BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.06.2021

PRONOUNCED ON : 23.06.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P(MD)No.4876 of 2013

(Through Video Conferencing)

R.Anandaselvi .. Petitioner

Vs.

1.The Regional Manager,
Indian Overseas Bank,
No.250, East Car Street,
Thoothukudi.

2.The Branch Manager,
Sattankulam Branch,
Indian Overseas Bank,
Sattankulam-628 704,
Thoothukudi District. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to return the money collected from the petitioner after the waiver of the loan under the Agricultural Loan Waiver Scheme, 2008 along with interest and compensation.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondent No.2 : Mr.M.Senthil Kumar

ORDER

The petitioner has approached this Court seeking for the relief of refund of the loan amount collected by the respondent Bank with interest on the ground that the petitioner is entitled/eligible for a complete waiver of the loan under the Loan Waiver Scheme that was implemented in the year 2008.

2. The case of the petitioner is that she is the owner of agricultural lands totally measuring an extent of 4.28 acres. She availed loan facilities from the respondent Bank to the tune of Rs.1,60,000/-.

3. The further case of the petitioner is that a Debt Relief Scheme was introduced by the Government under the Agricultural Department Debt Waiver and Debt Relief Scheme, 2008(hereinafter called as the Scheme). According to the petitioner, she will fall within the category of a small farmer since she was holding less than 5 acres of land and under the Scheme, she is eligible for the waiver of the entire loan outstanding.

4. It is alleged by the petitioner that immediately after the Scheme was introduced, she approached the respondent Bank and informed the Branch Manager that she is entitled for the waiver of the entire loan. The further allegation that has been made in the affidavit is that the Branch Manager had demanded bribe and was not extending the relief in favour of the petitioner. Ultimately, a notice was sent by the respondent Bank on 16.8.2010 directing the petitioner to pay the entire outstanding loan of Rs.1,85,482/- within ten days, failing which, legal action will be taken against the petitioner. Aggrieved by the same, a legal notice was issued by the petitioner on 10.12.2010 calling upon the respondent Bank to take action against the erring official, namely, the Branch Manager. The same did not evoke any response. The petitioner left with no other option, paid the entire amount eventhough she was entitled for the waiver of the loan amount. Therefore, the present writ petition has been filed before this Court seeking for appropriate directions.

5. The second respondent has filed a counter affidavit in this writ petition. The relevant portions in the counter affidavit are extracted hereunder:

> "4. I submit that the averments contained in the paragraph 2 of the affidavit of the petitioner other than those which are hereunder admitted are denied as incorrect and misleading. It is true that the petitioner has availed two agricultural loans with this respondent one on 20.12.2003 Kishan credit card Agricultural loan of Rs.1,00,000/- and another loan of Rs.60,000/- on 06.02.2004 for laying of pipe lines. The allegation that the petitioner was a small farmer owning about 1.50 acres of agricultural lands in survey Nos. 14/6A; 4/3A, 14/1, 4/4, 4/5B1, 14/6B,14/3B and 14/2B (1.10 acres and Survey No.321/2B, 312/1 (40 cents) at Nedungulam Village, Sattankulam Taluk, Thoothukudi District is denied as incorrect and misleading. I submit that as per the Chitta and Adangal and the land and house property records submitted by the petitioner for availing these two loans, the petitioner comes under "other farmers" category owning 7.5600 acres of the land and the petitioner is not a "small farmer" as alleged by her hence, the petitioner is not eligible for the total waiver under the "Agricultural Debt Waiver Relief Scheme".
>
> *7. submit that the petitioner who is holding 7.56 Acres of land was entitled to 25% of Loan outstanding as benefit under the Debt Waiver Schema. I submit that for getting the benefits as stated earlier, the petitioner ought to have paid*

the remaining loan outstanding on or before the stipulated time. I submit that the bank has sent intimation to the petitioner on 17.04.2008 and 13.03.2009 directing the petitioner to deposit the amount on or before 30.09.2009. The petitioner has not chosen to pay the 75% of the loan outstanding in order to get the 25% benefit Under the above circumstances, the petitioner has not availed the benefits of the scheme within the stipulated time. As such petitioner cannot now come and claim the benefits of "Debt Waiver Scheme".

8. I submit that the petitioner only in order to throw mud on the bank is making false allegations against the bank. I submit that the bank has not sent Gundas to the petitioner as alleged. I submit that the petitioner in order to get back her residential and other mortgaged property, on her own has paid the entire loan outstanding without any reservation. Hence the petitioner is estopped from claiming the loan outstanding paid by her. I, submit that the present writ petition is totally misconceived and liable to be dismissed."

6. Heard Mr.G.Prabhu Rajadurai, learned counsel appearing on behalf of the petitioner and Mr.M.Senthil Kumar, learned counsel appearing on behalf of the second respondent.

