



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2020

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD)No.536 of 2020

and

C.M.P. (MD)No.3384 of 2020

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Umaiyaal

: Petitioner/Appellant

.. Vs ..

1.Assistant Director,
Handlooms and Textiles,
210, Palam Station Road,
Sellur, Madurai - 2.

2.The Assistant Director/Surcharge Proceeding Officer,
Handlooms and Textiles, Virudhunagar.

3.The Assistant Director/Arbitrator,
Handlooms and Textiles,
210, Palam Station Road,
Sellur, Madurai - 2.

: Respondents/Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to call for the records of the fair and decretal order dated 20.11.2019 passed in C.M.A.(CS)No.5 of 2011 on the file of the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur/Appellate Tribunal for Srivilliputhur Co-operative Society Case and set aside the same thereby allow the C.M.A.(CS)No.5 of 2011 by setting aside the orders passed in the proceedings dated 03.08.2009 in Ta.Na.2/09/G of the second respondent and consequent conditional attachment order passed by the first respondent.

For Petitioner

: Mr.I.Suthakaran

For Respondents

: Mr.J.Gunaseelan Muthiah

Additional Government Pleader

ORDER

This Civil Revision Petition is directed against the order passed by the Srivilliputhur Co-operative Society Cases' Appellate Tribunal, namely, the Principal District and Sessions Court, Virudhunagar at Srivilliputhur, in C.M.A.(CS) No.5 of 2011.

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

2.1.The revision petitioner is the wife of one Marimuthu who died on 01.07.2005. The husband of the revision petitioner Thiru.Marimuthu was employed as a Clerk in the Cooperative Society

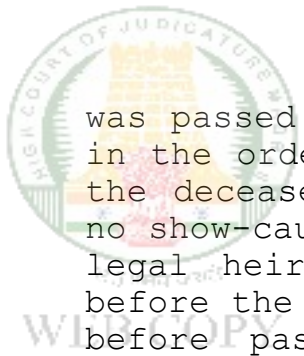


by name MH200 Subbulapuram Sri Murugan Handloom Weavers' Cooperative Society. An enquiry was directed by the Assistant Director of Handloom and Textiles, Madurai Region, following certain irregularities noticed. A report of the Enquiry Officer was submitted under Section 81 of the Tamil Nadu Cooperative Societies Act on 10.01.2007. Thereafter, surcharge proceedings were initiated by the Assistant Director of Handloom and Textiles. By proceedings dated 03.08.2009, the Assistant Director, Handlooms and Textiles passed surcharge order following the procedure under Section 87 of the Tamil Nadu Cooperative Societies Act. A sum of Rs.10,34,269.15 was arrived at as loss caused to the society known as MH200 Subbulapuram Sri Murugan Handloom Weavers' Cooperative Society. Though notice was issued to the Special Officer and erstwhile employees, no notice was issued to the revision petitioner or any other legal heirs of the deceased Marimuthu. However, under several heads, the legal representatives of the deceased Clerk by name Marimuthu, was shown as the persons responsible for the loss caused to the society in the said order.

2.2.Pursuant to the surcharge order under Section 87 of the Tamil Nadu Cooperative Societies Act, dated 03.08.2009, a notice under Section 167 of the Cooperative Societies Act was issued to the revision petitioner. The said notice also accompanied by a conditional attachment order under Section 167(1) of the Cooperative Societies Act dated 26.08.2009. Challenging the notice issued and the surcharge proceedings, the revision petitioner preferred an appeal before the Cooperative Special Tribunal-cum-Principal District Court, Virudhunagar at Srivilliputhur in C.M.A.(CS) No.5 of 2011. Before the appellate forum, the revision petitioner contended that she was not heard before passing any order under Section 87 of the Cooperative Societies Act or before passing an order of attachment. It is further submitted that the property which was attached does not belong to the deceased delinquent, namely, Marimuthu. It is specifically contended that the recovery order is null and void as far as the petitioner's husband is concerned as the proceedings were initiated after the death of the said Marimuthu who died on 01.07.2005. Though it is admitted that the deceased by name Thiru.Marimuthu left behind the revision petitioner and four other children as his legal heirs, it was further contended that none of the legal heirs is connected with the functioning of the society nor they are responsible for the loss if any caused to the society.

2.3.The learned Principal District Judge while acting as the Cooperative Special Tribunal dismissed the appeal by order dated 20.11.2019. Aggrieved against the same, the above Civil Revision Petition is filed.

