IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.03.2021

Pronounced on : 24.09.2021

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.NO.7215 OF 2021

AND

W.M.P.NOS.7715 & 7716 OF 2021

1.Manoharan

2.K.Thirunanasambandam

3.T.Balu

4.M.Anitha ... Petitioners

vs.

1.The Special Officer / Joint Registrar / Administrator, Now Managing Director, Villupuram District Central Co-operative Bank, No.2, Hospital Road, Villupuram.

2.The Deputy Registrar of Co-operative Society, Collectorate Complex, Villupuram.

3.The Principal District Judge, Villupuram. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records in connection with the impugned surcharge proceedings issued by the 2nd respondent bearing ref.No. ந,க,எண் .953/2013/குநஇ 957/2013/குநஇ 1040/2013/குநஇ dated 24.03.2020 received by the petitioners on 17.11.2020 and 955/2013/Fe dated 17.06.2020 received by the petitioner on 19.11.2020 and quash the same and further direct the 2nd respondent to conduct fresh enquiry after giving fair opportunities to the petitioners.

For Petitioners : Mr.Raja
for Mr.M.Kaviveerappan

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader
for R.1 & R.2

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ORDER

This writ petition is filed as against the surcharge order passed by the second respondent in e.f.vz;.953/2013/Fe, 957/2013/Fe, 1040/2013/Fe, dated 24.03.2020 and in e.f.vz;.955/2013/Fe dated 17.06.2020.

2. This is a second round of litigation as against the surcharge proceedings. The second respondent has already passed such an order under Section 87(1) of the Tamil Nadu Co-operative Societies Act, 1983, [hereinafter referred to as 'the Act'] as against the writ petitioners on 07.02.2013, which was challenged by these petitioners before the Principal District Court, Villupuram, in CO-OP CMA.Nos.5 to 10 of 2013 on the ground that the enquiry report under Section 81 of the Act and the 100% loan verification report were not furnished to them and without the same, the surcharge proceedings initiated as against them are liable to be quashed. The learned District Judge, by order dated 29.07.2016, set aside the impugned notices dated 07.02.2013 and remanded the matter to the second respondent to proceed with the enquiry under Section 87 of the Act, after furnishing the enquiry report conducted under Section 81 of the Act to the petitioners.

3. The petitioners 1 to 3 herein have filed separate writ petitions before this Court in W.P.Nos.10019 to 10021 of 2017 as against the orders of the learned District Judge in CMA.Nos.5 to 7 of 2013, dated 29.07.2016, insofar as remanding the matter to the second respondent to proceed with the enquiry. These writ petitions were dismissed by this Court by order dated 25.04.2017, based on the dictum laid down in *C.Kamaraj v. The Registrar of Co-operative Societies, Chennai and Others*, reported in *2017 (1) CTC 258*, wherein, this Court has held that non-submission of the report to the petitioner would not vitiate the entire proceedings and gave liberty to the concerned authorities to proceed further, after furnishing the copy of the enquiry report. Thereafter, the second respondent proceeded with the enquiry and passed the present impugned proceedings dated 24.03.2020 and 17.06.2020, which were received by the petitioners on 17.11.2020 and 19.11.2020, respectively.

4. Mr.Raja, learned Counsel appearing for the petitioners submitted that enquiry surcharge notice under Section 87 should accompany the enquiry report under Section 81. But, in this case, notice has been issued without furnishing the report under Section 81 of the Act. He further submitted that the 100% loan verification report is also an essential document for the petitioners to defend themselves during the enquiry, but the same was also not furnished. On these grounds, the petitioners have approached the District Court and the learned District Judge, by order dated 29.07.2016, set aside the notices and remanded the matter for fresh consideration, by holding that the enquiry officer ought to have furnished the enquiry report under Section 81 as well as the 100% loan verification report to the petitioners. This common order has also been confirmed by this Court in W.P.Nos.10019 of 10021 of 2017. But, even then, the full report was not furnished to the petitioners.

5. The learned Counsel further submitted that the issue arises out of disbursal of loan to self help groups. But the Bank has not issued any loan directly to the members of the self help groups. The loans were given to the members of the self help groups by the motivators and the representatives of the self help groups. There is no willful negligence on the part of the petitioners, however, a finding has been issued as against these petitioners.

