BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.11998 of 2019
and W.M.P.(MD) No.9043 of 2019

S.Murugan ... Petitioner

Vs.

1.The Deputy Director,
National Horticulture Board,
Plot NO.85 Sector 19 Industrial Area
Gurgeon 122 015
Haryana

2.The Centre Incharge,
National Horticulture Board,
Module No.37 2nd floor,
SIDCO Industrial Garments Complex,
Guindy, Chennai.

3.The Branch Manager,
Indian Bank,
Theni Branch,
No.144 Madurai Road,
Theni, Theni District. ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order vide No.NHB/LOI/33ATN0006569/2018-2019 dated 10.12.2018 on the file of the 1st respondent and quash the same as illegal and consequently direct the 1st respondent to reconsider the file afresh and grant the subsidy to the writ petitioner.

For Petitioner :Mr.P.Muthuvijayapandian
For Respondents :Mr.S.Sivaprakash for R1 and R2

Mr.Pala Ramasamy for R3

ORDER

Challenging the impugned order dated 10.12.2018 of the first respondent and for a consequential direction to the first respondent to grant subsidy to the petitioner, the petitioner is before this Court with this writ petition.

2.Heard the learned counsel for the petitioner, the learned standing counsel for the respondents 1 and 2 and the learned standing counsel for the third respondent Bank.

3.The short facts, which are required to be noticed for the disposal of the writ petition, are as follows:

That the petitioner, in order to get a loan for the establishment of poly house for horticulture purpose with the project, by name, "Commercial High Tech Horticultural Form under Poly House", made an application to the third respondent bank on 12.02.2016, based on such application, on processing the same, the third respondent, after getting legal opinion on 24.02.2016, directed the petitioner to give formal application on 28.02.2016 and thereafter, on getting appraisal report on 05.04.2016, sanctioned the loan on 24.04.2016, before which, an advance intimation on 12.04.2016 was sent by the third respondent to the first and second respondents.

4. In this regard, it is to be noted that, the first and second respondents ie., the National Horticulture Board and its Regional Centre respectively, are the authorities to sanction and release the subsidy for the said project and in this regard, it is further to be noted that, the total project cost is Rs.1.25 crore, out of which, the application for loan was made only for Rs.96 lakhs and the remaining amount would be invested by the petitioner. Out of this Rs.96 lakhs loan to be sanctioned by the third respondent Bank Rs.56 lakhs would be subsidy as per the scheme of the Government/respondents 1 and 2 and the said subsidy amount would be sanctioned and released directly by the first and second respondents to the third respondent Bank. Accordingly, the Bank would recover only remaining loan amount, after deducting the subsidy as per the scheme of the first and second respondents, from the petitioner.

5. When this is the arrangement under the Scheme to give loan for the said project to the petitioner, after having processed the application and on satisfying with the same, the third respondent Bank, after giving advance intimation about the sanctioning of the loan to the petitioner on 12.04.2016, sanctioned the loan on 24.04.2016.

6. Thereafter, it seems that, the first respondent has sought certain clarifications from the Bank on 06.09.2017 on two issues:

(i) The first issue was that, according to the first respondent, as per the information they received, the petitioner had given the application for sanctioning the loan to the bank only on 28.04.2016, whereas, the loan was sanctioned on 24.04.2016, according to the bank records. Therefore, it was not possible. Hence,the first respondent sought clarification on the first issue.

(ii) Secondly, the first respondent sought clarification from the bank that, as per the intimation from the bank, on 13.07.2016, immovable properties of the petitioner have been mortgaged as

security for availing such loan and the said mortgage has been made with deposit of title deeds pertaining to the project land also, after redeeming the same by the petitioner from the very same bank, as the said properties claimed to have been deposited as mortgage property for other loans already availed by the family members of the petitioner. Therefore, it is against the norms.
Hence, on these two issues, the first respondent sought clarification from the bank by the letter, dated 06.09.2017.

7. Thereafter, those two clarifications sought for by the first respondent bank has been clarified by the third respondent bank on 03.10.2017.

8. The necessary clarification given by the bank on 03.10.2017 is to be noted for clarity and better appreciation and the said communication of the bank, dated 03.10.2017 is extracted hereunder:

