BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No.5687 of 2016
and
W.M.P.(MD).Nos.5119 of 2016 & 12538 of 2017

M/s. R.S.837, Sivagangai District,
Consumers' Co-operative Wholesale
Stores Limited, through the Managing
Director "Formerly the Special Officer"
Kanchirangal, Thiruppathur Road,
Sivagangai-630 562. ... Petitioner

vs.

1.The Principal District Judge,
Sivagangai.

2.The Deputy Registrar of Co-operative Societies,
Sivagangai.

3.R.Ramamoorthi ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the first respondent in C.M.A.(C.S).No.2 of 2013 and quash the order passed therein on 30.09.2015.

For Petitioner	:	Mr.S.Seenivasagam
For R-1	:	Court
For R-2	:	Mr.J.Gunaseelan Muthiah Additional Government Pleader
For R-3	:	Mr.G.Thalaimutharasu

O R D E R

The instant Writ Petition is filed, challenging the order passed by the first respondent in C.M.A.(C.S).No.2 of 2013, dated 30.09.2015.

2. The petitioner/Co-operative Society challenged the order, dated 30.09.2015 passed in C.M.A. (C.S) No. 2 of 2013 by the learned Principal District Judge, Sivagangai. The petitioner has initiated a proceeding against the third respondent, under Section

82 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred as Act, 1983) for certain lapses committed by him and inter alia framed three grave charges. (i). ***Firstly;*** the third respondent while working as a Special officer of the Sivagangai District Consumers Co-operative Wholesale Stores Limited, without obtaining prior permission, deposited the fund of the Society to the tune Rs.12 lakhs with the State Bank of Hyderabad and withdrew the deposit pre-maturely, in violation of Sections 68 read with rule 79 of the Tamil Nadu Co-operative Societies Act and Rules, thereby caused loss to the society to the tune of Rs.10,479/-. ***(ii). Secondly;*** the third respondent has purchased a land for constructing a own building to the Society by inflating value of the property and by manipulating records caused loss of a sum of Rs.5,86,855/-. ***(iii). Thirdly;*** The third respondent has indulged in manipulating records to include the vendors as members of the society in order to avail exemption of stamp duty and hence, he had caused loss to the Government to the tune of Rs.1,03,941/-by way of getting exemption for payment of Rs.60,634/-as stamp duty at the rate of 7% and a sum of Rs.40,307/-as surcharge at the rate of 5%. On enquiry, the enquiry officer found that all the charges were proved and on conclusion of enquiry, the Enquiry Officer found that the third respondent caused a total loss of Rs.5,97,334/-to the society.

3. In furtherance of the above Enquiry report, the second respondent/Deputy Registrar of Co-Operative Societies initiated a suo-motu sur-charge proceedings against the third respondent. On conclusion of proceedings, the second respondent totally exonerated the third respondent. Aggrieved over the same, the Petitioner Society preferred an appeal before the first respondent in C.M.A. (CS).No.1 of 2009. The learned Principal District Judge allowed the appeal and remanded the matter for fresh disposal to the Deputy Registrar of Co-operative Societies / Arbitrator. Pursuant to the same, the Petitioner Society was impleaded as appellant and the then Deputy Registrar was deleted from the array of parties. The second respondent / Arbitrator conducted a proper enquiry and finally, imposed a fine of Rs.5,97,334/- on the third respondent with 12% interest.

4. Aggrieved over the same, the third respondent preferred an appeal before the first respondent/Principal District Court, Sivagangai in C.M.A.(CS) No.2 of 2013, wherein, the findings of the Deputy Registrar/the second respondent herein was set aside by an order dated, 30.09.2015. Against which, the petitioner Society is before this Court.

5. Heard both sides and perused the materials available on record.

6. Section 68 of the Act, 1983, reads as follows:

" **68. Investment of funds:**

Subject to the provisions of sub-section (3) of section 66, a registered society may invest or deposit its funds in-

(a) the shares or deposits of the financing bank, or
(b) the shares of deposits of any co-operative bank, or
(c)the shares or securities of any other registered society, or
(d) any of the securities specified in section 20 of the Indian Trusts Act, 1882(Central Act II of 1882), or
(e) any other mode as may be prescribed :
Provided that no such investment shall be made in any manner as aforesaid, other than in the shares of deposits of the financing bank, except with the general or special sanction of the Registrar and subject to the such terms and conditions as may be specified by him.
For the purposes of this section, "co-operative bank" means such registered society as the Government may, be notification, specify in this behalf, to be a co-operative bank''.