6. Per contra, Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the respondents 1 & 2 submitted that the petitioners, misusing their position, have created bogus loan records and misappropriated to a large extent. Therefore, an enquiry was contemplated in the year 2011 under Section 81 of the Act. During the enquiry, the petitioners have taken a stand that they have issued the loans without verifying the identity of the parties, on the compulsion of the higher authorities. They have not verified any records to ascertain the identity of the borrowers and their addresses. Based on the enquiry report, surcharge proceedings were initiated as against the petitioners, it was also proved and a final order has been passed in the year 2013. On a challenge made to the final order, the learned Principal District Judge, Villupuram, while quashing the order, granted liberty to the second respondent to proceed further, after furnishing the report under Section 81 of the Act.

7. Subsequent to the orders of the District Court, the petitioners have filed writ petitions and dragged the proceedings for another three years. After the orders of the Writ Court dismissing the writ petitions, the proceedings commenced in the year 2018. He further submitted that as directed by the learned District Judge, the enquiry reports were communicated to the petitioners by proceedings in ந,க,எண்,957/2013/குந(2),(1) dated 09.11.2017 and in ந,க,எண்,1040/2013/குந (1) 21.11.2017. But the petitioners have not acknowledged the same. Therefore, paper publication was made on 01.10.2018, calling upon the petitioners to collect the report under Section 81 of the Act. But,

according to the learned Special Government Pleader, they have not responded for the paper publication. Again, by enclosing the above documents, a further communication was made through registered post, which were received by all the petitioners, except the second petitioner, as the post was returned unclaimed. Therefore, insofar as this petitioner is concerned, the notice was affixed in the door and compound of his house, in the presence of the Village Administrative Officer. Likewise, there were several communications between the petitioners and the Department regarding the enquiry, of which, some were received by the petitioners and some were returned as unclaimed. But, all the petitioners have addressed the Department and sought for the enquiry report under Section 81 and the 100% loan verification report. On one hand, they made the notices to return as unclaimed and on the other, they have sought for details.

8. He further submitted that on 09.03.2020, the Department, in the presence of the learned Principal District Judge, Villupuram, has handed over the enquiry report under Section 81 of the Act to the petitioners and the 100% loan verification report was also handed over to the petitioners. Therefore, they have complied with the earlier orders of this Court and only as per the orders of this Court, the enquiry was proceeded with, but the petitioners have dragged on the proceedings by one way or the other and therefore, requested this Court to dismiss this writ petition.

9. This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

10. The Cooperative movement in India was started even during the British period aiming to eradicate local money lenders who usually exploit the farmers by charging unreasonable rates of interest. Agricultural credit societies were established with the promulgation of Cooperative Credit Societies Act 1904. Now, Cooperatives all over the world have become an effective and potential instrument of economic development. The Cooperative Movement in Tamil Nadu has witnessed over the decades substantial growth in diverse areas of economy. Cooperatives are envisaged as an instrument for implementing many important policies like agricultural credit, urban credit, market intervention, price support for agricultural commodities through Cooperative Wholesale stores, Public Distribution system etc., From a small beginning, the Cooperative movement in Tamil Nadu has grown in strength over the years. Opening of a Village Cooperative credit society in Thiroor in Thiruvallore District in 1904 marked the advent of the Cooperative movement in Tamil Nadu ushering in a new era of services for the people of the state, particularly the agriculturist families. From Agricultural Banks to Marketing societies and Consumer Cooperatives provide service to the people in various economic activities.

11. But now, it appears that the movement is destroyed considerably due to the mismanagement in the Societies. Almost all the Housing Societies in this State are closed and the volume of cases filed by the Officers of the Cooperative Societies as against the enquiry report under Section 81 and the surcharge proceedings would expose the volume of irregularities and misappropriation on account of maladministration of the Societies.

12. This is a clear case as to how the funds of the Societies have been misused. The Registrar of Cooperative Societies vide Circular No.21 of 2008 dated 09.07.2008, instructed all the District Central Cooperative Societies to provide loan of a sum of Rs.5,000/- per head to the self help groups. The members of self help groups and petty traders are eligible to get loan of a sum of Rs.10,000/- each. As per the Circular, the respective Branch Managers shall verify the eligible loan applications and open a savings bank account and thereafter, sanction the loan, which will be credited in to their savings bank account. It appears that taking advantage of this position, a fraud has been committed. Therefore, an enquiry under Section 81 of the Act was ordered on 20.01.2011 and the Enquiry Officer has also submitted his report on 30.06.2011. Based on the enquiry report, surcharge proceedings under Section 87 of the Act was initiated and the Deputy Registrar of Cooperative Societies issued surcharge notice to the petitioners on 13.02.2012.