> "We chronologically list out all following facts on necessary bank procedures and formalities are followed while sanctioning Term loan under LOI Not required category, of Mr.S.Murugan, S/o.Mr.Suruliperumal, Boothipuram Village, Bodi Taluk, Theni District.
>
> A) Date of term loan application receipt- 12.02.2016-The Promoter submitted his project report, etc.-(D1)
>
> B) Date of legal opinion: 24/02/2016-(2)
>
> C) Date of Formal loan application 28/02/2016(D3)
>
> D) Appraisal report 05/04/2016 (D4)
>
> E) 12/04/2016 Advance intimation to NHB, Gurgaon & NHB, Chennai (D5-enclosed) this can be also verified in your Inward register at Gurgoan NHB office and NHB Chennai Office.
>
> F) Sanction date:24/04/2016(D6)
>
> G) Date of start of project: 24/04/2016-The Promoter brought his own margin in land development, Irrigation infrastructure works. April/May are summer month, the promoter proposed to start major poly house construction works only in June/July 2016, which will help the skilled workers and the cost of work can also be kept under control, And hence term loan release is done in later.
>
> H) Date of first release 29.06.2016-(D7-) First disbursement made.
>
> I) redeposit of title deeds:13/074/2016(D8-)
>
> And with respect to the application dated 28/04/2016 may be read 28/02/2016 and please note that Item No.A,B,C,D,E,F,G,H,I can be verified at Bank. We again Certify that all necessary & due banking processes are followed and the promoter submitted his project on 12/02/2016 and loan is sanctioned 24/04/2016, which is well within NHB Guidelines for LOI-Not required cases.
>
> We kindly ask you to process the application and arrange for JIT & Subsidy release."

9. Though such a clarification was made by the Bank to the first respondent and thereafter also some correspondences had been there between the bank and the Horticulture Board, ultimately, the Horticulture Board has passed the impugned order dated 10.12.2018, whereby, the request of the petitioner to sanction the subsidy for the said project has been rejected.

10. Challenging the said order of rejection, dated 10.12.2018 made by the first respondent, this writ petition has been filed with the aforesaid prayer.

11. The learned counsel for the petitioner would submit that, insofar as the said two queries raised by the first respondent with the bank, the bank has made a clear clarification, as the original application was made by the petitioner on 12.02.2016 and after processing the same, formal application was made on 28.02.2016 and thereafter, after advance intimation, the bank sanctioned the loan on 24.04.2016 and the first disbursement of the loan was made on 29.06.2016 and thereafter with the further disbursement of the amount, the project was completed on 28.02.2017 and in this regard, the project completion certificate also was issued.

12. The learned counsel for the petitioner would submit that, therefore, the first reason that, there is a discrepancy in the date of application is concerned, has been completely clarified by the bank. Therefore, there can be no impediment for the first respondent to release the loan.

13. Insofar as the second clarification sought for by the first respondent Board is concerned, the petitioner never mortgaged the land with regard to the project, to the bank at any point of time to any loan and the title deeds pertaining to the project land has been first time mortgaged only for this project on 13.07.2016. This has also been clarified by the bank. Despite these two clarifications and having receipt of the same, the first respondent Board has once again reiterated their stand and passed the impugned order stating the very same two reasons once again and therefore, the impugned order cannot stand in the legal scrutiny.

14. However, the learned standing counsel for the first and second respondents would submit that, though the said two clarifications have been sought for by the first respondent in their letter, dated 06.09.2017, only in respect of the date of application, some clarifications have been given by the bank. However, in respect of the mortgage of the title deeds is concerned, that too, on 13.07.2016, no satisfactory clarification had been given by the bank and as per the available records, since the title deeds have been deposited for mortgage purpose to the bank, that too, the land of the project itself on 13.07.2016, after redeeming the same from the same bank, where some documents have been mortgaged for the loan availed by the family members of the petitioner, the first respondent Board, on consideration of these factors, decided to reject the plea of the petitioner, since such a

re-submission or re-mortgage of the same property is against the norms and hence, the petitioner is not eligible to get the subsidy, accordingly, it was rejected through the impugned order. Therefore, the same does not require any interference from this Court, the learned counsel contended.

15. I have also heard the learned counsel for the third respondent Bank, who reiterated the documents filed by the petitioner, especially, the communications of the bank giving reply to the clarifications sought for by the first respondent Board.

16. I have heard the submissions of the learned counsel for the parties and have perused the materials placed before this Court.

17. In respect of the issue raised in this writ petition, it is in a very narrow compass, as only two clarifications have been sought for by the first respondent Board from the bank and according to the bank as well as the petitioner, both the clarifications had been clarified to the satisfaction of the Board. However, it is the stand of the first respondent Board that, at least in respect of the second query raised by the Board, there was no satisfactory clarification.

18. Insofar as the first clarification is concerned, ie., date of application, it is either typographical error or total misunderstanding or misconception of the dates and events.

19. At any rate, since a clarification has been given in writing by the bank on 03.10.2017, as has been extracted above, where, the dates have been clearly mentioned to state that, initial application was made by the petitioner on 12.02.2016 and formal loan application was made on 28.02.2016. Thereafter, after getting appraisal report on 05.04.2016, advance intimation had been given by the bank to the first respondent Board on 12.04.2016 and only thereafter loan was sanctioned on 24.04.2016. Therefore, there is no ambiguity in the said dates and the apprehension raised by the first respondent with regard to the date of application as if it had been made only on 28.04.2016, whereas, the loan was sanctioned on 24.04.2016 is a mistaken understanding or error crept in the communications between the bank and the Board. But the fact remains that, application was made on 12.02.2016, formal application was made on 28.02.2016, advance intimation was given on 12.04.2016, loan was sanctioned on 24.04.2016. Therefore, there can be no quarrel on the said dates. Hence, the first reason or first clarification sought for by the first respondent Board stands clarified.

