anbarasan
For R1 & R2	:	Mr.R.Krishnamoorthy
For R3 & R4	:	Mr.S.T.S.Murthy, Additional Advocate General Assisted by Mr.L.P.Shanmugasundaram Special Government Pleader

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ORDER

According to the petitioner, the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was conducted for the alleged mis Management and mis-appropriation of funds of the society. On the basis of the enquiry report, Surcharge proceedings was initiated under Section 87 of the Act, for recovery of the amount of Rs.9,05,761/- towards loss caused to the society. After conducting an enquiry, the respondents 1 and 2 were served notice under Section 87 of the Tamil Nadu Co-operative Societies Act, dated 25.11.2004 by the 3rd respondent to show cause as to why surcharge proceedings should not be initiated against them. Challenging the said notice, the respondents 1 and 2 have filed writ petition in W.P.No.25148 of 2005 before this Court, on the ground that without supplying necessary documents more particularly report submitted under Section 81 of the Act, surcharge award was passed against the respondents 1 and 2. This Court has remitted back the matter to the 3rd respondent with the direction to provide all necessary documents and report submitted under Section 81 of the Tamil Nadu Co-operative Societies Act, to the 1st and 2nd respondents and to pass orders afresh. In compliance with the said order, the 3rd respondent provided an opportunity and furnished copies of documents to the respondents 1 and 2, and passed final surcharge award fixing the liability of Rs.9,05,761/- on the respondents 1 and 2.

2. Challenging the aforesaid order passed by the 3rd respondent, respondents 1 and 2 have filed an appeal in C.M.A.No.15 of 2013 before the 4th respondent Tribunal. The said appeal was allowed by holding that the enquiry was proceeded against the dead person and other grounds that when the enquiry officer has admitted that some members are also responsible for the alleged mis-appropriation, has not given any reason for absolving the liability. Aggrieved, the petitioner society has filed the present writ petition to set aside the order passed by the 4th respondent Tribunal.

3. The learned counsel for the petitioner society would submit that the Special Officer managing 5 to 10 societies, the Secretary get post approval of the loans after the disbursement of the loans. Therefore, the Secretary of the Society alone is responsible for the misappropriation of funds of the society. The other contention raised by the petitioner is that as per Section 84 of the Act, maintenance of accounts is statutory duty of the deceased secretary. The learned counsel for the petitioner society contended that in a surcharge proceedings, misappropriation of money need not be proved, it is enough, if

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it is established that loss has been caused to the society and by whom. Therefore, the order passed by the Tribunal is liable to be set aside.

4. In the counter affidavit filed by the respondents 1 and 2, it has been stated that the management, supervision and the administration of the petitioner society was entrusted with the Special Officer appointed under Section 89 of the Tamil Nadu Co-operative Societies Act, and one Mr.E.Selvaraj, Senior Inspector was in office as Special Officer between the period 2002 - 2004.

5. Further, the Special Officer having served for nearly two years between 2002-2004, stated to have submitted a report and complaint to the 3rd respondent, on 09.06.2004, after the demise of the deceased employee, alleging certain irregularities against the deceased employee. It is pertinent that the 3rd respondent ordered an inquiry Under Section 81 of the Act and the inquiry was conducted in the absence of the deceaased Secretary and all the irregularities occurred in the petitioner society during the tenure of the above Special Officer have been foisted against the deceased Secretary and based on the report, inquiry was conducted in the absence of the deceased K.A.Subramaniam and the 3rd respondent (the then Deputy Registrar, Pollachi) initiated surcharge proceedings and passed final orders on 25.04.2005 against the 1st respondent, the widow of the deceased Secretary Mr.K.A.Subramaniam and the 2nd respondent herein.

6. The aforesaid person filed a Writ Petition in W.P.No.25148 of 2005 challenging the surcharge order dated 25.04.2005, which was allowed and the surcharge order was set aside by this Court. However, the 3rd respondent was directed to furnish all documents relied upon by the respondents 1 and 2 and pass appropriate orders within six months, after providing opportunities to the respondents 1 and 2.

7. The 3rd respondent herein without adhering to law and the directions of this Court, again passed surcharge orders against the respondents 1 and 2 as per the proceedings in Na.Ka.No.17/2004/Ku.Sa., dated 03.10.2012. Aggrieved by the same, an appeal has been filed by the respondents 1 and 2 under Section 152(1) of the Tamil Nadu Co-operative Societies Act, 1983 before the Tribunal for Co-operative Cases at Tiruppur in C.M.A.No.15 of 2013 and the Tribunal allowed the appeal on 18.03.2016 and set aside the above surcharge orders dated 03.10.2012.

8. The learned Tribunal properly appreciated the facts and applied the law that the ''personal actions dies with the person'' and the widow and son of the deceased Secretary cannot

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defend the personal actions of her husband in the course of employment as Secretary of the petitioner society and the charges framed and levelled against the deceased Secretary get abated when he died before ordering inquiry.

9. The Tribunal while allowing the appeal, evidence of the contesting respondents herein have properly appreciated by stating that they have not obtained any loan, was not corroborated with independent witness and hence the evidence against the deceased Secretary cannot be taken into account in the absence of deceased employee against whom allegations have been made.

10. The Tribunal while allowing the appeal have rightly appreciated the evidence of the Special Officer that the Secretary do not have independent authority to sanction the loans and there was no complaint from the members regarding the irregularities in the sanction of loans. Further the evidence of the Special Officer before the 3rd respondent is that there was no complaint in the Audit report while the Secretary was alive.

