

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.01.2017

Coram

The Hon'ble Mr.Justice T.RAJA

Writ Petition No.43913 of 2016
and
W.M.P.No.37745 of 2016

1. D.V.Mathaiyan
2. Ameer John
3. T.K.Sampathkumar
4. A.Munusamy
5. K.N.Senthilkumar
6. T.Malliga
7. K.S.Mathammal

... Petitioners

Versus

1. The Deputy Registrar of Co-operative Societies, (Full Additional Charge), Dharmapuri.
2. T.T.14, Dharmapuri District Central Co-operative Bank Employees Co-operative Thrift and Credit Society Ltd., rep. by its Administrator, Dharmapuri.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Certiorarified Mandamus calling for the records of the first respondent in Na.Ka.3558/2016 sa.pa2 dated 19.09.2016 consequential enquiry notice in Na.Ka.3558/2016 sa.pa2 dated 2.12.2016 quash the same in so far as petitioners are concerned and direct the first respondent not to precipitating any penal action under the criminal law against the petitioners in respect of the issue covered by surcharge notice, which would be violation of Article 14 and 21 of the Constitution of India.

For Petitioners : Mr.M.S.Palaniswamy

For Respondents : Mr.V.Selvaraj, AGP (Co-op.) for R1
Mr.L.P.Shanmuga Sundaram, for R2.

ORDER

The petitioners have come forward with the present writ petition, challenging the impugned proceedings of the first respondent in Na.Ka.3558/2016 sa.pa2 dated 19.09.2016 and the consequential enquiry notice in Na.Ka.3558/2016 sa.pa2 dated 02.12.201, in and by which, the petitioners were issued with a show cause notice calling upon them to give their explanation as to why surcharge proceedings should not be taken against them under Section 87 of the Tamil Nadu Co-operative Societies Act.

2. The petitioners are the elected board of the second respondent society and they were assumed office on 09.05.2013. After some time, all the elected members were resigned from the board of directorship on 12.08.2015. Subsequently, finding some irregularities, for the alleged loss of Rs.39,17,655/- caused to the second respondent society during the tenure of the petitioners as board of Directors, the first respondent ordered enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, to find out the affairs of the second respondent society. Finally, the enquiry officer submitted his report. Based on the enquiry report dated 25.07.2016, the petitioners were given show cause notice under Section 87 of the Tamil Nadu Co-operative Societies Act on 19.09.2016, calling upon them to show cause as to why surcharge proceedings should not be taken against them for recovery of a sum of Rs.39,17,656/-. In the said show cause notice the only charge levelled against the petitioners is with regard to grant of loan to one S.Chandran, one of the members of the society for Rs.3,90,000/- on 14.02.2014, beyond the ceiling limit prescribed in the bye-laws of the society.

3. The petitioners submitted their explanation dated 23.11.2016 stating that they were not granted loan to any member against the ceiling limits prescribed in the bye-laws of the society and the entire loan amount of Rs.3,90,000/- with interest of Rs.1,74,440/- was repaid by the loanee Mr.S.Chandran on various dates to the account of the second respondent society. Since the entire loan amount together with interest has been repaid by the loanee, the petitioners were not responsible for the cause of alleged loss to the second respondent society. The petitioners have not misappropriated any amount of the second respondent society. However, the first respondent not only making attempts to initiate surcharge proceeding, but also threatens them to lodge a criminal complaint against them. When no loss has been caused to the society as alleged by the first respondent in the show cause notice, the petitioners need not be forced to face the order of an enquiry. On the aforesaid

grounds, the petitioners have come forward with the present writ petition.

4. Heard Mr.M.S.Palaniswamy, learned counsel appearing for the petitioner, Mr.V.Selvaraj, learned Additional Government Pleader (Co-operative), appearing for the first Respondent and Mr.L.P.Shanmuga Sundaram, learned counsel appearing for the second respondent.

5. The learned counsel appearing for the petitioner would submit that in the show cause notice issued to the petitioners, the first respondent had specifically mentioned that the petitioners had granted loan to one member Mr.S.Chandran for Rs.3,90,000/- on 14.02.2014, which is beyond the ceiling limit prescribed in the bye-laws of the society. Whereas, the petitioners on receipt of the show cause notice, submitted a detailed explanation on 23.11.2016, specifically mentioning that the petitioners never granted loan to any member of the society beyond the ceiling limit prescribed in the bye-laws of the second respondent society and in fact the entire loan amount of Rs.3,90,000/- together with interest of Rs.1,74,440/- has been repaid by the loanee to the account of the second respondent society and therefore, there is no need for the issuance of show cause notice under Section 87 of the Co-operative Societies Act.

6. Secondly, it was contended before this Court that even as per the existing by-law No.40, the ceiling limit has been fixed at Rs.5,00,000/- and the existing by-law No.40 has been amended subsequently, in which, the ceiling limit has been enhanced from 5,00,000/- to Rs.7,00,000/-. In the present case, the allegation against the petitioners in the show cause notice is that they have granted loan amount of Rs.3,90,000/- to Mr.S.Chandran, one of the members of the second respondent society, which is beyond the ceiling limit prescribed in the by-law of the society. Therefore, the very foundation on which the show cause notice issued against the petitioners under Section 87 of the Tamil Nadu Co-operative Societies Act, calling upon them to offer explanation as to why action should not be taken against them to initiate surcharge proceedings, is not only wrong and unsustainable but also total misconceive.

