THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.18963 of 2005

ORDER:

Heard Sri Sridhar Lendalay, learned counsel for the petitioner, learned Government Pleader for Cooperation appearing for 1st respondent and Sri P.B.Vijaya Kumar, learned counsel for 2nd respondent.

2. The petitioner was employed as a Clerk in the 2nd respondent-society during 1980-1993. In 1992, the then elected managing committee President wrote a letter on 22-02-1992 that there were certain discrepancies in the books of accounts of the society, for which, the earlier managing committee members are responsible and requested for enquiry/inspection by a Departmental Officer to ascertain the correctness of the accounts of the society.

3. Subsequently, a preliminary enquiry was directed by 2nd respondent through the Cooperative Sub Registrar and the report given by him indicated that certain transactions done by the previous managing committee were not valid and there is *prima facie* case of mis-use of funds of the society. On the basis of this, 1st respondent issued a letter dt.09-07-1992 to the District Cooperative Officer, Ranga Reddy District, for ordering a statutory inspection under Section 52 of the A.P. Cooperative Societies Act, 1964. On the basis of a report submitted by the Deputy Registrar/Divisional Cooperative Officer, the Special Cadre Deputy Registrar/District Cooperative

Officer, Ranga Reddy District, ordered for inspection on 18-01-1992 under Section 52 of the Act. Thereafter, on 22-08-1994, surcharge order under Section 60 (1) of the Act was passed on the members of the previous managing committee including petitioner and others fixing a liability of Rs.10,23,950/- on the petitioner.

4. It is pertinent to note that the petitioner did not file any appeal against the surcharge order.

5. One K.Sankaraiah, Ex-President, M.Venkata Rao, Ex-Treasurer and B.Janardhan Reddy, Ex-Secretary, filed C.T.A.Nos.32, 33 and 44 of 1995 before the A.P. Cooperative Tribunal, Hyderabad alleging that they were not supplied material relied upon by 1st respondent before passing the surcharge order.

6. By separate orders dt.18-12-1995, three C.T.As. were allowed and the orders of surcharge were set aside on the ground that the appellants in the said appeals were not given adequate opportunity to prove their innocence, that they should be supplied copies of all relevant materials and they should also be given an opportunity to produce relevant evidence and documents to contest the findings given in Section 52 Inspection Report, and allowed to cross examine the witnesses and therefore a fresh order should be passed.

7. On the basis of the surcharge order passed on 22-08-1994, E.P.7/SC/95 was filed by 2nd respondent before 1st respondent for recovery of the amount due under the surcharge order

and petitioner's immovable property bearing House No.24-119/10 of plot No.37 admeasuring 222 sq yds situated at Venkatapuram, Alwal, Ranga Reddy District was attached.

8. Thereafter, on 18-11-1996, fresh surcharge order was passed pursuant to the remand order dt.18-12-1995 in C.T.A.No.33 of 1995 passed by 1st respondent. In this surcharge order, the petitioner's liability was fixed at Rs.10,08,650/-.

9. In the auction conducted in E.P.7/SC/95, 2nd respondent became the highest bidder for a sum of Rs.1.00 lakh.

10. This was questioned in W.P.No.23861 of 1995 by the Writ Petitioner and initially stay was also granted for confirmation of the sale. But the said Writ Petition came to be dismissed for default on 08-10-2004. Consequent thereto, Certificate of Sale under Rule 52 (14) (iii) of the Act was issued on 28-05-2005 by the 1st respondent in favour of 2nd respondent in respect of the said property.

11. It is not in dispute that the surcharge order dt.18-11-1996 passed by 1st respondent was again challenged in C.T.ANos.18, 44 and 45 of 1997 by the three persons, who had earlier filed C.T.A.Nos.32, 33 and 44 of 1995, and again by order dt.17-08-2002, the appeals were allowed and the matter was remitted back to 1st respondent of fresh consideration after giving certain findings.

12. Pursuant to the sale confirmation order dt.28-05-2005, on 16-06-2005, the Sale Certificate was registered by the Sub Registrar, Vallabhnagar, Ranga Reddy District.

13. After the matter was remitted back on 17-08-2002, in C.T.A.Nos.18, 44 and 45 of 1997 by the A.P. Cooperative Tribunal, on 09-03-2006, a fresh surcharge order was passed by 1st respondent imposing a liability of Rs.1,98,240/- on the petitioner. This time, petitioner assailed it in C.T.A.No.121 of 2006 on the ground that there was violation of principles of natural justice.

14. This C.T.A. came to be allowed on 02-03-2009 accepting petitioner's contention and the matter was again remanded to 1st respondent for fresh disposal. The matter stands at that stage before 1st respondent.

