



C.R.P.No.2978 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.2978 of 2022

and

C.M.P.No.16109 of 2022

The Deputy Registrar of
Co-operative Societies (Housing),
Salem Region.

... Petitioner

vs

1.A.Murugesan
2.A.Boopathy
3.R.Selvaraj

4.The President,
K.K.128 Mettur Industrial Employees Co-operative Industrial
Housing Society, Near Railway Gate,
Pudusampatti, Mettur Dam,
Salem District – 636 403.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 20.10.2021 passed by the learned Principal District Court, Salem made in C.M.A.(CS) No.5 of 2019 and thereby confirming surcharge order dated 18.12.2018 passed by the Deputy Registrar of Co-operative Societies (Housing), Salem in R.C.No.2144/2015/E.

For Petitioner : Ms.Dr.S.Suriya
Additional Government Pleader
ORDER



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The Civil Revision Petition is filed challenging the order passed by the learned Principal District Judge, Salem in C.M.A.No.5 of 2019, dated 20.10.2021 allowing the appeal filed by the 1st to 3rd respondents herein by setting aside the surcharge order passed by the Deputy Registrar of Co-operative Societies (Housing), Salem in Na.Ka.No.2144/2015/E, dated 18.12.2018.

2. According to the revision petitioner/Surcharge Officer, the respondents 1 to 3 were appointed in the post of Junior Writer, Jewel Appraiser and Junior Assistant in Mettur Industrial Employees Co-operative Industrial Housing Society, Mettur. According to the petitioner, the respondents 1 to 3 were irregularly appointed to their respective posts. It is also stated that they had been paid salary to the tune of Rs.11,84,600/- and thereby, loss occurred to the Society.

3. The respondents 1 to 3 who participated in the surcharge proceedings contended that the enquiry against them were conducted in violation of the principles of natural justice, without furnishing the material



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documents. The Deputy Registrar of Co-operative Societies who conducted Section 87 enquiry found that the respondents 1 to 3 were guilty of misappropriation of funds and ordered surcharge against them. Aggrieved by the same, the respondents 1 to 3 filed an appeal before the learned Principal District Judge, Salem.

4. The Principal District Judge on consideration of the materials available on record came to the conclusion that there is no gross negligence and willful default on the part of the respondents 1 to 3 and consequently, set aside the surcharge order passed by the Deputy Registrar of Co-operative Societies (Housing), Salem and aggrieved by the same, the petitioner is before this Court.

5. Ms.Dr.S.Suriya, learned Additional Government Pleader appearing for the petitioner submitted that the petitioner were appointed in the post beyond the cadres strength and in view of the fact that the appointments were irregular, the salary paid to the respondents 1 to 3 shall be treated as loss to the Society. It was also submitted that the appointment of the respondents 1 to



3 were made by the Special Officer of the Co-operative Societies without getting necessary sanction from the Registrar of Co-operative Societies (Housing).

6. Both the contentions made by the learned counsel for the petitioner are not acceptable to this Court. If the appointment of the respondents 1 to 3 are irregular, then the Special Officer, who appointed the respondents 1 to 3 should have been proceeded against. But in the case on hand, surcharge proceedings were initiated only against the employees who is said to be appointed in an irregular manner. Further, the respondents 1 to 3 were paid salary only for service rendered by them for the Society.

7. Even assuming their appointments are irregular, it cannot be termed that any salary paid to the irregularly appointed employees would be a loss to the Society. In other words, for the work extracted from them, the salary has been paid. Therefore, it cannot be treated as a loss to the Society. Further, the sanction from the Registrar of Co-operative Societies, cadre strength etc., are all indoor management of the Society over which the employees/appointees



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shall have no control. Therefore, the irregular appointments allegedly made by the Special Officer cannot be put against the appointees viz., the respondents 1 to 3 and surcharge proceedings can be initiated against them for recovery of salary paid to them, especially in the absence of material that appointments were made due to their misrepresentation or fraud.

8. In view of the above discussion, I do not find any reason to interfere with the order of the Co-operative Tribunal as there is no willful negligence on the part of the respondents 1 to 3 to entitle the Deputy Registrar of Co-operative Societies to initiate surcharge proceedings against them.

9. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

01.11.2022

Index : Yes / No
Speaking Order : Yes / No
dm

S.SOUNTHAR, J.



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dm

To
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- 1.The Principal District Court,
Salem.
- 2.The Deputy Registrar of Co-operative Societies (Housing),
Salem.

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