

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
W.P. No.23014 of 2006
and
M.P. No.2 of 2006

S.Bharathi

.. Petitioner

Vs

1. The Deputy Registrar of Co-operative Societies
(Housing), Cuddalore.
2. Kallakurichi Taluk Co-operative Society,
rep. by its Special Officer,
Kallakurichi.
3. The Presiding Officer,
Co-operative Tribunal-
Principal District Judge,
Cuddalore.

.. Respondents

PRAYER : This Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records from the file of the first respondent relating to the impugned order 04.12.2001 bearing Ref.Na.Ka.No.4055/2000/SR and the fair and decretal order of the third respondent Tribunal dated 30.11.2005 in C.M.A. No.64 of 2002 and quash the same and pass such other further orders.

For Petitioner : Mr.Sai. Bharath & Ilan for
Mr.G.Ilanthiraiyan

For Respondents: Mrs.T.Girija,
Government Advocate for R1
Mr.G.Sankaran for R2

Tribunal for R3.

O R D E R

This Writ Petition has been filed, seeking to quash the order passed by the first respondent dated 04.12.2001

bearing Ref.Na.Ka.No.4055/2000/SR and the fair and decreetal order of the third respondent Tribunal dated 30.11.2005 in C.M.A. No.64 of 2002.

2. The learned counsel for the petitioner submitted that the second respondent directed enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 against the petitioner and appointed an enquiry officer. Based on the enquiry report dated 28.10.1998, the first respondent passed an order on 05.12.2000, with liberty to file objections if any, by the petitioner. However, without considering the objections submitted by the petitioner, the 1st respondent, passed the surcharge order on 04.12.2001. Challenging the above said order, the petitioner preferred an appeal in CMA No.64 of 2002 before the third respondent. The said appeal was dismissed on 30.11.2005. Aggrieved by the said orders, the present writ petition has been filed.

3. According to the petitioner, the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 was ordered, based on the allegations that the petitioner has not disbursed the Hudco loans to the members in proportionate to their stage of constructions, during various period and schemes, thereby causing a loss of Rs.2,45,400/- and Rs.38,100/- to the society. The second respondent has leveled the charges against the petitioner and the Secretaries of the society, who were working during the relevant period in the society. According to the petitioner, the Tribunal has disposed the appeal, without considering the grounds raised by the petitioner.

4. The learned Government Advocate appearing for the first respondent would submit that the second respondent had conducted a detailed enquiry and had passed the award against the petitioner. The Tribunal has rightly considered the allegations leveled against the petitioner, in Charge Nos. 5 and 6 of the surcharge order, towards the loss caused to the Society. The grounds raised by the petitioner has been duly considered by the Tribunal and the contentions of the petitioner has been rightly rejected and found that there is willful negligence on the part of the petitioner. Therefore, the Writ Petition filed by the petitioner is liable to be dismissed.

5. Heard the rival submissions of both the parties and perused the material available on record.

6. As submitted by the learned counsel for the petitioner, the petitioner has raised the grounds that sufficient opportunity was not granted to him in the surcharge proceedings to establish that there is no willful negligence on the part of the petitioner. However, the said contention has

not been considered by the Tribunal. On perusal of the order passed by the Tribunal, it is found that the appeal has been concluded based on the records, to prove that the petitioner has committed the willful negligence during the period he was working as a Special Officer in-charge of the third respondent society.

7. The learned counsel for the petitioner pointed out that there is no willful negligence on his part because the petitioner was only the Special Officer in-charge and as per the by-laws and provisions of Act. The Tribunal has considered the duties and responsibilities of the Special Officer and the Secretary. As per the by-laws of the third respondent Society, the nature of duty of the Special Officer and the Co-operative Sub Registrar is to physically verify the stage of the construction and recommend. Based on the supervision report, loan have to be issued by the Special Officer i.e. the petitioner. The said lapses on the part of the petitioner and the secretary of the third respondent society was pointed out during the audit report, as mismanagement in the third respondent society.

8. Further, it is also observed by the Tribunal that as per the terms and conditions of the loan, the same should be sanctioned only depending on the stage of the construction. The audit officer was examined as a witness and recording the statement itself proves that the petitioner as a Special Officer and the Secretary, without verifying the stage of constructions have sanctioned the loans issued under HADCO scheme. The bye laws of the third respondent society itself would clearly establish that the responsibilities and duties of the Secretary and the Special Officer. Therefore, the petitioner is held responsible for the loss caused to the society and the Tribunal has rightly come to a conclusion that there was mismanagement and willful negligence while sanctioning loan, without proper verification the stage of the buildings. Therefore, the petitioner as Special Officer and the Secretary, are held responsible for the willful negligence and mismanagement.

9. In view of the clear findings of the Tribunal that the petitioner is held responsible for the mismanagement. Therefore, the willful negligence on the part of the petitioner is clearly established before this Court. The petitioner has relied upon the decision of this Court in the case of S.Ramadevi Vs. The Special Officer, Ambur Cooperative Sugar Mills, Vadapudupet, Vellore District and others, reported in 2016-4-L.W.452, the relevant portion of the order is extracted below :

" 19. A detailed discussion has been made by making reference to various

judgments on this aspect in another judgment reported in Sathyamangalam Co-operative Urban Bank Ltd. vs. Deputy Registrar of Co-operative Society and Antother, (1980) 2 MLJ 17, it is held thus:

"The degree of negligence that is contemplated under Section 71 (1) of the Tamil Nadu Co-operative Societies Act is not mere negligence, but wilful negligence. The word 'wilful' has not been defined in the Act. 'Wilfulness' or 'wantonness' imports pre-meditation or knowledge and consciousness that an injury or loss is likely to result from the act done or from the omission to act. It imports a constructive intention as to the consequences which, entering into the willful act, the law imputes to the offender and in this way a charge, which otherwise would be mere negligence, becomes by reasons of a reckless disregard of probable consequences, a willful wrong. The act done or omitted to be done must be intended or must involve such reckless disregard of security and right as to imply bad faith. In examining whether there is willful negligence, it has to be seen first whether the person concerned is guilty of negligence and if so, whether the said wilful negligence is the proximate cause of the injury or loss sustained."

10. Based on the facts of the present case, the Tribunal has considered the case, on the basis of examination of the witnesses, the documents and the bye laws of the third respondent society. It is made clear that the petitioner is also responsible for the negligence and mismanagement the third respondent society. Therefore, there is wilful negligence on the part of the petitioner for the loss sustained by the society. In the light of the decision cited supra, giving the definition of wilful negligence, this Court comes to a conclusion that there is no error and illegality in the order passed by the Tribunal and this Petition is liable to be dismissed.

11. In view of the above, this Writ Petition is

dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

rkp

To

1. The Deputy Registrar of Co-operative Societies
(Housing), Cuddalore.

+lcc to Mr.Sai Bharath and Ilan, Advocate SR.No.66394

+lcc to Mr.G.Sankaran, Advocate SR.No.66471

+lcc to Government Pleader SR.No.67585

W.P. No.23014 of 2006
and
M.P. No.2 of 2006

GN(06/12/2017)



WEB COPY