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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.1316 of 2014 (NPD)
& M.P. (MD) No.1 of 2014

K.Lakshmanan

.. Petitioner/Appellant

Vs.

1.The Deputy Registrar of Co-operative
Societies,
Doovipuram 3rd Street,
Thoothukudi.

2.P.Nallasivan

3.A.Kanikumar

4.R.Venkatesan

5.R.Esakkimuthu

.. Respondents

(Respondents 2 to 5 are given up
in the appeal, since they are not
necessary parties)

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the judgment and decree, dated 10.11.2011, passed in C.M.A.(C.S.)No.34 of 2009, by the learned Principal District Judge, Thoothukudi, confirming the order dated 21.06.2006, passed in S.C.No.9 of 2005, by the Deputy Registrar of Co-operative Societies, Thoothukudi.

For Petitioner : Mr.D.Venkatesh

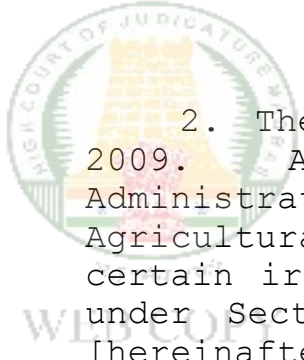
For R1 : Mr.K.Maheshraja
Government Advocate

For Respondents 2 to 4 : Given up vide in EB

For Respondent No.5 : No Appearance

ORDER

This Civil Revision Petition is filed against the judgment and decree, dated 10.11.2011, passed in C.M.A.(C.S.)No.34 of 2009, by the learned Principal District Judge, Thoothukudi, confirming the order dated 21.06.2006, passed in S.C.No.9 of 2005, by the Deputy Registrar of Co-operative Societies, Thoothukudi.



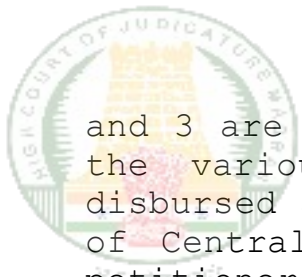
2. The petitioner is the appellant in C.M.A.(C.S.)No.34 of 2009. According to the petitioner, he was a member of Administrative Committee in EE.444 Sawyerpuram Primary Agricultural Co-operative Bank. There was an allegation of certain irregularities and misappropriation of funds. An enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act [hereinafter referred to as 'the Act'] has been conducted. In the enquiry report, it was found that the petitioner and the respondents 2 and 3 colluded together, forged the document and misappropriated funds to the tune of Rs.2,23,555/-. The first respondent/Deputy Registrar of Co-operative Societies initiated *suo motu* surcharge proceedings against the petitioner and others under Section 87 of the Act, based on the enquiry report. The petitioner and others participated in the surcharge proceedings. The first respondent, by her proceedings dated 21.06.2006, bearing Reference No.த.வ.9/2005, passed a surcharge order holding that the petitioner and the respondents 2 and 3 had forged signature in the loan document and misappropriated the funds. The loan amounts were sanctioned to the persons, who are not members and by impersonating the dead members. The petitioner and others also by forging the signature of members, got the loan sanctioned to persons, who did not have any land or the members of the Society. The first respondent in the surcharge proceedings held that the petitioner and the respondents 2 and 3 are jointly and severally liable to pay a sum of Rs.2,23,555/-.

3. Against the said surcharge proceedings, the petitioner filed C.M.A.(C.S.)No.34 of 2009 before the Principal District Court, Thoothukudi.

4. The learned Principal District Judge, Thoothukudi, after considering all the materials on record and the arguments of the learned counsel for the petitioner and the learned Government Pleader, dismissed the Civil Miscellaneous Appeal, confirming the order of the first respondent, passed in the surcharge proceedings.

5. Against the order dated 10.11.2011, passed in C.M.A.(C.S.) No.34 of 2009, the present Civil Revision Petition is filed.

6. The learned counsel for the petitioner submitted that as per Section 87 of the Act, surcharge proceedings must be completed within a period of six months and in the present case, order was passed beyond the period of six months and there was nothing on record to show that the said period was extended. The copy of the order in the surcharge proceedings was served on the petitioner only on 14.05.2007. The first respondent did not furnish the copy of the enquiry report, conducted under Section 81 of the Act. The petitioner was only a member of Administrative Committee in EE.444 Sawyerpuram Primary Agricultural Co-operative Bank and he had nothing to do with the loan transaction. Only the respondents 2



and 3 are responsible for the loan transaction. After completing the various procedures, the loan amounts are sanctioned and disbursed after verification by the Special Officer and Supervisor of Central Bank. No evidence was produced to show that the petitioner was involved in the alleged misappropriation of funds.

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7. At the time of arguments, the learned counsel for the petitioner submitted that the enquiry report under Section 81 of the Act was not furnished to the petitioner. The failure on the part of the first respondent to furnish copy of the report of enquiry conducted under Section 81 of the Act vitiates the entire proceedings.