13. It appears that the documents have been seized by the police pursuant to the criminal case and most of the documents were in the Judicial Magistrate Court and therefore, the petitioners were permitted to peruse the records. The petitioners were also provided with an opportunity during the surcharge proceedings to offer their explanations and they have taken a stand that there is no guidelines enabling them to verify the disbursal and that the loan amounts were disbursed on the compulsion of higher officials. Finally, the surcharge order under Section 87(1) of the Act was passed by the second respondent on 07.02.2013. As against the same, the petitioners have preferred CMA.Nos.6 to 8 of 2013. The said appeals were taken up together along with two more appeals and by a common order dated 29.07.2016, the learned Principal District Judge set aside the order passed by the second respondent, by holding that the enquiry report under Section 81 of the Act has to be furnished to the petitioners and remanded the matter for fresh consideration. As against the same, the petitioners 1 to 3 have preferred writ petitions before this Court in W.P.Nos.10019 to 10021 of 2017 and they were dismissed by this Court by order dated 25.04.2017. Thereafter, the second respondent proceeded with the enquiry and said to have furnished the enquiry report under Section 81 of the Act to the petitioners vide letter dated 09.11.2017 and 21.11.2017. But the petitioners have not acknowledged the same and therefore, paper publication was effected on 01.10.2018 calling upon the petitioners to come and collect the enquiry report from the second respondent office. A copy of the paper

publication was also communicated to the petitioners and the same was received by the petitioners, except the second petitioner. Therefore, a notice was said to be affixed on the second petitioner's house in the presence of the Village Administrative Officer on 26.10.2018 and notice of enquiry was issued on 14.11.2018.

14. The petitioners said to have received the notice of enquiry, submitted their reply on 12.11.2018, 15.11.2018 and 20.11.2018 by registered post. Thereafter, in the enquiry, the petitioners have requested for sometime and as per their request, the enquiry was posted to various dates. In the meantime, the petitioners have issued a legal notice through their Advocate that the enquiry report under Section 81 of the Act was not furnished to them. Representations were also made by the petitioners seeking the documents, for which, the petitioners were asked to appear and take down the copies. But the petitioners did not turn up to receive the same. Thereafter, representations were made by the petitioners seeking the documents. When it was forwarded to them through registered post, they did not receive the same. The third petitioner alone received the 100% loan verification report on 05.02.2019, which was sent to him, through registered post on 31.01.2019. On the one hand, they sought for the details and on the other hand, they either did not turn up to collect the same or refuse to receive the post and made it to return as unclaimed. Paper publications were also made in this regard, calling upon the petitioners to appear and collect the enquiry report under Section 81 of the Act. Finally, the enquiry report under Section 81 of the Act was handed over to the Advocates of the petitioners, before the learned Principal District Judge, Villupuram, on 09.03.2020. Thereafter, the enquiry was posted on 24.03.2020 and the same was communicated to the petitioners through registered post. The petitioners said to have sent a letter that the full records have not been furnished and also sought permission for the appearance of their Advocates during the enquiry. The same was permitted and a further notice was issued. But it was returned as unclaimed / door locked.

15. The petitioners were provided with sufficient opportunities and all the documents were also furnished to them. They have taken a specific stand that on the directions of the higher officials, they have sanctioned the loan and that there is no specific guidelines for verification before sanctioning the loan. Perusal of the impugned orders would disclose that the petitioners have deliberately dragged on the proceedings for eleven years and the *modus operandi* is similar for all these petitioners. Though separate enquires were conducted, a similar stand has been taken by all the petitioners and a similar method has been adopted by all of them to drag on the proceedings. On the directions of the District Court and this Court, the second respondent has continued with the proceedings, provided sufficient opportunities and passed the impugned orders, after considering the reply given by the petitioners. The enquiry report under Section 81 of the Act was furnished to the petitioners before the learned

District Judge. Apart from the same, the 100% loan verification report was also furnished.

16. In such view of the matter, this Court is not inclined to entertain this writ petition and the same is accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

mrm/gk

-sd/-
Assistant Registrar

True Copy

Sub-Assistant Registrar

TO

1 The Principal District Judge,
Villupuram.

2 The Special Officer / Joint Registrar / Administrator, Now Managing Director,
Villupuram District Central Co-operative Bank,
No.2, Hospital Road, Villupuram.

3.The Deputy Registrar of Co-operative Society,
Collectorate Complex,
Villupuram.

COPY TO

The Section Officer,
Legal Cell Section,
High Court, Madras - 104.

+1 C.C. to MR.KAVIVEERAPPAN, ADVOCATE SR.NO.50061

+1 C.C. to GOVERNMENT PLEADER SR.NO.49805

W.P.No.7215 of 2021

DCH(CO)
PM(21/10/2021)