7. The learned counsel for the petitioner submitted that the petitioner totally owns agricultural lands to the extent of 4.28 acres. The particulars of the lands owned by the petitioner has been explained in the additional affidavit filed by the petitioner on 08.03.2018. The learned counsel submitted that the loan was extended in favour of the petitioner at the time when the petitioner was owning 3.87 acres. After getting the loan, the petitioner purchased further properties and including those properties, the petitioner owns only 4.28 acres. Therefore, the learned counsel submitted that the petitioner will clearly fall under the category of a 'small farmer' under the Scheme since she owns less than 5 acres of agricultural land.

8. The learned counsel for the petitioner further submitted that eventhough the petitioner was entitled for the waiver of the entire outstanding loan, due to the attitude of the Branch Manager, the petitioner was forced to pay the entire outstanding loan in order to redeem her property given as security. It was further submitted that the stand taken by the respondent Bank as if the petitioner owns more than 7 acres is totally unsustainable since the

lands in S.No.315/1 to an extent of 1.55.0 hectares was illegally added to the total land holding of the petitioner. The learned counsel concluded his arguments by submitting that the petitioner is entitled for the relief under the law that was introduced as a Scheme by the Government and therefore, the petitioner has every right to enforce the benefit under the Scheme by filing a writ petition and seeking for refund of the amount paid towards loan outstanding.

9. Per contra, the learned counsel appearing on behalf of the respondent Bank submitted that the petitioner was extended loan facilities only after taking into consideration the fact that the petitioner was owning nearly 7.56 acres of lands. It was further submitted that the petitioner will not come within the definition of 'small farmer' and at the best, the petitioner will only fall within the category of 'other farmer'. Insofar as the other farmers are concerned, the Scheme itself provides that there will be a one time settlement under which the farmer will be given a rebate of 25% of the eligible amount subject to the condition that the farmer pays the balance of 75% of the eligible amount. The learned counsel submitted that the petitioner inspite of being informed about the same, did not come forward to pay the balance of 75% of the loan outstanding. It was further submitted that the amount was paid by the petitioner without any protest and after redeeming all the documents that were given as security, the petitioner has chosen to knock the doors of this Court in the year 2013 by making unsubstantiated allegations against the officers of the Bank. The learned counsel therefore submitted that there are absolutely no merits in the present writ petition and the same is liable to be dismissed.

10. The only issue that requires an answer in the present writ petition is as to whether the petitioner is entitled for the waiver of the entire outstanding loan amount under the Scheme and eventhough the outstanding loan has been repaid to the Bank, whether the same can be directed to be refunded to the petitioner in exercise of the jurisdiction under Article 226 of the Constitution of India?.

11. Before delving deep into the issue involved in the present writ petition, it will be beneficial to extract some of the important clauses from the Scheme hereunder:

> *"3.5. 'Marginal Farmer' means a farmer cultivating (as oner or tenant or share cropper) agricultural land up to 1 hectare (2.5 acres).*
>
> *3.6. 'Small Farmer' means a farmer cultivating (as owner or tenant or share cropper) agricultural land of more than 1 hectare and up to 2 hectares (5 acres).*
>
> *3.7. 'Other Farmer' means a farmer cultivating*

(as owner or tenant or share cropper) agricultural land of more than 2 hectares (more than 5 acres).

5.Debt Waiver:

5.1 In the case of a small or marginal farmer, the entire 'eligible amount' shall be waived.

6.Debt Relief:

6.1. In the case of 'other farmers' there will be a one time settlement (OTS) Scheme under which the farmer will be given a rebate of 25 per cent of the 'eligible amount' subject to the condition that the farmer pays the balance of 75 per cent of the 'eligible amount';

Provided that in the case of revenue districts listed in Annex-I, 'other farmers' will be given OTS rebate of 25 per cent of the 'eligible amount' or Rs.20,000, whichever is higher, subject to the condition that the farmer pays the balance of the 'eligible amount'.

7.Implementation

7.1. Every branch of a scheduled commercial bank, regional rural bank, cooperative credit institution, urban cooperative bank and local area bank covered under this Scheme shall prepare two lists, one consisting of 'small and marginal farmers' who are eligible for debt waiver and the second consisting of 'other farmers' who are eligible for debt relief under this Scheme. The lists shall include particulars of the landholding, the eligible amount and the amount of debt waiver or debt relief proposed to be granted in each case. The lists shall be displayed on the notice board of the branch of the bank/society on or before June 30, 2008.

10.Obligations of the lending institutions:

10.1 Every lending institution shall be responsible for the correctness and integrity of the lists of farmers eligible under this Scheme and the particulars of the debt waiver or debt relief in respect of each farmer. Every document maintained, every list prepared and every certificate issued by a lending institution for the purposes of this Scheme shall bear the signature and designation of an authorised officer of the lending institution.

10.2. Every lending institution shall appoint one or more Grievance Redressal Officers for each State (having regard to the number of branches in that State). The name and address of the Grievance Redressal Officer concerned shall be displayed in each branch of the lending institution. The

Grievance Redressal Officer shall have the authority to receive representations from aggrieved farmers and pass appropriate orders thereon. The order of the Grievance Redressal Officer shall be final.