8. In support of his submissions, the learned counsel for the petitioner relied on the judgment of this Court reported in 2013 (1) CTC 367 [S.Kumarasamy Vs. The Deputy Registrar of Coop. Societies, Kovilpatti], wherein at paragraph 4, it has been held as follows:

"4. As far as the first ground is concerned, notice under Section 87 of the Societies Act was issued to the petitioner on 17.04.2007 and the same was served upon him on 20.04.2007. Even though it is mentioned therein that the enquiry report submitted by the Enquiry Officer under Section 81 of the Cooperative Societies Act has been enclosed, in fact, it was not so. It is evident from the fact that the proceeding viz., the enquiry report prepared by the Enquiry Officer is dated 29.07.2006. Both the notices under Sections 87 and 81 and the report under Section 87 of the Act have been produced. When the report under Section 87 of the Act was not served upon the petitioner, the society sent notice under Section 87 of the Act to the petitioner on 29.07.2006 but without enclosing the copy of the enquiry report under Section 81 of the Act. While they sent the notices under Section 87, the report under Section 81 of the Act should also accompany. But only on 17.04.2007 the enquiry report under Section 81 of the Act was sent to the petitioner along the covering letter which was served upon the petitioner on 20.04.2007. It shows that long after the issue of the notice under Section 87, the report under Section 81 was served upon the petitioner. Since, the petitioner was not afforded with ample opportunities at the time of receipt of notice under Section 87 it has to be observed that the principles of natural justice have been violated which would vitiate the entire proceedings."

9. The learned Government Advocate submitted that the petitioner and the respondents 2 and 3 colluded together, forged the documents and misappropriated funds. In the enquiry conducted under Section 81 of the Act, it has been proved that the petitioner also participated in the misconduct by forging the



signature of loanees. All the materials were considered by the first respondent as well as by the Appellate Authority and by giving valid reason, it has been held that the petitioner along with the respondents 2 and 3 are jointly and severally liable to pay the amounts.

10. I have considered the submissions of the learned counsel appearing for the parties and perused the materials available on record.

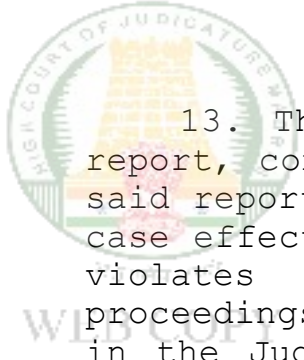
11. The first contention of the learned counsel for the petitioner is that as per Section 87 of the Act, surcharge proceedings must be completed within six months and the said period can be extended by further period of six months. According to the petitioner, surcharge proceedings were initiated on 23.12.2005 and order was communicated to him only on 14.05.2007. From the order of the first respondent, passed under Section 87 of the Act, it is seen that the said order was passed on 21.06.2006, within six months from 23.12.2005. When surcharge proceedings are initiated, the petitioner has not produced any material before the Appellate Authority to show that the order of the first respondent, dated 21.06.2006, was served on him only on 14.05.2007. In any event, a Division Bench of this Court in the judgment reported in 2008 (8) MLJ 231 [S.V.K.Sahasramam Vs. Deputy Registrar of Co-op. Societies, Tiruvannamalai Circle, Tiruvannamalai and others], has held that the period mentioned in Section 81 and 81(4) of the Act is only directory in nature and is not mandatory. The period mentioned in the said Section is similar to the period mentioned in Section 87 of the Act. In paragraphs 13 and 14 of the said judgment, the Division Bench of this Court has held as follows:

"13. Therefore, if such enquiry is continued beyond the time limit mentioned in the relevant statute, the said time cannot be held to be mandatory in view of the principles laid down in Montreal Street Railway Company (supra), which has been affirmed by the Supreme Court.

14. The writ appeal is thus dismissed. There shall be no order as to costs. Consequently, M.P. No.1 of 2008 is closed."

Therefore, the time limit mentioned in Section 87 of the Act to complete the proceedings is only directory and not mandatory.

12. The next contention of the learned counsel for the petitioner is that the report of the enquiry conducted under Section 81 of the Act was not furnished to him. The learned counsel contended that the first respondent relied on the report, without examining the Enquiry Officer and without giving an opportunity to the petitioner to cross-examine the said Officer.



13. The surcharge proceedings is initiated based on enquiry report, conducted under Section 81 of the Act. In such case, the said report has to be furnished to the petitioner to put forth his case effectively. The failure to furnish Section 81 enquiry report violates the principles of natural justice and the entire proceedings under Section 87 of the Act are vitiated. This Court in the Judgment reported in 2013 (1) CTC 367 referred to above, considered this issue and held that delay in furnishing Section 81 Enquiry Report violates the principles of natural justice and vitiates the entire proceedings.

14. In the present case, Section 81 Enquiry Report was not furnished to the petitioner. The learned Appellate Authority failed to consider this aspect and thus, committed an error and irregularity in dismissing C.M.A.(C.S.)No.34 of 2009. The order of the learned Judge is liable to be set aside.

15. In the circumstances, the order dated 10.11.2011, passed in C.M.A.(C.S.)No.34 of 2009, by the learned Principal District Judge, Thoothukudi, as well as the order dated 21.06.2006, passed in S.C.No.9 of 2005 by the first respondent/Deputy Registrar of Co-operative Societies, are set aside. The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Principal District Judge,
Thoothukudi.
- 2.The Deputy Registrar of Co-operative
Societies,
Doovipuram 3rd Street,
Thoothukudi.

Copy to:- The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai

+One cc to Mr.D.Venkatesh, Advocate, SR.No.11805
smn2
RL/5C/5P/SKN/28.3.2017

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& M.P.(MD)No.1 of 2014