7. Rule 79 of the Act, 1983 reads as follows:

79. Investment of Funds in a banking company :

(1) A society may apply to the Registrar for grant of permission to invest or deposit its funds in the deposits of a banking company, if there is no branch of the financing bank or a co-operative bank to render the banking service required by it or the existing branch of the financing bank or a co-operative bank is not able to, or cannot, render the services required by it to carry on its business. The application made to the Registrar shall be in Form No.32.

(2) The Registrar may grant permission to a society to invest or deposit its funds in the deposit of any banking company after satisfying himself that there is no branch of the financing bank or a co-operative bank available to render the banking service required by the society or a existing branch of the financing bank or a co-operative bank is not able to, or cannot, render the services required by the society to carry on its business.

(3)Such permission shall not be granted for more than one year at a time and the maximum amount

that can be so invested in any or all of such banking companies shall not be in excess of the requirements of the society for obtaining the banking services required by it and shall not result in diversion of funds outside the co-operative sector.

8. As per the above provisions, it is clear that for investing or depositing in the shares of other Co-operative Banks, registered Societies etc., other than in the shares of the financing bank, prior permission of the Registrar shall be obtained. As per Rule 79, it is mandatory to get permission from the Registrar for depositing the money in a banking company in Form 32 where there is no branch of financing bank or Co-operative Bank exist or not able to render its services to the Society.

9. Hence, it is crystal clear that when dealing with the deposits of any Co-operative Society prior permission of the Registrar is mandatory. In the instant case, the third respondent has deposited the money of the Co-operative Society in State Bank of Hyderabad, without getting permission from the Registrar, on the pretext that it fetches more interest. In that process, he has not considered the existence of the financing bank and other Co-operative Banks notified by Government within that District. The Registrar may grant permission in a banking company only when the branch of the financing bank is not available that too subject to the gap of one year period and that it shall not result in diversion of funds outside Cooperative sector. Such being the case, the act of the third respondent depositing the money in a banking company without prior permission is contrary to the statutory provisions and is a misconduct.

10. The further argument made by the learned counsel appearing for the petitioner is that the money was withdrawn prematurely by the third respondent and thereby caused loss to the society is also clearly explained in the enquiry report under Section 87 of the Act, 1983. Even though in the enquiry report, it is stated that the third respondent has made a deposit, as claimed by him and through withdrawal, he caused loss to the tune of Rs.10,479/-, the Lower Appellate Court without considering the said fact found that the charges against the third respondent were not proved and if at all the petitioner suffered loss to the tune of Rs.10,479/- by the third respondent, the petitioner should have taken only disciplinary action against the third respondent, but they ought not to have initiated any other proceedings. But, as per the provisions of Co-operative Societies Act, 1983, in addition to the criminal, departmental proceedings, surcharge proceedings can also be initiated. The first two being penal proceedings, the later is a recovery proceedings. Hence, initiation of disciplinary proceeding cannot be in lieu of recovery proceedings or vice versa. But, both

can be simultaneous. The finding of the Tribunal on this aspect is erroneous and cannot be accepted. The recovery of money as ordered in the surcharge proceedings is legal and as such sustainable.

11. In so far as the second charge is concerned, the third respondent formed a committee of nine members to search a suitable site. As contended by the learned counsel for the petitioner, it is true that all the nine members are his subordinates working in the same society and that they have made a request to purchase a common property for the society with bonafide intention. In so far as the charge of pre-determination of purchasing particular property is not proved by materials. It is also relevant to note that the third respondent had sent the proposal to the Joint Registrar of Co-operative Societies for getting permission to purchase the land at the rate of Rs.75/-(sq. ft.). The guideline rate at that relevant point of time was at Rs.23/-(sq. ft.). During the examination of the third respondent, he would categorically depose that the sale agreement was registered at Rs.71.35/- per sq.ft and an advance amount of One Lakh was also paid. The sale agreement was registered to show that the purchase rate was @ Rs.75/- per sq.ft. Later, it was approved by the Joint Registrar also. Having approved the rate of purchase and payment of sale consideration, the contention of the petitioner that it was higher than the guideline rate is not sustainable. Further allegation that he got a sale deed registered in favour of his wife at the guideline rate is also not sustainable. One cannot compare a private purchase of property with official transactions made in favour of the Society. There is no allegation against the third respondent of misappropriation of money. In this regard, the enquiry Officer in his report has stated that the third respondent has not indulged in monetary gain and infringed his rights and committed an offence and thus caused pecuniary loss to the Society.

