

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.264 of 2014 and
M.P.No.1 of 2014

S.439 Salem Agricultural Producers
Co-operative marketing Society Limited,
Represented by its President P.Palanisamy,
Suramangalam Road, Salem-636 009. ...Appellant/2nd Respondent
(Cause Title accepted vide order
of court dated 09.01.2014 made in
M.P.No.1 of 2014 in W.A.SR. No. 2109/2014)

Vs.

1. V.Rajendran
2. The Deputy Registrar of Societies,
Salem Circle, Cherry Road, Salem.
3. S.Paulraj
4. The Principal District Judge-cum-Special
Tribunal for Co-operative Cases, Salem.
..Respondents/Petitioner & Respondents 1,3, &4

Prayer: Writ Appeal is filed under Clause 15 of the Letters
Patent to set aside the order dated 17.09.2013 in W.P.No.664 of
2009.

W.P.No.664 of 2009:

Petition filed under Article 226 of the constitution of
India for the issuance of a Writ of Certiorari, calling for the
record relating to the Judgment and decree dated 12.09.2008 of
the 4th Respondent made in CMA(CS) 33/2004 under Section 152 of
the Tamil Nadu Co operative Societies Act 1983 and quash the
same.

For Appellant : Mr.D.Shivakumaran
For Respondents: Mr.S.Venkataraman for R1
Mr.S.P.Harikrishnan
for R3 - No Appearance

JUDGMENT
[was made by P.VELMURUGAN, J.]

This writ appeal has been filed against the order dated 17.09.2013 made in W.P.No.664 of 2009.

2. For the sake of convenience, the parties are referred to as per their rank in the writ petition.

3. The case of the writ petitioner before the writ court is that he was employed as an Assistant. The third respondent was employed as the Special Officer and one Govindasamy was employed as Supervisor. Similarly, one S.Selvarasan was working as Junior Assistant in the second respondent/Society. An enquiry was ordered under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 (herein after referred to as "the Act"), against the writ petitioner and the other employees named above, for having caused loss to the Society in connection with the purchase of turmeric and other items for higher price than the Erode Turmeric Market Price and sale of those items at a lesser price on receiving commission from the Traders.

3.1. Based on the enquiry report, surcharge proceedings were initiated by the Society under Section 87 of the Act in N.Ka.No.615/1999, dated 23.04.2002, against the writ petitioner and others. The delinquent officers were ultimately directed to pay the amount as mentioned in the surcharge order dated 23.04.2002.

3.2. Aggrieved over the order dated 23.04.2002, the writ petitioner preferred an appeal before the statutory Tribunal in C.M.A.(C.S) No.33 of 2004. The Tribunal by order dated 12.09.2008 dismissed the appeal and confirmed the surcharge order dated 23.4.2002.

4. Thereafter, the writ petitioner approached this Court by filing writ petition in W.P.No.664 of 2009, to quash the order dated 12.09.2008 passed by the Tribunal.

5. The learned Single Judge allowed the writ petition filed by the writ petitioner by order dated 17.9.2013. Aggrieved by the order dated 17.9.2013 made in W.P.No.664/2009, the society has preferred this writ appeal.

6. The learned counsel for the Society, who filed the present writ appeal, contended that, after following the due process of law, surcharge was ordered on 23.04.2002, demanding to pay the amount as stated in the surcharge proceedings. The writ petitioner preferred an appeal in C.M.A.(CS).No.33 of 2004 before the Tribunal. The Tribunal has elaborately discussed and

answered all the points raised by the writ petitioner and confirmed the surcharge order dated 23.04.2002. The writ court failed to consider the basic facts and erroneously allowed the writ petition. Hence, the learned counsel seeks to allow the writ appeal, by setting aside the order dated 19.09.2013 made in W.P.No.664 of 2009.

7. The learned counsel for the writ petitioner, who is the first respondent herein, contended that, Section 87 of the Act clearly says that there should be a willful negligence, to proceed against the employee. However, in the surcharge order dated 23.04.2002, there was no categorical finding that the loss caused to the society was due to the willful negligence on the part of the writ petitioner. The learned counsel submitted that the surcharge proceedings initiated against one Govindasamy, who was working as Superintendent, was dropped on the ground that he died without leaving any legal heirs. Both the first respondent and the Tribunal failed to consider this aspect that the Govindasamy died intestate leaving behind his parents and others to inherit his properties which were acquired during his lifetime out of the income earned from the Society.

8. According to the learned counsel, as per Section 87 of the Act, the Society ought to have continued the surcharge proceedings against the legal heirs of the deceased Govindasamy. The other aspect is that when the higher officer viz. the third respondent, who was working as Special Officer was exonerated from the surcharge, on the sole ground that he has taken steps to recover the dues from the traders, the same benefit has to be extended to the lower rank staff namely clerk, the writ petitioner.

9. On a perusal of the materials would go to show that the surcharge order dated 23.04.2002 was issued against the writ petitioner and other persons for having caused loss to the Society. Subsequently, the third respondent, who was working as Special Officer, and one Govindhasamy who was working as Superintendent, were exonerated from the surcharges. The third respondent was exonerated on the ground that he has initiated steps to recover the dues from the traders. The said Govindhasamy was exonerated on the ground that he died without leaving any legal heir.

10. In our view, the learned Single Judge was right in deciding the matter that when the higher official namely the third respondent, who was working as Special Officer, was exonerated for the reason stated above, it is sufficient enough to exonerate the lower rank employee like the writ petitioner.

11. There is one more aspect which would go to the root of the matter. Though the charge is that turmeric was purchased for

higher price than the price fixed by the Erode Turmeric Market, there is nothing stated as to the Erode Turmeric market price. The charge is therefore vague.

12. Therefore, we are of the considered view that the learned Single Judge has rightly decided the issue on hand by giving valid reasons for allowing the writ petition. In view of above findings, we find, there is no illegality or infirmity in the order passed by the learned Single Judge. The Society who is the appellant herein has not made out any valid reason to interfere with order dated 17.09.2013 in W.P.No.664 of 2009.

13. In the result, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

cgi/tar

To

1. The Deputy Registrar of Societies,
Salem Circle, Cherry Road, Salem.
2. The Principal District Judge-cum-Special
Tribunal for Co-operative Cases, Salem.

+1 CC to Mr.D. shivakumaran, Advocate sr 15972.
+1 CC to Mr.S. Venkatesan, Advocate sr 15689.

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W.A.No.264 of 2014

PA(CO)
SP(12/04/2018)

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