

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.7.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.12817 of 2013 and 1770 of 2018

1.R.Krishnaraj ... Petitioner in WPs 12817/13 &
and petitioner in WP.1770/18
2.V.Selvakumar
3.N.Paneerselvan ...Petitioners 2&3 in W.P.No.1770/18

Vs.

1.The Deputy Registrar of Cooperative
Societies (Housing),
22 ARK Complex, Manjakuppam,
Cuddalore.
2.The Principal District Judge,
Cuddalore District,
Cuddalore. ... respondents in W.P.No.12817/13

1. The Deputy Registrar of
Co-Operative Societies,
Cuddalore Region,
Cuddalore District ...1st Respondent in WP.1770/18
2.The Management,
Cuddalore Public Servants (G) Coop Housing
Building Society,
Rep. By its President,
No.38-A, main Road, Pudupalayam,
Cuddalore - 607 001.

R2 impleaded as per order dated 16.2.2018
by KRCBJ in WMP.3702 of 2018 in WP.1770 of 2018

... 2nd respondent in W.P.No.1770/2018

Prayer in W.P.No.12817/13: Writ Petition filed under Article 226
of the Constitution of India, praying for the issuance of a
Writ of Certiorari, calling for the impugned order passed by the
first respondent in his proceeding in Na.Ka.1044/06 Sa.Pa. dt.
31.8.2007 and impugned order passed by the second respondent in
C.M.A.No.13/2009 dt. 02.12.2011 and quash the same.

Prayer in W.P.No.1770/18: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the first respondent herein to permit the petitioners to remit the principal amount of Rs.59,22,757/- (Fifty Nine Lakhs Twenty Two Thousand Seven Hundred and Fifty Seven only) to the credit of the Cooperative Society (Housing) Cuddalore without insisting the interest of 14%.

For Petitioner :Mr.M. Suresh
(W.P.No.12817/13)

Mr.K.Raju
for Mr.M.Kaviveerappan
(WP.1770 of 2018)

For Respondent No.1 in both : Mr.L.P.Shanmugasundaram
Spl. Govt. Pleader

O R D E R

W.P.No.12817 of 2013 has been filed by one Mr.R.Krishnaraj, who has served as Vice-President of the first respondent Society, seeking to quash the impugned order passed by the second respondent / the Principal District Court, Cuddalore, partially confirming the surcharge proceedings dated 31.08.2007 of the first respondent Society.

2. W.P.No.1770 of 2018 has been filed seeking a direction to the first respondent to permit the petitioners to remit the principal amount of Rs.59,22,757/- to the credit of the Cooperative Society (Housing) Cuddalore, without insisting the interest 14%.

3. Since the facts involved in both the writ petitions are one and the same, they are disposed of by this common order. For better appreciation, facts involved in W.P.No.12817 of 2013 are stated below:-

While the petitioner was working as Vice-President and Special Officer of the Cuddalore Public Servants (General) Cooperative House Building Society from 03.10.1998 to 25.05.2001 and from 25.05.2001 to 31.03.2003 respectively, it is alleged that there was a various revenue loss caused to the Society due to his maladministration. Therefore, an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act was ordered, whereby, the Enquiry Officer, in his enquiry report dated 15.10.2005, recommended to initiate surcharge proceeding under Section 87 of the Act against the petitioner to recover the monetary loss caused to the society. Subsequently, on the basis of the said enquiry report, a surcharge proceeding dated 31.08.2007 was also initiated against the petitioner and 6

others to recover a sum of Rs.68,04,357/- by the first respondent, which is impugned herein. Aggrieved by the same, when an appeal was preferred in C.M.A.No.13 of 2009, the Principal District Judge, Cuddalore, vide order dated 02.12.2011, while modifying the order passed by the first respondent under Section 87 of the Act, held that the petitioner was responsible for the loss caused to the society and he is liable to make good the revenue loss caused to the Society. As against the orders of the respondents 1 and 2, the present writ petition has been filed.

