

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.37220 of 2004

B.Maximus

.. Petitioner

-vs-

1. Deputy Registrar of Cooperative
Societies (Housing)
Chengalpattu Region, Chengalpattu
Kancheepuram District

2. J.J.767 Karanodai Cooperative
Building Society rep.by its
Special Officer
Karanodai
Chennai 600 067

..Respondents

Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the order passed in Cooperative Civil Miscellaneous Appeal No.5 of 1999 dated 28.2.2004 on the file of Principal District Judge, Chengalpattu, confirming the order passed by the first respondent in his proceedings Tha.Thee.3/98-99 E dated 31.12.1998 and quash the same.

For Petitioner :: Mr.P.Ganesan for Mr.S.Mani

For Respondents:: Mrs.T.Girija
Additional Government Pleader

ORDER

Mr.B.Maximus, who was working as Cooperative Sub Registrar and posted as the Special Officer of J.J.767, Karanodai Cooperative Building Society, Karanodai, Chennai, suffered an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act in respect of administration of the cooperative society. Subsequently, a further enquiry was ordered on 3.12.97 and the report was submitted by the Deputy Registrar on 25.4.98. Based on the above report, surcharge proceedings were initiated against the petitioner, another Special Officer by name Jagadeesan, Secretary of the society by name Radha and one Clerk

by name Sadasivam. The period covered in the report is from 1.1.94 to 30.10.97. The petitioner was working as Special Officer from August, 1995 to December, 1996. Prior to the petitioner, Mr.Jagadeesan was working as the Special Officer from February, 1994 to July, 1995. Therefore, as the total loss caused to the society was arrived at Rs.1,08,925/-, a show cause notice dated 23.6.98 was issued and the petitioner submitted his detailed representation. Without considering the explanation, it is stated that the Deputy Registrar of Cooperative Societies (Housing), Chengalpattu, the first respondent herein passed surcharge proceedings on 31.12.98 fixing the liability of Rs.99,062.50p on the part of the petitioner individually and Rs.49,374/- jointly and severally along with the Clerk Sadasivam. As against that, the petitioner filed a civil miscellaneous appeal before the learned Principal District Judge, Chengalpattu in C.C.M.A.No.5 of 1999 and the learned Principal District Judge dismissed the appeal by judgment dated 28.2.2004. Challenging the same, the present writ petition has been filed.

2. Learned counsel for the petitioner submitted that the surcharge proceedings initiated against the petitioner are liable to be set aside, for the reason that the enquiry was ordered on 3.12.97 and the report was submitted on 25.4.98 within a period of four months and therefore the report itself becomes void ab initio, non est in the eye of law. Secondly, it was contended that the surcharge proceedings initiated by the first respondent are liable to be set aside, for the simple reason that the surcharge order failed to mention how the alleged shortage to the society has occurred and how much the petitioner can be held responsible. For instance, so far as item no.4 is concerned, the surcharge proceedings specifies the period from 16.2.94 to 31.10.96 for a period of 34 months, in respect of the salary given to the employees to the tune of Rs.1,37,409/-. When the society was functioning and for the services rendered, the staff members of the society are entitled to receive the salary and the petitioner has only made the payment towards their salary. But this has been wrongly found fault with. Therefore, the allegation found in item no.4 cannot be legally maintainable. Had the petitioner, being the Special Officer, failed to pay salary to the staff members, they would not have worked and would have also indulged in unwanted protest, leading to public nuisance and would have reflected the bad administration of the cooperative society. Therefore, the payment of salary to the staff members cannot be found fault with.

3. So far as item no.1 is concerned, it was contended that there is an allegation against the petitioner and the Clerk Mr.P.Sadasivam for the period from 1.1.94 to 31.10.97, in not

making the deposit to the society's account after collection of the loan from the members. However, the respondents cannot demand a sum of Rs.48,010/- from the petitioner alone, as they themselves have indicated that Mr.Sadasivam has not responded to that. Hence, the petitioner if at all is liable to pay a sum of Rs.24,005/- to the society in respect of item no.1. Coming to item no.2, the allegation put against the petitioner and Mr.P.Sadasivam is that they have not remitted the registration fee collected from the new members to the tune of Rs.1,364/-, for which the petitioner is liable to pay a sum of Rs.682/- on his part to the society. Item no.3 is not related to the petitioner. So far as item no.5 is concerned, the allegation put against the petitioner is that he had paid the advocate fee of Rs.19,000/- to the counsel, who had conducted the case on behalf of the society. When the case was already filed against the cooperative society by his predecessor, it is the responsible duty and obligation on the part of the petitioner as the successor to pay the advocate fees, failing which the case would not have been conducted properly and that would have caused great prejudice to the society. Therefore, the payment of Advocate fees of Rs.19,000/- cannot be found fault with. The learned counsel for the petitioner also further submitted that the petitioner is a senior citizen aged about 78 years and he also retired in the year 2000 on reaching the age of superannuation. But the respondents, without deducting a reasonable amount, have wrongly withheld the gratuity amount payable to the petitioner.

4. Heard the submissions of the learned Additional Government Pleader for the respondents also.

5. This Court finds merit on the submissions made by the learned counsel for the petitioner in respect of item nos.4 & 5 of the surcharge order are concerned. The reason being that so far as the item no.4 of the surcharge order is concerned, when the petitioner had only paid the salary to the staff members of the society who had worked for the period from 16.2.94 to 31.10.96 for a period of 34 months, the respondents cannot fasten the liability on the petitioner, as the staff members are entitled to receive the salary for the work assigned to them. Similarly, in respect of item no.5, when the case was already filed by the society, the petitioner being the successor is duty bound to pay the advocate fees to the counsel who had conducted the case on behalf of the society, failing which the case would not have been conducted properly and would have caused great prejudice to the society. Therefore, the impugned order passed by the learned Principal District Judge, Chengalpattu confirming the surcharge order passed by the first respondent in respect of item nos.4 & 5 shall stand quashed. However, so far as item nos.1 & 2 are concerned, as contended by the learned counsel for

the petitioner, the petitioner is liable to pay only a sum of Rs.24,005/- and Rs.682/- respectively. As item no.3 is not concerning the petitioner, the respondents are directed to settle the gratuity amount to which the petitioner is entitled to, after deducting a sum of Rs.24,687/- in respect of item nos.1 & 2, within a period of four weeks from the date of receipt of a copy of this order. With this direction, the writ petition stands partly allowed. Consequently, W.P.M.P.No.44664 of 2004 is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Registrar of Cooperative Societies (Housing)
Chengalpattu Region
Kancheepuram District
2. The Special Officer
J.J.767 Karanodai Cooperative Building Society
Karanodai
Chennai 600 067

+1 cc to M/s. C.S. Associate, Advocate Sr.No. 1889
+1 cc to Special Government Pleader (co-operation)

W.P.No.37220 of 2004

RSI (CO)
NSP(19/5/2020)

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