

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.9100 of 2015
and MP.Nos.1 to 3 of 2015

R.Rajendran

..Petitioner

Vs.

1. The Special Tribunal for Coop.cases,
(Principal District Court),
Salem - 637 007

2. The Deputy Registrar(Housing),
Office of the Deputy Registrar of
Cooperative Societies,
Salem Region,
Salem,
Salem District

3. The Special Officer,
SLM/HSG 06 Veeraganur Cooperative
House Building Society Ltd.,
Veeraganur,
Salem District.

4. B.Ganesan

5. R.Rajammal

6. M.Palanivel

7. D.C.Sampath

8. S.Manickam

9. L.Gandhi

10. C.Sugumar

(R4 to R10 are impleaded as per Order
dated 03.09.2015 by N.K.K.,J. in
WP.No.9100 of 2015)

..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records, pertaining to the surcharge order dated 15.09.2003 made in Na.Ka.No.1933/2003-E passed by the second respondent confirmed in the Judgment and Decree dated 26.06.2014 made in CMA (CS)No.45 of 2003 and 1 of 2004 on the file of the first respondent and quash the same.

For Petitioner : Mr.N.Manokaran
For Respondents : R1 - Tribunal

: Mrs.T.Girija,
Government Advocate for R2

: Mrs.T.P.Savitha for R3

: Mr.T.Chandrasekaran for R4, 5, 6 & 9

ORDER:

According to the petitioner, the petitioner was elected as the President of the third respondent society for the period from 31.10.1994 to 24.05.2001. The second respondent ordered an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983. The Enquiry Officer submitted a report on 09.02.2001 to initiate action against the members of the Elected Board and its employees for causing loss to the tune of Rs.34,20,963/- for the alleged disbursement of the housing loan to its members without verifying the records. On the basis of the report, the second respondent issued a show-cause notice under Section 87 (1) of the said Act on 25.03.2003 and thereafter passed the impugned surcharge order on 15.09.2003 by fixing liability on the petitioner. Challenging the aforesaid surcharge order, the petitioner has filed an appeal before the first respondent and the same was dismissed on 26.06.2014. Challenging the said Judgment and Decree passed by the first respondent / The Special Tribunal for Cooperative Cases, the petitioner has filed the present writ petition before this Court.

2. The learned counsel for the petitioner would submit that the Appellate court has erroneously dismissed the appeal. According to the petitioner, the first respondent / Tribunal has held that the enquiry report has not been furnished to the petitioner, however, relying upon the Judgment in the case of N.Sekar Vs. The Principal District Judge cum Cooperative Tribunal, Thanjavur and others reported in 2009 (1) CTC 473 has held that non furnishing of the enquiry report to the petitioner is not mandatory and therefore, on this ground, the proceedings

is not vitiated and without considering the other grounds, the Tribunal had dismissed the appeal filed by the petitioner. According to the petitioner, the second respondent has passed the Surcharge order against the petitioner alone, wherein the other employees of the Society and the members of the elected members of the Society have been discharged from the Surcharge proceedings, despite the enquiry report reveals that the other employees and the then Board of Directors jointly and severally responsible for the loss sustained to the Society. Hence, by order dated 03.09.2015, this Court suo moto impleaded the proposed respondents No.4 to 10 as parties in the present writ petition. In the light of the aforesaid fact, the impugned order passed by the Tribunal is liable to be set aside.

3. The learned counsel for the third respondent would submit that the findings of the Tribunal has clearly indicated that the enquiry report has not been furnished to the writ petitioner. However, the said order has been passed by relying upon the above decision of this Court. Hence, the writ petition is liable to be dismissed.

4. The learned Government Advocate appearing for the second respondent would submit that the petitioner has not objected before the Deputy Registrar / the second respondent for non furnishing of the enquiry report. The learned counsel for the respondent society would submit that the Tribunal has not considered the fact whether the petitioner was permitted to peruse the records. Since the petitioner has not requested for furnishing the copy of the enquiry report, he is not entitled to raise the ground that furnishing of the said report is mandatory. The said disputed fact can be decided by the Appellate Tribunal.

5. The learned counsel for the respondents No.4, 5, 6 and 9 would submit that this Court by suo moto impleaded the proposed respondents 4 to 10 by order dated 03.09.2015 as parties in the writ petition.