12. The fact remains that in most of the places the market value will normally be higher than the guideline value of the immovable properties. It is a clear case that the society can register the property only at agreed rate of purchase. A Society cannot pay higher sale consideration at market value to the vendor and register the deed at a much lower guideline rate. In that view of the matter, the third respondent had purchased and registered the deed at the prevailing market rate of Rs.75/-(sq. ft.) and not at the guideline rate. Throughout the enquiry, the enquiry Officer did not find that the market value was lesser than the sale consideration. When it is not proved by the Enquiry Officer that the market value was lesser than the rate fixed for the purchase of land, it cannot be construed that the third respondent caused loss to the society. Admittedly, a proposal was sent to the Joint Registrar of Co-operative Societies who after perusing all the records and after applying his mind, accorded approval, for the purchase of the land at the prevailing market rate. If at all any illegality is attributed, it is equally attributable to the Joint

Registrar, who as per Section 87, ought to have applied his mind and acted judiciously becoming of his rank. Section 87 of the Act, 1983, reads as follows;

"**87. *Surcharge.***

(1) Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding up of a society, it appears that any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment which is not in accordance with this Act, the rules or the by - laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the board, Liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the person authorised as aforesaid thinks just: Provided that no action shall be commenced under this sub section after the expiry of seven years from the date of any act or omission referred to in this sub section : Provided further that the action commenced under this sub section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate.

(2) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum ordered under this section to be repaid to a

registered society or recovered as a contribution to its assets may be recovered as if it were an arrear of land revenue and for the purpose of such recovery the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by this act.

(4) The Registrar or the person authorised by him shall, when acting under this section, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:__

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any documents;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any court or office,

(e) issuing commission for examining of witnesses".

13. Therefore, the petitioner cannot be singled out and made a scape goat for all the charges. The Management witness, who deposed before the Enquiry Officer, categorically narrates only the functions of the Co-operative society those that are not relevant to the charges framed.

14. The further allegation is that the third respondent has involved in manipulating the records to include the vendors as members of the society in order to avail exemption of stamp duty. In so far as this charge is concerned, in his report, the Enquiry Officer has given a finding that when the Co-operative Society stood to gain and not the delinquent there is no need for manipulating the records. Accepting the same, the Lower Appellate Court has also given a finding that the said charge is not proved. This Court is also of the same view and the said charge is not sustainable.

15. In so far as the allegation that without obtaining permission as per Section 68 of the Act, the third respondent deposited the funds of the Society with another Bank and withdrew the said deposit pre-maturely and thereby caused loss to the society to the tune of Rs.10,479/- is concerned, this Court is of the opinion that the said amount shall be recovered from the third respondent. In other aspects, the findings of the lower appellate court in C.M.A.(C.S).No.2 of 2013, dated 30.09.2015 is confirmed.

16. Accordingly, the Writ Petition is partly allowed. The first and second charges against the third respondent are set aside and in other aspects, the findings of the lower appellate court in C.M.A.(C.S).No.2 of 2013, dated 30.09.2015 is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ksa/tk

To

1.The Principal District Judge,
Sivagangai.

2.The Deputy Registrar of Co-operative Societies,
Sivagangai.

+1 CC to SPL GP (SR-90643[F] dated 01/10/2019)

+1 CC to Mr.G.THALAIMUTHARASU, Advocate (SR-90801[F] dated 01/10/2019)

+1 CC to Mr.S. SEENIVASAGAM, Advocate (SR-90791[F]dated 01/10/2019)

W.P.(MD) No.5687 of 2016
30.09.2019

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