3.Before this Court, the fact that the Clerk of the Cooperative Society by name Marimuthu died on 01.07.2005 is not disputed. Similarly, the fact that the enquiry under Section 81 of the Act was directed only by proceedings of the Assistant Director, Handlooms and Textiles, on 12.04.2006 is not disputed. The report under Section 81 of the Act was drawn only on 10.01.2007. Surcharge order

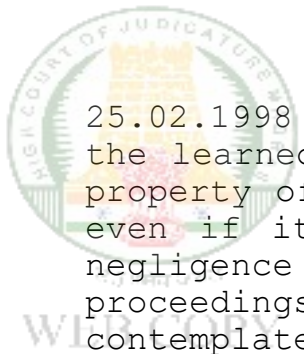


was passed by proceedings dated 03.08.2009. There is no indication in the order that the petitioner and other legal representatives of the deceased Marimuthu are heard. To the specific contention that no show-cause notice was issued to the revision petitioner and other legal heirs of the deceased Marimuthu, no material was produced before the Special Tribunal indicating that the petitioner was heard before passing the surcharge order. Though the copy of the surcharge order was marked to the revision petitioner, the revision petitioner has taken a stand that she was not given a copy of the order and that the same was also obtained only after the attachment order was passed under Right to Information Act. The surcharge proceedings has been initiated against several employees including the husband of the revision petitioner after his death. Insofar as the proceedings against the petitioner's husband is concerned, the whole thing is void and hence, this Court has to accept the contention of the revision petitioner that her properties cannot be attached even if it is proved that her husband is guilty of negligence and liable to pay the amount for the loss caused to the society. The learned Counsel appearing for the revision petitioner relied upon a judgment of the Division Bench of this Court dated 11.12.2018 in W.A.(MD)No.1511 of 2018 in the case of **The Management, R.A.No.18, Thiruvengadapuram Primary Agricultural Cooperative Credit Society rep. by its President and S.Rathinam and another** wherein it is held as follows:

"8. As per the provisions of the Tamil Nadu Co-operative Societies Act and the Rules, this Court is of the view that the appellant cannot presume that every property stands in the name of the wife of delinquent against whom surcharge proceedings are initiated as the property purchased out of the money provided by the delinquent so that the same could be attached as a property of the delinquent.

9. So long as the provision of Co-operative Societies Act or Rules framed therein do not contemplate a statutory fiction or presumption in favour of the Society to proceed against the property of a stranger, this Court is of the view that the order impugned in the Writ Petition cannot be sustained. However, it is open to the Registrar or the person authorised by him acting under Section 87 of the Act to initiate action to proceed against the property in accordance with law after establishing the fact the property of a close relative of the delinquent was in fact the property purchased out of money provided by the delinquent. In that view of the matter, we do not find any reason to interfere with the order passed by the learned Single Judge of this Court, allowing the Writ Petition."

4. By referring the above judgment, the learned Counsel appearing for the revision petitioner submitted further that the property of the revision petitioner which is sought to be attached belonged to her mother and that by virtue of a settlement deed dated



25.02.1998 the same was settled in favour of the petitioner. Hence, the learned Counsel appearing for the petitioner submitted that the property of the petitioner cannot be attached or proceeded against, even if it is found that the petitioner's husband was guilty of negligence which caused great loss to the society. Surcharge proceedings can be initiated against any employee of the society as contemplated under the provisions of the Tamil Nadu Cooperative Societies Act. However, the liability of the employee of the society is personal and hence, cannot be saddled on his legal representatives unless there is specific provision under the Cooperative Societies Act. Even applying common law principles, unless the properties of the employees of the cooperative society is inherited by his legal representatives, it is not possible for the society to initiate surcharge proceedings against the legal heirs of the deceased employee. In the surcharge proceedings, it is seen that the liability was fastened on the deceased Clerk of the society on the basis of the statement of the other employees. Without fixing responsibilities on the basis of records, the liability was fixed for substantial amount only against the deceased employee, namely, the husband of the revision petitioner. Be that as it may, the petitioner's property can never be attached unless there are material to show that the property was acquired in the name of the petitioner out of the money provided by the petitioner's husband. There is no material produced to indicate that the property that was acquired by the petitioner was out of the money provided by the petitioner's husband. The settlement deed dated 25.02.1998 shows that the property belonged to the petitioner's mother was gifted in favour of the petitioner and there is no material to disbelieve the statement of the petitioner born out from records.

5. For the reasons stated above, this Court is unable to sustain the order of the Principal District Judge, Srivilliputhur, in C.M.A. (CS) No.5 of 2011. Accordingly, this Civil Revision Petition is allowed and the order passed in C.M.A. (CS) No.5 of 2011 is set aside. The surcharge proceedings initiated by order dated 03.08.2009 is void and the subsequent notices issued under Section 167 of the Act, dated 26.08.2009 and the consequential conditional attachment order dated 26.08.2009 are illegal and hence, set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar (CS)



To

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210, Palam Station Road,
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Madurai - 2.

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210, Palam Station Road,
Sellur,
Madurai - 2.

4. The Principal District and Sessions Court/
Appellate Tribunal for Srivilliputhur Co-operative Society,
Virudhunagar District at Srivilliputhur.

+1 CC to M/s.I. SUTHAKARAN, Advocate (SR-13775[F] dated
07/08/2020)

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06.08.2020

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