10.3. Any farmer who is aggrieved on the ground that his name has been included in either of the two lists referred to in paragraph 7.1 or on the ground that his name has been included in the wrong list or on the ground that the relief granted to him has been calculated wrongly, may make a representation through the branch from which he received the loan or directly to the Grievance Redressal Officer of the lending institution concerned and every such representation shall be disposed of within 30 days of receipt thereof."

12. It is clear from the above that all those farmers, who fall within the category of small or marginal farmers are eligible for waiver of the entire loan outstanding. Incase, a farmer falls under the category of 'other farmer', clause 6 of the Scheme provides a mechanism for extending the benefit which involves rebate of 25% of the loan outstanding.

13. In the present case, the claim of the petitioner is that she was owning only an extent of 3.87 acres of agricultural lands when the loan was granted in her favour and after obtaining loan, she purchased further extent of lands to the tune of 41 cents. Therefore, according to the petitioner, even if these lands are taken into consideration, the total land holding of the petitioner works out to only 4.28 acres. As a consequence, the petitioner is claiming that she must be brought under the category of a small farmer under the Scheme. On the other hand, the categoric case of the respondent Bank is that the petitioner is owning 7.56 acres of land and she will fall only under the category 'other farmer'. To substantiate this stand taken by the respondent Bank, the copies of the chitta which stands in the name of the predecessor in title of those properties, is relied upon. The serious objection that has been taken by the learned counsel for the petitioner insofar as the chitta relied upon by the respondent Bank is that a property in S.No.315/1 to an extent of 1.55.0 hectares is not owned or enjoyed by the petitioner and it has been unnecessarily added to the land holding of the petitioner. In short, this Court has been called upon to determine a factual dispute as to whether the petitioner was only owning a total extent of 4.28 acres or she was owning and occupying an extent of 7.56 acres as claimed by the respondent Bank.

14. The classification of eligible farmers to determine the land holding criteria under the Scheme has been very widely worded. The total extent of land is calculated by taking into consideration the ownership and/or tenancy and/or share cropper, at the time of

sanction of the loan. The Bank has taken a clear stand that loan facility was extended to the petitioner only on the premise that the petitioner is owning/occupying 7.56 acres of land. Eventhough it looks like a simple arithmetic calculation of putting together all the lands and arriving at the total land holding, whether the petitioner was occupying and doing agriculture in S.No.315/1 which is an extent of 1.55.0 hectares, requires a factual finding based on evidence.

15. The Scheme itself provides a redressal mechanism at Clause 10 which has been extracted supra, for a farmer who is aggrieved on the ground that his name has not been included under the relevant category or he has been included in a wrong list. The farmer can make a representation before a Grievance Redressal Officer of a lending institution and it has been directed to be disposed of within a period of 30 days from the date of receipt of the representation from the farmer. The petitioner has not admittedly resorted to this remedy provided under the Scheme.

16. The petitioner after paying the entire outstanding loan and redeeming the documents given as security in the year 2012, has chosen to approach this Court in the year 2013 seeking for the refund of the loan amount that was repaid to the respondent Bank. According to the petitioner, the Branch Manager was demanding bribe and since it was not paid, the benefit was not extended to the petitioner.

17. The petitioner has also stated that she was forced to sell certain properties and thereafter cleared the loan to the respondent Bank.

18. It is clear from the above that the petitioner has not resorted to the alternative mechanism that was provided under the Scheme for an aggrieved farmer and wants this Court to decide upon certain factual aspects and allegations made in the affidavit filed in support of the writ petition. This writ petition is more in the nature of recovery of money from the respondent Bank. A relief of this nature should ordinarily be filed only before a competent Civil Court. The reason being that there are disputed questions of facts and it requires oral and documentary evidence to come to the correct conclusion. There is no bar to exercise jurisdiction under Article 226 of the Constitution of India to direct refund of money. But however, when the case involves disputed questions of facts, which requires evidence and appreciation of evidence, this Court has to adopt a self-imposed restriction upon itself and can refuse to exercise its writ jurisdiction and direct the parties to agitate the dispute before a competent Civil Court. The present case clearly falls under this category.

19. In view of the above discussion, this Court is of the considered view that this writ petition involves disputed questions of facts and therefore, this Court is not inclined to exercise its

jurisdiction under Article 226 of the Constitution of India. It is left open to the petitioner to approach a competent Civil Court and seek for the relief against the respondent Bank. The time that was spent before this Court during the pendency of this writ petition, can be excluded while computing the limitation as per Section 14 of the Limitation Act.

20. In the result, this writ petition is dismissed. No Costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-19988[F] dated 23/06/2021)

+1 CC to M/s.M.SENTHIL KUMAR, Advocate (SR-20237 [F] dated 25/06/2021)

ORDER MADE IN
W.P(MD)No.4876 of 2013

23.06.2021

CN (30.06.2021) 8P 3C