

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.04.2017
CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.27003 of 2016
and
W.M.P Nos. 23200 & 23201 of 2016

P. Anandam .. Petitioner

/Vs/

1. The Deputy Registrar of
Co-operative Societies
Tiruvarur Region
Mannargudi
Tiruvarur District.

2. Thiruturaipoondi Co-operative
Primary Agricultural and Rural
Land Development Bank
T.788 rep. By its President
Thiruthuraipoondi
Thiruvarur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned surcharge order made in Na.Ka. No.1/1995/Sa.Pa dated 31.07.2009 passed by the 1st respondent confirmed in the judgment and decree dated 12.04.2016 made in Co-op. C.M.A. No.3 of 2010 passed by the learned Special Tribunal for Cooperative Cases/ Principal District Court, Tiruvarur, quash the same and to pass further orders.

For Petitioner : Mr. N.Manokaran

For Respondents : Mr. V. Selvaraj,
Addl. Govt. Pleader for R1

Mrs.T.Girija,
Government Advocate

O R D E R

This Writ Petition has been filed seeking to quash the surcharge order made in Na.Ka. No.1/1995/Sa.Pa dated 31.07.2009 passed by the 1st respondent, confirming the judgment and decree dated 12.04.2016 made in Co-op. C.M.A. No.3 of 2010 by the

learned Special Tribunal for Cooperative Cases/ Principal District Court, Tiruvarur.

2. Learned counsel for the petitioner submitted that the petitioner was appointed as a Senior Inspector of Cooperative Societies on 16.07.1986 and was posted as a Special Officer in the 2nd respondent Bank. Subsequently, he was promoted as a Special Officer. The 1st respondent, in his Lr. No. Na.Ka. 1/95 dated 25.10.1995 ordered to conduct an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983, on the financial irregularities that took place during the year 1994-95. The enquiry officer conducted the enquiry and filed his report on 23.07.1996, holding that the employees of the 2nd respondent bank had committed financial irregularities to a tune of Rs.3,78,899/-. Therefore, the 1st respondent initiated surcharge proceedings under Section 87(1) of the Act and issued show cause notice on 11.07.1997. An award was passed on the surcharge proceedings, by the 1st respondent in Na.Ka No. 1995/Sa.Pa dated 31.07.2009, alleging that all the three employees are jointly and severely liable to the loss of Rs.2,04,882.20 caused to the 2nd respondent Bank. Challenging the said order, an appeal in C.M.A. No. 12 of 1999 was filed before the learned Principal District Court/ Special Tribunal for Cooperative Cases, Nagapattinam. Learned Tribunal remanded the matter and directed the respondents to conduct fresh enquiry. On 31.07.2009, the 1st respondent passed an order against the petitioner. Aggrieved by the same, the petitioner filed an appeal in Coop.C.M.A. No. 3 of 2010 before the learned Special Tribunal for Cooperative Cases (District Court), Tiruvarur. The said appeal was dismissed on 12.04.2016, holding that as per records, the alleged entries in respect of item Nos. 1 to 5 have been made without any vouchers, counter signed by the employees. Challenging the said order, the petitioner has filed this writ petition before this Court.

3. According to the petitioner, the 1st respondent has passed the surcharge order without permitting the petitioner to let in oral or documentary evidences to substantiate the allegations against him. The 1st respondent has not followed the mandatory provisions under Section 87(4) of the Tamil Nadu Cooperative Societies Act, 1983, before passing the impugned order. Learned counsel for the petitioner further submitted that the Special Tribunal has held the petitioner liable for the alleged entries, in the absence of any documentary evidences produced by the respondents. It is the submission of the petitioner that the entire proceedings is vitiated, for violation of principles of natural justice, non-compliance of the mandatory procedure contemplated under Section 87 of the Act, 1983 and more particularly on the ground of delay and laches. It is the case of the petitioner that the 1st respondent had viewed very seriously, the mere delay and

inadvertent entries made by the clerical staff without considering the same under Section 176 of the Tamil Nadu Cooperative Societies Act, 1983. On the above grounds, learned counsel for the petitioner pleaded this Court to set aside the surcharge order dated 31.07.2009.

4. Learned counsel representing the 2nd respondent has filed counter affidavit. Learned Additional Government Pleader would submit that the 1st respondent and the Tribunal decided to fix the liability on the petitioner based on the original records of the 2nd respondent Bank and on the basis of the detailed enquiry after affording sufficient opportunity to the petitioner. So, nothing warrants to interfere with the order passed by the 2nd respondent under Section 87 of the Tamil Nadu Cooperative Societies Act. Thus, the orders passed by both the authorities are perfectly valid. Further, the 1st respondent submits that the petitioner is attempting to avert the execution of the surcharge award and so this writ petition is liable to be dismissed.

5. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material available on record.

6. As submitted by the counsel for the petitioner, twice the surcharge proceedings have been remanded by the Special Tribunal to the 1st respondent, to conduct the enquiry as per law, after giving opportunity to both sides, by furnishing copies of documents sought by the petitioner and to let in oral and documentary evidence. In spite of specific direction by the Registrar of Cooperative Societies, the procedure contemplated under Section 87(4) of the Tamil Nadu Cooperative Societies Act has not been followed by the 1st respondent. The petitioner has also relied on the decision of this Court in the case of **M. Karuppannan vs. The Deputy Registrar (Dairying) reported in 2012 91) CWS 794**, wherein it is observed that the enquiry officer is expected to record evidence on oath or at least he should receive evidence on affidavit. If any adjudication is made without evidence, it is out of surmises and findings are perverse, which cannot be sustained.

7. Therefore, this Court has no hesitation to set aside the order passed by the 1st respondent as well as the Tribunal, on the ground that enquiry has been conducted as per the procedure contemplated under Section 87(4) of the Tamil Nadu Cooperative Societies Act. In so far as the other grounds are concerned, it is left open to the petitioner to agitate before the 2nd respondent, as per the provisions of law.

8. Considering the above said submission, the impugned surcharge order made in Na.Ka. No.1/1995/Sa.Pa dated 31.07.2009 passed by the 1st respondent and the impugned appellate order dated 12.04.2016 made in Co-op. C.M.A. No.3 of 2010 by the learned Special Tribunal for Cooperative Cases/ Principal District Court, Tiruvarur, are set aside and the matter is remanded back to the 1st respondent. The 1st respondent is directed to let in oral and documentary evidences and conduct an enquiry afresh, as per Section 87(4) of the Tamil Nadu Co-operative Societies Act and pass orders within a period of six weeks from the date of receipt of a copy of this order. The petitioner is also directed to co-operate with the proceedings.

9. This writ petition is allowed, with the above direction. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Registrar of
Co-operative Societies
Tiruvarur Region
Mannargudi
Tiruvarur District.

2. Thiruturaipoondi Co-operative
Primary Agricultural and Rural
Land Development Bank
T.788 rep. By its President
Thiruthuraipoondi
Thiruvarur District.

+1 cc to Mr.N.Manokaran Advocate sr 23209
+1 cc to the Government pleader sr 23268
+1 cc to Mr.T.Girija Advocate sr 23519

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and
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23201 of 2016

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