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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.15662 of 2017

The Special Officer,  
Now the Official Liquidator,  
K-2174, Boluvampatti Hill Tribes Co-operative  
Marketing Society Limited,  
Boluvampatti,  
Coimbatore District.

..Petitioner

Vs.

1. The Deputy Registrar of Co-operative Societies,  
Coimbatore Circle,  
Collectorate Buildings,  
Coimbatore District.

2. Kamalam

3. S.Rajkumar

4. The Presiding Officer,  
Principal District Court,  
Coimbatore.

..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the Principal District Judge, Coimbatore dated 06.01.2017 in Co-operative C.M.A.No.16/2014 and quash the same and consequently permit the petitioners to proceed with the recovery and the loss caused to the petitioner society.

For Petitioner : Ms.T.P.Savitha

For R1 : Mr.U.Baranidharan  
Additional Government Pleader

For RR 2 & 3 : Mr.R.Marudhachalamurthy



## O R D E R

The petitioner is challenging the judgment and decree of the Principal District Judge, Coimbatore, dated 06.01.2017 in allowing the C.M.A.No.16 of 2014 filed by the respondents 2 & 3, who are the legal heirs of the employee viz., late K.Sundarraaj, an Ex-officio President of the petitioner society. During the period when the said K.Sundarraaj was working as President in the petitioner society, he caused loss to the society to the tune of Rs.6,36,154/-. Therefore, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as the 'Act') was ordered and based on the enquiry report of the Enquiry Officer dated 23.09.1998, surcharge proceedings were initiated under Section 87 of the Act. The said K.Sundarraaj, in his explanation to the show cause notice issued under Section 87(1) of the Act, stated that enquiry report and other documents were not furnished to him and therefore, he is unable to submit his explanation to the show cause notice. Subsequently, he did not appear before the 1<sup>st</sup> respondent and the 1<sup>st</sup> respondent proceeded with and passed the surcharge order dated 23.06.1999, fixing the liability on the said K.Sundarraaj. Subsequently, the said K.Sundarraaj died on 27.01.2001. Therefore, the respondents 2 & 3, who are the wife and son of the said K.Sundarraaj filed C.M.A.No.16 of 2014 before the Principal District Judge, Coimbatore, challenging the surcharge order dated 23.06.1999. Apart from raising various grounds, they also took a stand that Section 81 enquiry report was not furnished to the Ex-officio President, the said K.Sundarraaj and hence, enquiry under Section 81 of the Act is vitiated. The Co-operative Tribunal accepted the said plea and allowed the appeal by the judgment dated 06.01.2017. Against the said judgment and decree dated 06.01.2017 made in C.M.A.No.16 of 2014, the petitioner has come out with the present Writ Petition.

2.Ms.T.P.Savitha, learned counsel appearing for the petitioner, referring to various averments culminated in initiating the surcharge proceedings, contended that the said K.Sundarraaj did not appear before the 1<sup>st</sup> respondent. He could have appeared before the 1<sup>st</sup> respondent and sought for the enquiry report relied on by the 1<sup>st</sup> respondent. The learned Judge failed to appreciate the materials placed before him and on erroneous ground, allowed the Civil Miscellaneous Appeal and prayed for setting aside the judgment in C.M.A.No.16 of 2014 and allowing the Writ Petition.

3.Mr.U.Baranidharan, learned Additional Government Pleader appearing for the 1<sup>st</sup> respondent submitted that the employee K.Sundarraaj did not appear before the 1<sup>st</sup> respondent even after receiving the notice issued by the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent conducted surcharge proceedings and passed an order



directing the employee K.Sundarraaj to pay a sum of Rs.6,36,154/- with interest at the rate of 18% per annum. The Tribunal erroneously allowed the appeal by setting aside the order of the 1<sup>st</sup> respondent and hence, prayed for allowing the Writ Petition.

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4. Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader appearing for the 1<sup>st</sup> respondent as well as the learned counsel appearing for the respondents 2 & 3 and perused the entire materials on record.

5. From the materials on record, it is seen that admittedly the 1<sup>st</sup> respondent did not furnish the report filed by the Enquiry Officer, who conducted the enquiry under Section 81 of the Act against the said late K.Sundarraaj, Ex-officio President of the petitioner society. From the explanation submitted by the said K.Sundarraaj, it is seen that he has specifically mentioned that Section 81 enquiry report was not furnished to him and therefore, he is not in a position to effectively put forth his case and defend. In spite of the same, the 1<sup>st</sup> respondent did not furnish the report filed by the Enquiry Officer. In the present Writ Petition, the petitioner has taken a stand that the said K.Sundarraaj ought to have approached the 1<sup>st</sup> respondent and obtained a copy of the report. This Court again and again held that Section 81 enquiry report based on which surcharge proceedings initiated must be furnished to the persons against whom surcharge proceedings are initiated. Failure to furnish said report based on which surcharge proceedings initiated vitiates the entire proceedings. Non-furnishing of the report under Section 81 violates the principles of natural justice and hence, the order passed in the surcharge proceedings cannot be sustained. The learned Judge, in the appeal, has considered this issue in proper perspective and also the judgments of this Court and allowed the Civil Miscellaneous Appeal. There is no error in the above said judgment of the learned Judge warranting interference by this Court.

6. For the above reasons, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

krk



To

1. The Deputy Registrar of Co-operative Societies,  
Coimbatore Circle,  
Collectorate Buildings,  
Coimbatore District.

2. The Principal District Judge,  
Principal District Court,  
Coimbatore.

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.19736

+1cc to M/s.T.P.Savitha, Advocate, S.R.No.19722

+1cc to the Government Pleader, S.R.No.20333

W.P.No.15662 of 2017

NMI (CO)  
RGA(12/04/2022)