

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.10.2019

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Writ Petition No.27462 of 2019
and W.M.P.No.26932 of 2019

M.Subramani

... Petitioner

Vs

1.The Registrar of Co-operative Societies,
Kilpauk, Chennai - 600 010.

2.The Deputy Registrar of Co-operative Societies,
Hosur Circle, Hosur, Krishnagiri District.

3.The Enquiry Officer/Co-operative Sub Registrar,
S.333, Kamandoddi Primary Agricultural
Co-operative Credit Society,
Kamandoddi Village & Post - 635 130,
Shoolagiri Taluk, Krishnagiri District.

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Mandamus, praying to direct the 1st respondent to appoint any other Additional Registrar of Co-operative Societies to conduct enquiry for the irregularities committed in S.333, Kamandoddi Primary Agricultural Co-operative Credit Society, Kamandoddi Village and Post - 635 130, Shoolagiri Taluk, Krishnagiri District.

For Petitioner :Mr.C.Prakasam

For Respondents :Mr.D.Venkatachalam
Additional Government Pleader

ORDER

By consent, the main writ petition is taken up for final disposal at the admission stage itself.

2. Heard Mr.C.Prakasam, learned counsel appearing for the petitioner and Mr.D.Venkatachalam, learned Additional Government Pleader, who takes notice on behalf of the respondents.

3. The allegation of the petitioner herein is that three different Deputy Registrars have conducted Section 81 enquiry regarding misappropriation of the society fund and has given three different figures. Based on the 81 enquiry report, surcharge proceedings under Section 87 has been initiated.

4. According to the petitioner, the President of the Society has grabbed the property of the petitioner worth about 6 Crores and executed sale deed in favour of his mother-in-law and has falsely implicated him in this surcharge proceedings. Hence, the matter has to be enquired by an officer not below the rank of Assistant Registrar. The main contention of the petitioner is that the second respondent initiated Section 81 enquiry. The 3rd respondent/ Co-operative Sub Registrar, conducted the enquiry without affording any opportunity and has ascertained the loss sustained by the society to the tune of Rs.32,14,994/-. Subsequently, the team from District Central Co-operative Bank Officials inspected the society and submitted the report alleging loss sustained by the said society to the tune of Rs.74,65,599/- whereas in the surcharge notice under Section 87 was issued, it is stated that the society has sustained loss of Rs.61,01,423/-. At the same time, the second respondent has lodged complaint before the CCIW CID Police, as if the society has sustained loss to the tune of Rs.93,41,994/-.

5. Pointing out the discrepancy in the amount alleged to have misappropriated from the society, the learned counsel for the petitioner would submit that there is inconsistency in the case of the society regarding the loss sustained and therefore, it is appropriate that 87 enquiry should be conducted by the officer not below the rank of Assistant Registrar. Further, he alleges that prime property of the petitioner was taken away by the President of the society by obtaining power of attorney.

6. The learned Standing Counsel appearing for the respondent would submit that the contention of the petitioner for change of officer has no basis and the alleged inconsistency in the loss sustained by the society is not incorrect.

7. The learned counsel for the respondent circulated the enquiry report conducted under Section 81, which indicates that the loss sustained by the society as Rs.61,01,423/-, which is the amount reflected in the surcharge proceedings also. Regarding the amount shown in the complaint preferred before CCIW CID Police, the learned counsel for the respondent would submit that the total amount misappropriated is mentioned in the FIR from out of the money misappropriated partial amount was repaid by the delinquent. The amount, which has been repaid, has been shown in the complaint and therefore, there is no

inconsistency as alleged by the petitioner. Insofar as the other allegations regarding the President who alleged to have grabbed the property from the petitioner, this is not a relevant facts for consideration of this writ petition.

8. In the said circumstances, this Court finds that the reasons stated in the affidavit for change of officers are not sustainable. The petitioner is therefore, bound to participate in the surcharge proceedings and put forth his case before the Deputy Registrar conducting the enquiry and he cannot have a change of enquiry officer for the reasons stated in the affidavit.

9. Accordingly, this Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar of Co-operative Societies,
Kilpauk, Chennai - 600 010.

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+1 cc to Mr.C.Prakasam, Advocate, S.R.No.86844

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(CO)
SSM(04/11/2019)