6. According to the learned counsel for the petitioner, the respondents 4 to 10 have already been discharged from the surcharge proceedings by the second respondent. Therefore, the contention of the petitioner is that the second respondent has fixed the responsibility against the petitioner alone despite the enquiry report discloses that the other employees and the then Board of Directors jointly and severely responsible. Ultimately, this Court has held that if there is any responsibility fixed on the respondents 4 to 10, opportunities shall be given to them to put forth their contentions before the appropriate forum.

7. Considered the rival submissions made by the parties concerned and perused the materials available on record.

8. The issue involved in the present writ petition before this Court is that the enquiry report under Section 81 of the said Act was not furnished to the writ petitioner. The said ground has been raised before the Appellate Court. The Appellate court has also admitted the contention of the petitioner, however, relying upon the decision of this Court N.Sekar Vs. The Principal District Judge cum Cooperative Tribunal, Thanjavur and others reported in 2009 (1) CTC 473 held that non furnishing of the report is not mandatory. But, the learned counsel for the petitioner has relied upon the decision of this Court reported in 2017 (1) CTC p 258, wherein this Court has held that the enquiry report under Section 81 of the said Act shall be furnished to the aggrieved persons. Subsequently, the Division Bench of this Court in the case of R.Ramadevi Vs. The Special Officer, Ambur Cooperative Sugar Mills, Vadapudupet, Vellore District and others reported in 2016 (4) LW 452, wherein this Court has held as follows.

"24. In so far as furnishing of copies of certain documents and giving adequate opportunities to put forth the case is concerned, the proceedings do show that the appellant was permitted inspection of the material records. Depositions were given to her. She was given repeated opportunities to cross-examine the witnesses, which she earlier declined on account of absence of documents and thereafter also refused to cross-examine the witnesses. It cannot be said, there was inadequacy of opportunity violating the principles of natural justice as applicable to such proceedings. The judgment sought to be relied upon by the learned counsel for the appellant of the learned Single Judge of this Court in Sambandam vs. The Deputy Registrar (Credit) Co-op. Societies, Mylapore, Madras, 1999 (3) MLJ 310, would not really apply, as in the facts of that case, the enquiry report had not been furnished, while the protest in the present case is apparently on an incomplete enquiry report. It does appear from the conduct of the appellant that excuses were sought to be made, despite sufficient opportunities to defend her case, of violation of principles of natural justice rather there being actually any such absence. The second plea is also, thus, rejected."

9. But, on the facts of the case in hand, there is no discussion by the Appellate Tribunal whether adequate opportunity was given to the writ petitioner in accordance with

law. The aforesaid decision of this Court has been relied upon and contended by the parties that the said disputed fact can be decided only by the Appellate Tribunal by perusing necessary documents produced by the parties concerned.

10. In view of the facts and the aforesaid decisions of this Court, the decision of the Appellate Tribunal is liable to be set aside. Insofar as the other contentions raised by the writ petitioner that the same has to be gone into merits of the case before the Appellate Tribunal. Both the parties undertake that they will cooperate for the disposal of the said appeal.

11. In view of the facts, the decisions cited supra and the submissions made by the learned counsel for the parties, the Judgment and Decree passed by the first respondent / Tribunal is quashed and the same is remanded to the first respondent to consider the matter afresh on merits and in accordance with law as expeditiously as possible after providing an opportunity to the parties concerned to file additional documents before the Appellate Tribunal.

12. In the result, the writ petition is allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

13. It is needless to say that the petitioner has to file an application to implead the respondents 4 to 10 before the Appellate Tribunal, since they have been parties to the proceedings.

Sd/-

Assistant Registrar(CS VIII)

सत्यमेव जयते

//True Copy//

Sub Assistant Registrar

lok

WEB COPY

To

1. The Special Tribunal for Coop.cases,
(Principal District Court),
Salem - 637 007
2. The Deputy Registrar(Housing),
Office of the Deputy Registrar of
Cooperative Societies,
Salem Region,
Salem,
Salem District
3. The Special Officer,
SLM/HSG 06 Veeraganur Cooperative
House Building Society Ltd.,
Veeraganur,
Salem District.

+1 cc to the Govt Pleader sr 67582
+1 cc to the T.Chandrasekaran Advocate sr 62198
+1 cc to M/s.N.Manokaran Advocate sr 66297
+1 cc to M/s.T.P.Savitha Advocate sr 66043

W.P.No.9100 of 2015
and MP.Nos.1 to 3 of 2015

aa06/12/2017



WEB COPY