11. The inquiry officer as well as the surcharge officer viz., the 3rd respondent have failed to prove anything about the personal benefit out of misappropriation by the deceased K.A.Subramaniam and hence the Tribunal has rightly discharged the appellants therein in C.M.A.No.15 of 2013 dated 18.03.2016. It is incorrect to say that the Tribunal has passed non-speaking and cryptic orders, when the Tribunal have taken into account all the evidence available on record and passed the reasoned and speaking orders.

12. It is submitted that the deceased Secretary did not gain any personal benefits out of the transactions under question and the charges have not been proved against the deceased Secretary with cogent and corroborative material evidences both oral and documentary. Moreover, neither the inquiry officer nor the surcharge officer have mentioned any provisions of law as to how the estate of the deceased Secretary which is inherited by the respondents 1 and 2 herein is liable for the surcharge liability. In the circumstances, the liability foisted on the deceased Secretary by conducting inquiry and passing surcharge orders after the demise of the Secretary on 31.05.2004 is unsustainable. Further, the respondents 1 and 2 (wife and son of the deceased) cannot defend the personal action/service of the deceased Secretary.

13. It is submitted that the Special Officer appointed under Section 89 of the said Act, had been entrusted with the management, supervision and administration of the writ petitioner society during the relevant point of time and the

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Secretary is entrusted with the duties of maintaining the books of accounts, as sanctioned by the Special Officer under Section 84 of the said Act, and the Secretary is not at all responsible for the sanction of loans by the Special Officer. When the Secretary dies even before inquiry and Surcharge proceedings, the 3rd respondent ought to have proceeded against the Special Officer concerned and other employees for fixing the Surcharge liability, leaving the deceased.

14. In any event, the surcharge proceedings cannot be proceeded against the deceased person after his demise even before the inquiry and surcharge proceedings. The legal representatives of the deceased employee are not competent to defend the personal service/actions of the deceased Secretary in the course of his employment in the said society. Therefore, the judgment and decree passed by the Tribunal is valid, sustainable in law and on facts and does not warrant any interference by this Court, since the scope of the interference of this Court under Article 226 of the Constitution of India is very limited as the decree and judgment of the Tribunal is final and binding according to Section 152 of the said Act. Therefore, the respondents 1 and 2 have prayed this Court to dismiss the writ petition.

15. Heard the learned counsel for the petitioner society, learned counsel for the respondents 1 and 2 and the learned Additional Advocate General for the respondents 3 and 4 and perused the materials available on record.

16. The contention of the learned counsel for the petitioner society is that under bye-laws, the deceased Subramaniam, the then Secretary of the Society is responsible for the loss sustained to the society for a sum of Rs.9,05,761/-. The enquiry was conducted under Section 87(1) of the Tamil Nadu Co-operative Societies Act, and the legal representatives of the deceased employee appeared before the Enquiry Officer and submitted their explanation. Therefore, the said enquiry was conducted before the demise of the deceased Subramaniam. On perusal of the records shows that their is an irregularity and misappropriation committed in disbursal of the loan and sale accounts of the Members and agricultural crop loan. Hence, the enquiry was conducted against the then Secretary of the Society.

17. Admittedly, the petitioner Society is under the control of the Special Officer. It is not disputed that the Secretary do not have independent authority to grant loan. He acts under the control of the Special Officer. Admittedly, the deceased K.A.Subramaniam, then Secretary in the petitioner society died on 31.05.2004 leaving behind the respondents 1 and 2 as legal

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heirs. The enquiry was conducted and report was submitted on 28.09.2004. Subsequently, surcharge order was passed on 25.04.2005. Therefore, it is clear that the enquiry was conducted after demise of the deceased K.A.Subramaniam. The Special Officer during cross examination admitted that audit was conducted one year before the demise of the then Secretary K.A.Subramaniam and they do not find any irregularity. It is admitted by the Enquiry Officer that the petitioner alone is not responsible and the Special Officer is also responsible for the misappropriation of the funds of the Society. When the Enquiry Officer admitted that some members are also responsible for the alleged misappropriation, no reason was given in his report for absolving their liability from surcharge proceedings. Therefore, the Tribunal has rightly held that when the Secretary cannot act independently to grant loan, liability cannot be fixed against the Secretary. Further, the respondents 1 and 2 are not the members of the Society and they do not aware of the surcharge proceedings. Further, it was not proved that the deceased Subramaniam obtained any pecuniary benefit in the alleged misappropriation. Therefore, there is no error or illegality in the order passed by the Tribunal. Hence, the order of the Tribunal is confirmed.

18. With the above, this writ petition is dismissed. However, it is open to the petitioner society to proceed against the Special Officer in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar

ssn

सत्यमेव जयते

To
1. The Deputy Registrar of
Co-operative Societies,
Dharapuram Circle,
Vasantha Road, Dharapuram (Po),
Tiruppur District,
Pin-638 656.

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2. The Special Tribunal for
Co-operative Society Cases /
First Additional District Judge,
Tiruppur (Po & Dt).

+1cc to Mr.R.KRISHNAMOORTHY, Advocate, S.R.No. 69134
+1cc to Mr.P.ANBARASAN, Advocate, S.R.No. 69036
+1cc to the Government Pleader, S.R.No. 70109

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and
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