4. Mr.K.Raju, learned counsel appearing for the petitioners would submit that when there is no finding of misappropriation of money or willful negligence against the petitioners, the question of initiation of surcharge proceedings under Section 87 of the Co-operative Societies Act does not arise. In so far as the salary made to the staff appointed in violation of rules is concerned, the Registrar issued a clarification letter dated 20.09.2010 stating that the salary could not be recovered from the persons appointed upto 12.3.2001 as they received salary for the work done, therefore, it cannot be held against the petitioners warranting initiation of surcharge proceedings. It is further stated that the respondents have not even considered the fact that staffs appointed in violation of the Rules are still working and they are being given timescale of pay.

5. So far as the surcharge proceedings passed by the first respondent is concerned, it is pleaded that the respondents themselves have admitted that proceedings were initiated against 15 persons and the amount would be recovered and hence, the question of initiating surcharge proceedings against the petitioners alone based on presumption does not arise. Further, it is submitted that the first respondent, without any basis, arbitrarily imposed 14% interest on the surcharge amount, therefore, the same cannot be legally sustainable. With these submissions, he pleaded, the impugned order is liable to be interfered with.

6. A detailed counter affidavit has been filed. Learned Special Govt. Pleader for the respondents would submit that the petitioners have suffered the order under Section 87 of the Tamilnadu Co-operative Societies Act, based on the enquiry report under Section 81 and thereafter, final order also came to be passed on 31.8.2007 by the first respondent under Section 87 of the Act stating that there was a loss caused to the Cuddalore General Employee Co-operative Society due to maladministration of the petitioners during the period from 1999 to 2002 and the said order was also confirmed by the Tribunal. Hence, he pleaded, the petitioners cannot claim any indulgence from this Court on the ground of no finding of misappropriation or mismanagement.

7. Reply to the said contention, learned counsel for the petitioners submitted that there is no finding of misappropriation, however, in respect of W.P.No.12817 of 2013, the petitioner is prepared to pay the principal amount of Rs.68,04,357/- along with 25% interest which comes to Rs.17,01,089/-, in total Rs.85,05,446/-. In respect of W.P.No.1770 of 2018, it is stated, the petitioners, in the said writ petition, are prepared to remit the principal amount of Rs.59,22,757/- along with 25% interest which comes to 14,80,689/- in total Rs.74,03,446/-. It is further stated that the petitioners required minimum one year to settle the said sum, as they have to receive the money from the debtors of the Society.

8. Be that as it may, since this issue is pending for more than 11 years and that the respondent society has not recovered the loan granted to its members for those 11 years, in the interest of the Society, this Court is inclined to pass the following order;

a) in respect of W.P.No.12817 of 2013, the petitioner, in the said writ petition, is directed to remit the principal amount of Rs.68,04,357/- along with 25% interest from the principal amount which comes to 17,01,089/-, in total Rs.85,05,446/-.

b) likewise, in respect of W.P.No.1770 of 2018, the petitioners are directed to remit the principal amount of Rs.59,22,757/- along with 25% interest from the principal amount which comes to 14,80,689/-, in total Rs.74,03,446/-.

c) the petitioners are directed to remit the aforesaid amount within a period of five months from the date of receipt of a copy of this order.

9. In fine, with the above directions, the writ petitions are disposed of. No Costs. Consequently, M.P.No.1 of 2013 is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1 THE DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES (HOUSING),
22 ARK COMPLEX, MANJAKUPPAM, CUDDALORE.

2 THE PRINCIPAL DISTRICT JUDGE,
CUDDALORE DISTRICT, CUDDALORE.

3. THE DEPUTY REGISTRAR OF
CO-OPERATIVE SOCIETIES,
CUDDALORE REGION,
CUDDALORE DISTRICT

4. THE MANAGEMENT,
CUDDALORE PUBLIC SERVANTS (G) COOP HOUSING
BUILDING SOCIETY,
REP. BY ITS PRESIDENT,
NO.38-A, MAIN ROAD, PUDUPALAYAM,
CUDDALORE - 607 001.

+ 1 cc to MR. M. Kaviveerappan, Advocate Sr.52170

+ 1 cc to Mr. M. Suresh, Advocate Sr.52171

+ 1 cc to Government Pleader Sr.52853

+ 2 ccs to Mr.L.P. Shanmugasundaram, Advocate SR.53009

W.P.Nos.12817 of
2013 and 1770 of 2018
and M.P.No.1 of 2013

NRL (CO)
EU (18/09/2018)

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