7. I find merit on the submissions made by the learned counsel appearing for the petitioners.

8. After issuance of notice by this Court, Mr.V.Selvaraj, learned Additional Government Pleader (Co-operative), on instructions from the respondents, has produced a copy of the by-law No.40 both existing and amended, which is extracted as under:-

AS EXISTING BY LAW NO.40	AS AMENDED BY LAW NO.40
No member shall at any time be indebted to the society by way of Principal to the extent of more than Rs.500000 on account of any loan or loans taken by him provided the total amount of the monthly instalment of the loans obtained and to be obtained along with other items does not exceed 50% of the gross pay subject to the limit a member may at the discretion of the committee be given a loan not exceeding Rs.100 for every share held by him or 25 times his Gross pay per month or individual maximum borrowing power whichever is less.	No member shall at any time be indebted to the society by way of Principal to the extent of more than Rs.700000 on account of any loan or loans taken by him provided the total amount of the monthly instalment of the loans obtained and to be obtained along with other items does not exceed 50% of the gross pay subject to limit a member may at the discretion of the committee be given a loan not exceeding Rs.100 for every share held by him or 25 times his Gross pay per month or individual maximum borrowing power whichever is less.

9. A perusal of both existing as well as amended by-law No.40 would clearly show that the ceiling limit prescribed for grant of loan as per existing by-law No.40 is fixed at Rs.500000/- and as per the amended by-law No.40, it has been enhanced from Rs.5,00,000/- to Rs.700000/-. From this, it is very clear that the petitioners have granted loan to a member within the ceiling limit prescribed in both existing as well as amended by-law No.40. Hence, there is no question of issuance of show cause notice calling upon the petitioners to show cause as to why action should not be taken for initiating surcharge proceedings for recovery of an amount of Rs.39,17,659/- under Section 87 of the Tamil Nadu Co-operative Societies Act. Therefore, the writ petition stands allowed and the impugned show cause notice is hereby quashed in so far as the petitioners are concerned. No costs. Consequently, W.M.P.No.37745 of 2016 is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gr.

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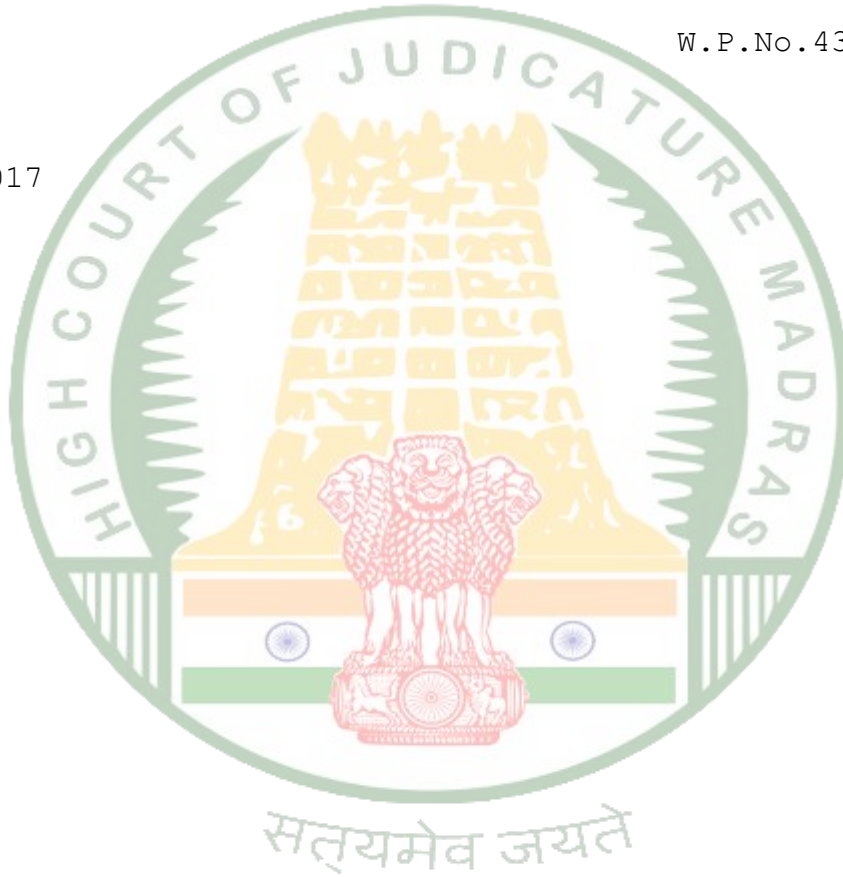
1. The Deputy Registrar of
Co-operative Societies, (Full Additional Charge),
Dharmapuri.

2. The Administrator, T.T.14,
Dharmapuri District Central
Co-operative Bank Employees Co-operative
Thrift and Credit Society Ltd., Dharmapuri.

+1 cc to Mr.Ms.Palanisamy Advocate sr 2341
+1 cc to Government Pleader sr 2252
+1 cc to Mr.L.P.Shanmuga Sundaram Advocate sr 1807

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