15. The principal contention of the learned counsel for the petitioner is that his property was sold for a sum of Rs.1.00 lakh in favour of 2nd respondent pursuant to the surcharge order passed on 22-08-1994 by 1st respondent, and once the said surcharge order was set aside in C.T.ANo.33 of 1995, the sale could not have been proceeded with; on 28-05-2005 sale confirmation order cannot be issued; and the said Sale Certificate should not have been registered on 16-06-2005 by the Sub Registrar, Vallabhnagar. He therefore seeks quashing of the entire proceedings in EP No.7/SC/95.

16. Learned counsel for the petitioner reiterated the said contention.

17. Learned Government Pleader for Cooperation appearing for 1st respondent stated that 1st respondent is seized of the matter and an award/surcharge order is expected shortly from the 1st respondent.

18. Sri P.B.Vijaya Kumar, learned counsel for 2nd respondent, stated that the proceedings dt.22-08-1994 issued by 1st respondent were challenged in C.T.A.Nos.32, 33 and 44 of 1995 by others and not by the petitioner; that the petitioner cannot have the benefit of the order passed therein on 18-12-1995; that each of the surcharge orders passed i.e. 22-08-1994 or 18-11-1996 or 09-03-2006, do not exonerate the petitioner from any liability; already there have been three remands by the A.P. Cooperative Tribunal and further remand in future cannot also be ruled out. He further contended that even as per the order dt.09-03-2006, passed by 1st respondent, the petitioner's liability is Rs.1,98,240/- which is more than the sale consideration of Rs.1.00 lakh for which sale in favour of the 2nd respondent was confirmed; that the petitioner having filed W.P.No.23861 of 1995 challenging the sale proceedings did not pursue it and the same was dismissed on 08-10-2004 for non-prosecution; and petitioner did not take any steps to revive the said Writ Petition. He contended that the sale confirmation in favour of 2nd respondent on 28-05-2005 and the registration done on 16-06-2005 of the sale confirmation letter and the Sale Certificate be made subject to

the final surcharge order which might be passed by 1st respondent in the pending enquiry.

19. From the above contentions of the parties, the question to be considered is "whether the Sale Confirmation order dt.28-05-2005 and the consequent registration of the Certificate of Sale on 16-06-2005 deserved to be set aside or not?"

20. While the petitioner's contention is that the surcharge order dt.22-08-1994 passed by 1st respondent was set aside in C.T.A.Nos.32, 33 and 44 of 1995 on 18-12-1995 by the A.P. Cooperative Tribunal, Hyderabad, appears to be attractive, the fact remains that it was not the petitioner who filed those appeals.

21. Petitioner did file W.P.No.23861 of 1995 before this Court challenging the order passed in E.P.No.7/SC/95 for sale of the property of the petitioner and initially obtained stay order for conformation of sale pending disposal of the Writ Petition, but subsequently the said Writ Petition was dismissed for default on 08-10-2004. Petitioner took no steps to restore the same. In view of the dismissal of the said Writ Petition, sale confirmation order was issued on 28-05-2005 and the Certificate of Sale was registered on 16-06-2005.

22. The matter has gone to the Cooperative Tribunal twice after the initial surcharge order was passed on 22-08-1994, when the latter surcharge order dt.18-11-1996 was questioned in C.T.A.Nos.18,

44 and 45 of 1997 and the latest surcharge order dt.09-03-2006 was challenged by the petitioner in C.T.A.No.121 of 2006, which also was allowed on 02-03-2009.

23. In each of these surcharge orders passed against the petitioner, the liability of the petitioner is fixed at more than Rs.1.00 lakh which is sale consideration for the sale of the property. The said liability cannot be said to be final having regard to the pendency of the surcharge proceedings after C.T.ANo.121 of 2006 was allowed on 02-03-2009 and the matter was remitted back to 1st respondent.

24. At this point of time, I am therefore of the opinion that it is not in the interest of justice to set aside the sale confirmation order dt.28-05-2005 or the registration of Sale Certificate dt.16-06-2005 and that interest of justice would be met, if this Sale Confirmation order and the registration of the Certificate of Sale is made subject to the final surcharge order passed by 1st respondent.

25. This is because the 2nd respondent cannot be made to suffer by not being able to recover the amount due to it on account of proceedings taken by the various parties to the surcharge order including the petitioner and it has already had to wait 23 years from the first surcharge order dt.22-08-1994.

26. Therefore, the Writ Petition is disposed of declaring that the sale confirmation order dt.28-05-2005 in E.P.No.7/SC/95 as well as the registration of the Certificate of Sale on 16-06-2005 in respect

of the petitioner's property shall abide by the final surcharge order which may be passed by the 1st respondent in the matter. No costs.

27. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-08-2017
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