

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

WP.No.23592 of 2004 and
WPMP.No.28565 of 2004

1. Nedungadu Soundaraja Mills

Employees Union,
(Regd.No.126/1972),
Rep.by its General Secretary,
Nitheeswaran West,
Koilpathu - 609 605,
Karaikal

2. K.Mohandoss

...Petitioners

Vs.

1. Registrar of Cooperative Societies,
Government of Pondicherry,
Pondicherry

2. Soundaraja Mills Limited,
Rep.by its Managing Director,
Nedungadu,
Karaikal - 609 603

3. Soundaraja Mills Employees
Cooperative Credit Society,
No.P.353, Rep. by its President,
Nedungadu,
Karaikal - 609 603

4. K.Rudarappasamy

5. P.Murugaiyan

...Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the first respondent to complete the inquiry under Section 75 of the Societies Act and initiate Surcharge proceedings under Section 82 of the Societies Act and to recover the amounts misappropriated by the fourth and fifth respondents and to

initiate criminal action as per Sections 403 & 405 of the Indian Penal Code, award costs.

For petitioners : Mr.V.Govardhanan
For respondents : Mr.B.Nambiselvan, Additional
Government Pleader for R1

: Mr.R.Thirumoorthy for R2

: No appearance for R3 & R4

: Mr.Balan Haridoss for R5

ORDER:

The learned counsel for the petitioner society would submit that the fourth respondent is the President and the fifth respondent was the Secretary of the Society. The Board of the third respondent society authorised management of the second respondent mill to deduct subscription due to the society every month from the salary of the workers of the second respondent mill and remit the same to the third respondent society. As such, the same was deducted and remitted to the society. By communication dated 16.10.2000, the third respondent society asked the management to deduct certain sums of money with interest and remit to the third respondent society as if they had borrowed from the society. The members of the association has denied the said borrowing. Thereafter, the petitioner association contacted the fourth respondent and came to know that there was misappropriation in the third respondent society and subsequently, the petitioner came to know that the fifth respondent has been dismissed from the second respondent mill. The union has requested the first respondent to initiate both civil and criminal action under Section 75 & 82 of the Act. In spite of the representation, there is no response from the first respondent for the alleged irregularities committed by the fourth and fifth respondents in the third respondent society. The petitioner also came to know that the first respondent is not able to initiate criminal action for the reason that they could not secure the records from the third respondent society and also from the fifth respondent. Therefore, in view of the serious irregularities committed by the third respondent society, no enquiry was conducted under Section 75 and 82 of Puducherry Cooperative Societies Act. and therefore, the present writ petition has been filed before this Court

2. The counter affidavit has been filed by the first respondent stating that it was brought to the notice of the first respondent that the fifth respondent has not handed over the records to the society for the period he was working as Secretary of the society and hence, the enquiry officer was

unable to proceed with. The society has initiated action before the Sub-Divisional Magistrate, Karaikal against P.Murugaiyan for providing records, invoking Section 156 of the Act. By order dated 11.09.2000, the learned Sub Divisional Magistrate has ordered P.Murugaiyan to return all the records to one, M.Kalaimani. Since, the M.Kalaimani was unable to secure the records from P.Murugaiyan, the learned Sub-Divisional Magistrate directed the management to take further action in accordance with law. According to the first respondent, the mill management has taken steps to bail out the members and fixed deposit holders. The mill was honouring the commitment and repayment was made to the members towards their share, thrift deposit and fixed deposit. Therefore, steps were taken to settle due amount to the members of the third respondent society for the last 10 years. Further stated, as on today, that a sum of Rs.15,53,630/- is outstanding due. In the mean time, the Society also filed criminal complaint under Section 468 and 477 A of the Indian Penal Code. The said criminal complaint was closed as mistake of the fact. And again, a fresh petition was filed under Section 159 read with 173 of Cr.P.C. By order dated 11.04.2014, the learned Judicial Magistrate No.II, Karaikal dismissed the writ petition and directed the society to institute a private complaint. Then, a criminal revision case was filed in No.589 of 2015 before this Court and the same was disposed of by order dated 18.06.2015 holding that it was open to the society to file a protest petition. The said petition is pending before the said court. Further, it has been stated that the society is undertaking to reconstruct the records and once records are produced, audit for the remaining years will be taken up. The enquiry ordered under Section 75 of the Act in July 2000 could not be completed for want of records. So in view of the steps taken by the society and the Department, the writ petition is liable to be dismissed.

3. The learned counsel for the fifth respondent has filed the counter affidavit by stating that the fifth respondent has not control over the records and only the second respondent has control over the same. Therefore, the prayer for the writ petition to complete the enquiry under Section 75 to initiate surcharge proceedings is not maintainable.

4. On the submission of the learned counsel for the parties, the case of the petitioner is that the petitioner made serious allegations for misappropriation by the fourth and fifth respondents under the third respondent society. The contention of the petitioner union has emerged from the above said facts that the first respondent has initiated to conduct the enquiry against the fourth and fifth respondents. At the instant of the third respondent society, an enquiry officer was appointed by the Sub-Divisional Magistrate, Karaikal. The enquiry officer

would not be able to secure the records from the fifth respondent. Therefore, the Sub-Divisional Magistrate directed the management to take further action in accordance with law. Subsequently, the criminal action was also initiated against the fifth respondent and the same was closed as mistake of the fact by the Nedungudi Police Station. After the filing of criminal revision petition before this Court, this court has given liberty to file a protest petition before the Judicial Magistrate No.II, Karaikal and the same is pending. The first respondent has also submitted that the enquiry under Section 75 could not be completed for want of records. Perusal of the prayer for the present writ petition is concerned, it is seen that the petitioner union has sought for direction against the first respondent to conduct enquiry and to initiate surcharge proceedings under Section 82 of the Puducherry Cooperative Societies Act. In spite of the representation has been received dated 24.05.2004, no action has been taken under Section 75 and under Section 82 of the Act. Further, there is no reply or denial of the said representation made by the petitioner union. The said representation is pending before the first respondent. The grievance of the petitioner union is that no proceedings has been initiated by the first respondent under the provisions of the Act and also there is no reply from the first respondent for the representation made by the petitioner union. The other allegations and denial in the affidavit and the counter affidavit, at this stage, cannot be considered at this preliminary stage. Therefore, this court is inclined to direct the first respondent to consider the petitioner's representation dated 24.05.2004 in accordance with law and to take decision as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this Order.

5. The writ petition is disposed of with above directions. Consequently, connected miscellaneous petition is closed. No costs.

6. It is needless to say that the petitioner also furnishes a copy of the said representation along with the order copy.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

lok

To

1. Registrar of Cooperative Societies,
Government of Pondicherry,
Pondicherry

+ 1 cc to Mr.R.Thirumoorthy Advocate,SR.68680

+ 1 cc to M/s.Row & Reddy,Advocate,SR.69307

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NR 24/10/2017



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