

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.NO.14312 OF 2017

K.Rajavel

.. Petitioner

Vs

1. The Deputy Registrar of Coop Societies,
Cuddalore Circle,
No.6, Dhandapani Nagar, Semmandalam,
Cuddalore - 607 001.
 2. The Special Officer
(now the President),
E.2611 Vellakarai Primary Agricultural
Cooperative Credit Society,
Vellakarai Post - 607 004.
Cuddalore Taluk & District.
- ... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the entire records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.4110/2009/Ku.Na, dated 25.08.2011, and the same was confirmed by the District Court/Coop. Tribunal, Cuddalore, in C.M.A.(C.S.) No.1 of 2012, dated 04.03.2017 and quash the same.

For Petitioner : Mr.C.Prakasam

For R1 : Mrs.T.Girija, AGP

For R2 : Mr.L.P.Shanmugasundaram, Spl.GP

ORDER

This writ petition has been filed by former Assistant Secretary of the second respondent Cooperative Society challenging the order passed by the District Court/Cooperative Tribunal, Cuddalore, in C.M.A.(CS).No.1 of 2012, dated 04.03.2017. Though this petition has been filed under Article 226 of the Constitution of India, in the light of the

authoritative pronouncement of the Hon'ble First Bench of this Court in E.S.Sundara Mahalingam vs. The Special Tribunal for Co-operative Cases (District Judge), Tirunelveli, W.A.No.4021 of 2019, dated 22.11.2019, this petition has to be treated as a petition under Article 227 of the Constitution of India and either party aggrieved by this order is not entitled to avail the remedy of intra-Court appeal.

2. The petitioner had challenged the surcharge order passed by the first respondent dated 25.08.2011 holding the petitioner guilty of having caused loss to the Society. The contention advanced by the learned counsel for the petitioner is in fact reiteration of all the grounds raised before the Tribunal. The sheet-anchor of the submission of Mr.C.Prakasam, learned counsel for the petitioner, is that the petitioner was only working as Assistant Secretary and had absolutely no power to sanction loan and it is by the higher officials and therefore, the petitioner cannot be held responsible. Further, the crop loans are sanctioned only after the applications are scrutinized and approved by the Special Officer, Field Officer and other Higher Officials of the Cooperative Department. Furthermore, the chitta, adangal and other revenue records produced by the borrowers are also verified by the Special Officer and Field Officer. Therefore, the petitioner would plead that he is absolutely innocent and has no role to play for sanctioning of the alleged bogus loans.

3. Further, it is submitted that the Government announced the waiver scheme waiving the agricultural loan and the eligibility of the borrowers was scrutinized by Five Member Committee consisting of Joint Registrar of Region, concerned Deputy Registrar and three Officers of the Cooperative Department and only after considering the eligibility, waiver was approved and consequently sanctioned. It is submitted that the petitioner had no role to play in this process. Further, it is submitted that though Surcharge Authority, in his order dated 25.08.2011, states that the petitioner did not appear for the enquiry, in the very same paragraph, namely, paragraph No.5, the first respondent refers to the petitioner's explanation dated 29.06.2011, which would show that there is total non-application of mind.

4. Mrs.T.Girija, learned Additional Government Pleader appearing for the first respondent, submitted that the Surcharge Authority has clearly brought out the modus-operandi of the petitioner and examined all the documents and found that the petitioner was responsible for creating bogus documents and obtaining the loans in the name of his father, mother and other family members and misappropriated the amount and thereafter, availed the benefit of waiver scheme announced by the Government

and has fully benefited. This order passed by the Surcharge Authority was tested for correctness by the Tribunal and the Tribunal, after considering the facts and circumstances of the case and the evidence placed before it, has dismissed the appeal and therefore, this Court may consider and confirm the order passed by the Tribunal.

5. Heard Mr.C.Prakasam, learned counsel appearing for the petitioner and Mrs.T.Girija, learned Additional Government Pleader appearing for the first respondent.

6. After elaborately hearing the learned counsel appearing for either parties, what is required to be seen in the instant case that whether the approach of the Tribunal in this matter was just and proper and whether there was any arbitrariness and perversity in the approach of the Tribunal. On reading of the impugned order passed by the Tribunal, this Court finds that none of the ground was made out by the petitioner nor canvassed in the writ petition or argued before the Court. The submission of the petitioner on the duties and responsibilities of the Assistant Secretary is only to shift the blame on the Special Officer, Field Officer and other Higher Officials of the Cooperative Department. Further, after considering the facts and circumstances of the case, it is seen that the petitioner has played fraud and the petitioner is the person who has handled the loan application. Subsequently, when cheques were drawn, the petitioner endorsed the signature and also endorsed to pay the cash.

7. Furthermore, the loans have been obtained in the names of 12 persons, who are none other than the petitioner's father, mother and close relatives. The same set of documents have been used to obtain the loans in the names of different persons. Thus, through the evidence, it has been clearly brought out that the petitioner had a vital role in sanctioning of loans.

8. Further, during the enquiry conducted under Section 81 of the Act, the petitioner has accepted that his duty was to prepare the loan file and 12 bogus loans obtained in the name of his father, mother and other family members were also availed by him and he has also enjoyed the benefit of waiver. Further, it has been brought out clearly that the petitioner has approached the Village Administrative Officer and got bogus chitta and adangal in the name of 11 persons as if the land belonging to those 11 persons and they were cultivating the land. Thus, fraud has been played and the loans have been secured by the petitioner in the name of his father, mother and other relatives. If, according to the petitioner, father, mother and other relatives had genuine transactions with the respondent

Society, nothing prevented the petitioner from examining them either before the Enquiry Officer under Section 81 of the Act or before the Surcharge Authority under Section 87 of the Act or before the Tribunal, but, the petitioner did not resort to such procedure, which shows that the petitioner had created bogus records and availed the benefit. That apart, the eligibility for waiving of loan was also certified by the petitioner by putting his signature. Thus, the Tribunal has rightly confirmed the order passed by the first respondent by taking note of the evidence on record and in this petition under Article 227 of the Constitution of India, this Court cannot re-examine the factual matters and act as if it is second appellate Court over the findings recorded by the first respondent.

9. Thus, for all the reasons stated above, the writ petition fails and the same is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Registrar of Coop Societies,
Cuddalore Circle,
No.6, Dhandapani Nagar, Semmandalam,
Cuddalore - 607 001.
2. The Special Officer
(now the President),
E.2611 Vellakarai Primary Agricultural
Cooperative Credit Society,
Vellakarai Post - 607 004.
Cuddalore Taluk & District.

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.13140
+1cc to the Special Government Pleader, S.R.No.12378

W.P.No.14312 of 2017

MG(CO)
CS/09/03/2020