20. Insofar as the second query raised by the first respondent Board is concerned, even according to them, 13.07.2016 mortgage in respect of the land of the project by the petitioner was a re-submission or mortgage after redeeming the property from the very same bank for availed some other loan by family members of the petitioner, in this regard, even though there has been a

clarification to the bank in the said communication dated 03.10.2017, since the first respondent has not sought for any further clarification on the pointed query, it can be presumed that, the first respondent has accepted that issue also. However, the fact remains that, the property has never been mortgaged by the petitioner with the third respondent Bank for any earlier loan. This has been clarified subsequently by the bank in a detailed letter dated 10.01.2019 addressed to the first respondent, where, in paragraph No.3, the bank has made the following clarification:

> "**3.We certify that said poly house project area 221/4b, 2281/8 property is not mortgaged before this said loan for poly house and taken as security only for this project. And for this property, this is the first loan, customer never took loan for this project area.**"

21. Therefore, the fact remains that, the property has never been mortgaged earlier to that of the mortgage dated 13.07.2016 and if at all the property in question is mortgaged by the petitioner, it has been mortgaged only for the current project and this has been very much clarified by the bank.

22. In this regard, if at all any further clarification required by the first respondent Board, they could have very well asked the bank to give clarification to the pointed query in this regard, but it seems that, no such attempt has been made by the first respondent Board.

23. In this regard, even though this Court asked the learned standing counsel for the first and second respondents to submit the records to state that, on what basis the first respondent Board has come to the conclusion that, the property has already been mortgaged with the third respondent bank prior to the mortgage dated 13.07.2016, the learned standing counsel, after getting instructions from the first and second respondents, made submission today before this Court that, no such record is available. However, they claimed that, they received some information or intimation from the bank.

24. In the absence of any such information or intimation from the bank to the first or second respondent to state that, the property in question has already been mortgaged with the very same bank by the petitioner for some other loan, the said reason cited by the board, without any record, cannot be sustained.

25. This Court can safely take a decision with an additional ground also in view of the detailed letter written by the bank to the first respondent dated 10.01.2019, where, in paragraph No.3, this has been clearly clarified and that paragraph has already been extracted hereinabove.

26. Therefore, the fact remains that, both the queries raised by the first respondent has been clarified by the bank and documents

are also there, intimations have been made in writing to the Board, where it has been clearly mentioned that, there is no error in the date of application and also the submission that, the documents, which have been deposited for mortgage on 13.07.2016 already been mortgaged by the petitioner, is also incorrect. Hence, these two reasons cited by the first respondent in the impugned order would not stand in the legal scrutiny.

27. Moreover, before sanctioning the loan on 24.04.2016, an advance intimation was given by the bank to the first respondent on 12.04.2016 and only thereafter, loan was sanctioned and amount has been disbursed, pursuant to which, project was completed and the project completion report also was given by the bank, which reads thus:

> “**PROJECT COMPLETION CERTIFICATE**
>
> This is to certify that Mr.S.Murugan, S/o.Suruli Perumal, Door No.W/6, WS 5-41 Main Bazaar, Boothipuram, Bnodi Taluk, Theni District, Tamil Nadu State have completed the project in full in all respects with respect to the Commercial Hi-tech Horticulture Farm under Poly House of Capsicum and Cucumber in 2.00 ac at Survey No.221/4B, 218/8 Boothipuram Village, Bodi Taluk, Theni District, Tamil Nadu State. The project was completed in full in all respects on 28.02.2017.”

28. Therefore, all these developments as well as the documents filed before this Court would combinedly go to show that, absolutely there is no scope for the first respondent to give the two reasons, as discussed above, for passing the impugned order to reject the plea of the petitioner to release the subsidy for the loan already sanctioned by the third respondent towards the petitioner, that too, at this stage, where the project has been completed.

29. In that view of the matter, this Court has no hesitation to hold that, the impugned order cannot be said to be sustained. Hence, it requires interference.

30. In the result, the impugned order is quashed. The matter is remitted back to the first respondent for reconsideration and on such reconsideration, since two reasons cited in the impugned order has been found to be unsustainable or *non est* and no other reasons have been given in the impugned order, the respondents, especially, the first respondent shall pass necessary order to clear the application/plea of the petitioner for sanctioning the subsidy, as per the eligibility of the petitioner under the scheme, which is being implemented by the first respondent and such needful shall be undertaken by the first respondent within a period of four weeks from the date of receipt of a copy of this order.

31. With these observations and directions, the writ petition is ordered. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

RR

TO

1.The Deputy Director,
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+1CC TO MR.S.SIVAPRAKASH, Advocate Sr. No. 77341

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