

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.20643 of 2014

G. Gopal

...Petitioner

-vs-

1. The Special Officer,
DD 527, Kelamangalam Agri Producers Coop
Marketing Society, Kelamangalam, Krishnagiri District.
2. The Deputy Registrar of Coop Societies,
(Enquiry Officer) Krishnagiri.
3. The Tribunal for Coop Cases (Principal Dist Judge)
Krishnagiri. ... Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the order dated 21.01.2013 of the 3rd respondent made C.M.A(Coop Society) 10 of 2011 along with the order Tha Thi 1/2009 Sa Pa 1 dated 29.06.2009 of the 2nd respondent, quash both the order in so far as the petitioner is concerned.

For Petitioner : Mr. S. Venkataraman
For Respondents : Mr.M.S.Palaniswamy [R1]
Mr.R.Balaramesh[R2]
R3- Tribunal

ORDER

Heard Mr.S.Venkataraman, learned counsel for petitioner, Mr.M.S.Palaniswamy, learned counsel for 1st respondent and Mr.R.Balaramesh, learned counsel for 2nd respondent.

2. With consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

3. The petitioner has challenged the order passed by the Principal District Court, Krishnagiri, which functioned as a Co-operative Tribunal and testing the correctness of the order of sur-charge passed by the 2nd respondent against the petitioner and others.

4. It cannot be necessary for this Court to dwell into the factual matrix as a thorough exercise was done by the District Court while testing the correctness of the order of surcharge passed by the 2nd respondent dated 29.06.2009. The order having been passed by the Principal District Court, this Court can test the correctness of the order in exercising the jurisdiction under Article 227 of the Constitution of India and not under Article 226 of the Constitution of India as held by Hon'ble Division Bench in a recent decision. Though this petition has been filed under Article 226 of the Constitution of India, which needs to be construed as a petition under Article 227 of the Constitution of India and if that is so that can be looked into as a petition under Article 227 of the Constitution of India and to decide whether the order passed by the Principal District Court suffers from perversity or there is any illegality committed by the Tribunal. In the absence of any such ground, this Court will not interfere with the findings of the Principal District Court.

5. On a perusal of the order impugned, this Court finds no perversity in the approach of the Tribunal except with regard to the order of recovery, which was passed by the 2nd respondent, which was confirmed by the Tribunal. In this petition, this Court concerned about the quantum of loss caused to the Society under item 3, which is to the tune of Rs.2,60,804/-. The 2nd respondent has held that four(4) persons to be jointly and severally liable to make good this loss, which is caused to the Society namely 1. Thiru.I.Vinayagamoorthis, Special Officer 2. Thiru.S.Thirunanamoorthis, Secretary, 3. Thiru.Gopal, Cashier, 4. Thiru.T.S.Santha Basha, Lorry Contractor. The 4th person is not a member of the society and therefore, the order of surcharge cannot be enforced against him. While considering the correctness of the order, the Tribunal (Principal District Court) should have noted the same and to this extent, the order is erroneous.

6. With regard to the remaining three persons, the 3rd person Mr.G.Gopal is the writ petitioner, who is the only person, who had challenged the order of surcharge before the Tribunal and now before this Court. The other persons namely Thiru.I.Vinayagamurthy, Special Officer and Thiru.S.Thirunanamurthy, Secretary have not challenged the surcharge order dated 29.06.2009 and the same has become final as against those two persons. Therefore, the Society should have been ordered to recover the amount jointly and severally from the three persons namely the Special Officer, Secretary and the Cashier. However, what has now been done is that the entire amount has been recovered from the petitioner, the Special

Officer and the Secretary can be kept free, though they have not filed appeal against the surcharge order and accepted the same. This virtual issue has not been noted by the Tribunal in the impugned order. To that extent, this Court is inclined to interfere with the impugned order.

7. In the result, the writ petition is partly allowed and the order passed by the 3rd respondent Tribunal is modified to that extent that one third of the total amount recoverable under the column No.3 shall be recovered from the petitioner G.Gopal, Cashier of the Society and the remaining shall be recovered from Thiru.Vinayagamurthi, Special Officer and Thiru.S.Thirunanamurthy, Secretary. Liberty is granted to the respondent to proceed against the Lorry Contractor Thiru.T.S.Santha Basha by approaching the appropriate Civil forum. Since the entire amount was recovered from the petitioner, the respondent is directed to retain one third remaining amount of the petitioner by crediting the same to the bank account of the petitioner within a period of eight(8) weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.S.VI)

/True Copy/

Sub Assistant Registrar

To

1. The Special Officer,
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Marketing Society, Kelamangalam, Krishnagiri District.
2. The Deputy Registrar of Coop Societies,
(Enquiry Officer) Krishnagiri.
3. The Tribunal for Coop Cases (Principal Dist Judge)
Krishnagiri.

+1cc to Mr.M.S.Palaniswamy, Advocate Sr.No.3845
+1cc to Mr.S.Venkataraman, Advocate Sr.No.4426
+1cc to The Government Pleader Sr.No.5334

AKM/11.03.2020 /3P-7C/

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