

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2020

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Writ Petition No.10832 of 2020 and
W.M.P.Nos. 13145 & 13147 of 2020

J.Thangavel

.... Petitioner

-Vs-

- 1) The Joint Registrar of Cooperative Societies
Kancheepuram Region, Vandavasi Salai
Opp.Collector Office, Kancheepuram
District.
- 2) The Deputy Registrar of Cooperative
Societies, Chengalpet Circle
Chengalpet, Chengalpet District.
- 3) The President
Oragadam Primary Agricultural
Cooperative Credit Society
Oragadam Village and Post
Chengalpet District.
- 4) The Cooperative Sub Registrar
Enquiry Officer, O/o.Deputy Registrar
of Cooperative Societies, Chengalpet
Circle, Chengalpet District.

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the entire records relating to the impugned order passed by the 2nd respondent in his proceedings NO Surcharge 1/2020-2021 A3 dated 23.06.2020 and consequential order passed by the 2nd respondent in his proceedings Na.Ka.No.764/2020/A3 dated 29.06.2020.

For Petitioner :Mr.C.Prakasam

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader

O R D E R

The petitioner at the relevant time, was working as Assistant Secretary in the third respondent Society. He was placed under suspension on 03.08.2019 for certain acts of misconduct. The petitioner appears to have submitted his explanation stating that there was no fault on his part in discharge of his duties and he has only followed what is provided under the Rules and also in terms of some Settlement being arrived at under Section 18(1) of the Industrial Disputes Act.

2. However, not satisfied with the explanation, Section 81 enquiry was conducted and on the conclusion of the Section 81 enquiry, causing loss to the Society was found to be established against the petitioner. Pursuant to that, the second respondent issued Surcharge Notice under Section 87 of the Cooperative Societies Act. Thereafter, by proceedings dated 29.06.2020, attachment notice was issued of the immovable property belonging to the petitioner. Challenging the same, the petitioner is before this Court.

3. The main ground of challenge to the Surcharge Proceedings and the Attachment notice is that the Enquiry Report of Section 81 enquiry was not furnished to him and without furnishing the same, it is impermissible for the second respondent to go ahead with the Surcharge proceedings. Moreover, it is also stated in the affidavit filed in support of the writ petition that his act which was misconstrued as dereliction of duty is incorrect and he had acted only in accordance with the Settlement entered into Section 18 of the Industrial Disputes Act. In any event it is not for this Court to appreciate the factual averments of the petitioner as an explanation to the Surcharge Proceedings or the Section 81 Enquiry. It is open to the petitioner to convince the authority as to his conduct with reference to the discharge of duties.

4. However, in regard to non-furnishing of Section 81 Enquiry Report is concerned, notice was ordered in the writ petition. In response to the notice, Mr.L.P.Shanmugasundaram, learned Special Government Pleader entered appearance and the counter affidavit has been filed. In the counter affidavit, it is stated that on 10.08.2020, copy of the Section 81 Enquiry Report was sent to the address of the petitioner and he was also directed to appear before the second respondent Office on any working day on 19.08.2020, 20.08.2020 and 21.08.2020 to take note of the required documents.

5. Learned counsel for the petitioner would submit that even after furnishing of the Enquiry Report and an opportunity to take note of the documents was given to the petitioner, still there is illegality in the proceedings of the second respondent.

6. At this, learned Special Government Pleader appearing for the respondents would submit that the main ground on which the writ petition has been filed bypassing the Section 87 proceedings is only non-furnishing of the Enquiry Report which has now been furnished. Therefore, it is for the petitioner to face the Surcharge Proceedings and only thereafter he could have any cause of action for approaching the Tribunal or before this Court.

7. Considering the above narrative, this Court is of the view that the petitioner is under obligation to face the Surcharge Proceedings and the legal objection to the proceedings ie., non-furnishing of the Section 81 Enquiry Report has since been rectified and removed, this Court cannot stall the further Surcharge Proceedings in the matter. It is for the petitioner to face the Section 87 proceedings and if any adverse order is passed, it is still open to him to work out his remedy in the manner known to law.

8. While so, this Court's jurisdiction under Article 226 of the Constitution of India cannot be invoked at this preliminary stage. In this Circumstances, this Court is of the considered view that the writ petition need not be entertained any further and the same is liable to be dismissed. Therefore, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

9. However, it is clarified that no precipitous action be taken against the petitioner till the conclusion of the Section 87 Proceedings against him.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

KST

To

- 1) The Joint Registrar of Cooperative Societies
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Opp.Collector Office, Kancheepuram
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+1 CC to Mr.L.P.Shanmugasundaram, Advocate sr 30526.

+1 CC to Govt. Pleader sr 30474.

W.P.No.10832 of 2020

VSNII (CO)
SP(19/10/2020)

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