

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.09.2017
CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 7931 of 2015
and
M.P. No. 1 of 2015

C. Devan

... Petitioner

Vs.

1. The Cooperative Tribunal/
Prl.District Judge,
Salem - 636 001.

2. The Deputy Registrar of
Co-operative Societies,
(Housing) Salem Region,
Salem - 636 001.

3. No.1564, Arignar Anna
Cooperative Housing
Society Ltd.,
rep. by its President,
Salem Cuddalore Main Road,
Attur - 636 102,
Salem District.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the relating to the impugned order of surcharge passed by the 2nd respondent in his proceedings Na.Ka.No.6660/2001 E dated 25.02.2008 as confirmed by the Learned Cooperative Tribunal made in Judgment and Decree in C.M.A. (CS).No.7 of 2008 dated 30.06.2014 and quash the same.

For Petitioner : Mr.K.Premkumar

For Respondents : R1 Tribunal
Ms.T.Girija
Government Advocate for R2

Mr.L.P.Shanmuga Sundaram
Spl. Government Pleader for R3

O R D E R

This Writ Petition has been filed to quash the surcharge order passed by the 2nd respondent in his proceedings Na.Ka.No.6660/2001 E dated 25.02.2008, confirmed by the learned Cooperative Tribunal made in Judgment and Decree in C.M.A.(CS). No.7 of 2008 dated 30.06.2014.

2. The learned counsel for the petitioner submitted that the petitioner was the Secretary in the 3rd respondent Society and retired on 30.04.1998 on attaining superannuation. On 18.10.2001, the 2nd respondent issued surcharge notice under Section 87(1) of the Tamil Nadu Co-operative Societies Act, 1983, on the basis of statutory inspection and the investigation conducted under Section 82 of the Act. It is stated that the petitioner and the Special Officer had caused loss to the tune of Rs.1,34,781/- being the amount spent on 18.11.1995 for celebrating Cooperative Week, having failed to recover the proportionate amount from other cooperative societies, participated in the celebration. The petitioner submitted his explanation, denying all the allegations found in the said charges. According to the petitioner, he spent the money for celebrating Cooperative Week, after being sanctioned by the 3rd respondent, Special Officer and at the instance of the 2nd respondent and other higher officials of the Department. Therefore, he is no way responsible for the expenses or has committed any willful negligence to initiate surcharge proceedings. Further, learned counsel for the petitioner submitted that no charges were framed against the petitioner till he attained the age of superannuation.

3. However, the second respondent passed the surcharge order under Section 87(1) of the Act, on 25.02.2008 directing the petitioner along with the Special Officer R. Shivaraj to recoup a sum of Rs.1,34,781/- with 16% per annum, till its realisation. Aggrieved by the same, the petitioner filed an appeal under Section 152(1) of the Act, before the 1st respondent in C.M.A. (CS) No.7/2008. The Co-operative Tribunal without considering the contentions raised by the petitioner herein, erroneously dismissed the appeal on 30.06.2014. Assailing the said judgment passed by the Tribunal, the petitioner has preferred the present writ petition.

4. The learned counsel for the petitioner submitted that it is the specific case of the petitioner that he being a Secretary of the Society is not responsible for the alleged loss and the Special Officer is the person who incurred the expenditure to celebrate the Cooperative week. The duty of the Secretary is only to abide the instructions of the Deputy Registrar and other higher authorities. The department has nowhere specifically stated that the petitioner has taken the

decision and has spent money beyond the amount fixed for the celebration. The learned counsel for the petitioner further submitted that neither the Tribunal nor the 2nd respondent have established any willful negligence on the part of the petitioner, to initiate proceedings against the petitioner under Section 87(1) of the Act, as held by the Division Bench of this Court in the case of K. Ajay Kumar Gosh vs. Tribunal for Cooperative Cases, Nagercoil reported in (2009) 4 MLJ 992 and in the case of P. Elango vs. Administrator, M.R.K Co-operative Sugar Mills & Ors. Reported in (2014) 3 MLJ 575. Therefore, the impugned judgment of the Tribunal and the order of the 2nd respondent against the petitioner is liable to be set aside.

5. The learned Special Government Pleader would submit that proceedings under Section 87(1) of the Act was initiated against the petitioner and the other Special Officer by the 2nd respondent. By considering the willful negligence on the part of the petitioner and the Special Officer, in the appeal filed by the petitioner, the Tribunal upheld the order of the 2nd respondent. It was held that the petitioner being the Secretary of the 3rd respondent Society, is also responsible for the loss sustained by the Society. Therefore, the writ petition deserves to be dismissed.

6. Considered the rival submissions made by the learned counsel for the parties and perused the material available on record.

7. The specific charge against the petitioner is towards the excess amount spent for the Cooperative Week Celebration without getting permission from the higher authorities, namely, the Deputy Registrar/ Joint Registrar. The Deputy Registrar has passed an order stating that the petitioner is responsible for the loss caused and therefore the respondents are liable to recover the said amount from the petitioner as well as the Special Officer. Challenging the said order passed by the 2nd respondent, the petitioner alone has filed the appeal in C.M.A. (CS) No.7/08, by raising the ground that as per the Resolution passed by the Registrar of Co-operative Societies, funds have to be collected from other societies and so the Deputy Registrar has also communicated to the Chairman of the Celebration Committee, asking them to collect the amount from the other societies participated in the Co-operative Week Celebration. Therefore, the said decision taken by the Deputy Registrar has been communicated to the Special Officer. The petitioner being the Secretary has not spent the said amount, without getting approval of the concerned authorities. Therefore, there is no willful negligence on the part of the petitioner. The Tribunal, without duly considering whether the charges for willful negligence has been supported by any evidence, had dismissed the appeal of the petitioner, by merely

accepting the contention of the respondent department. In the light of the decisions in (2009) 4 MLJ 992 and (2014) 3 MLJ 575, relied by the learned counsel for the petitioner, in the absence of willful negligence by the petitioner the 2nd respondent ought not to have initiated surcharge proceedings under Section 87(1) of the Act and hence the order passed by the Tribunal is set aside. It is clear from the contention of both the parties that the Special Officer R. Sivaraj has not preferred any appeal against the Deputy Registrar of Co-operative Societies and so the said order has become final. Hence, the order passed by the Tribunal is liable to be set aside.

8. Therefore, the order passed by the 2nd respondent in his proceedings Na.Ka.No.6660/2001 E dated 25.02.2008, confirmed by the learned Cooperative Tribunal made in Judgment and Decree in C.M.A.(CS).No.7 of 2008 dated 30.06.2014, is set aside and the writ petition stands allowed. Consequently, the connected Miscellaneous petition is closed. No orders as to costs.

sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

avr

To

1. The Cooperative Tribunal/Prl.District Judge,
Salem - 636 001.
2. The Deputy Registrar of Co-operative Societies (Housing),
Salem Region, Salem - 636 001.
3. The President,
No.1564, Arignar Anna Cooperative Housing Society Ltd,
Salem Cuddalore Main Road,
Attur - 636 102. Salem District.

+1 CC Mr.K.Premkumar Advocate SR.No.65822
+1 CC GOVT.PLEADER SR.No.66454

VG II(CO)
EGR 20/11/2017

W.P. No. 7931 of 2015
and
M.P. No. 1 of 2015