



W.P.(MD)No.1495 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.1495 of 2020

and

W.M.P.(MD)No.1207 of 2020

R.Justin Manoharadhas

... Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
Thuckalay,
Kanyakumari District.

2.The Co-operative Sub-Registrar / Field Officer,
S.81 Enquiry Officer for
Y.25, Manakkavillai Primary Agricultural Cooperative Credit Society,
Manakkavillai (PO)
Kanyakumari District-629 164.

3.Y.25 Manakkavillai Primary Agricultural Cooperative Credit Society,
Manakkavillai (PO),
Kanyakumari District-629 164,
Represented by its Administrative Officer.

4.The Secretary,
Y.25 Manakkavillai Primary Agricultural Cooperative Credit Society,
Manakkavillai (PO)
Kanyakumari District-629 164.

5.Thathayous Rani

... Respondents



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Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 1 to 4 to recover the agricultural produce pledge loan No.5 (2018-2019) of Rs.3,50,0000 with accrued interest given to the former vice-president/member Shri.Lala Lajapathi Roy (membership No.7403) from his assets available with the bank in the form of gold jewels pledged by him under jewel loan account Nos.10719, 10220 and 11447 in reference to the petitioner's representation dated 12.12.2019.

For Petitioner	: Mr.N.Dilipkumar
For R1 to R4	: Mr.M.Senthil Ayyanar
	Government Advocate
For R5	: Mr.V.Devakumar

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for R1 to R4 and the learned counsel appearing for the private respondent.

2. The writ petitioner was the secretary of the third respondent Society. He retired on 30.04.2018. During his tenure, one Lala Lajapathi Roy was the vice-president of the board for the period 2013-2018. He



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died in an accident on 21.11.2018. It is the stand of the petitioner as well as the management of the society that the said Lala Lajapathi Roy had availed as many as four loans. One was agricultural produce pledge loan for a sum of Rs.3,50,000/-. Others were jewel loans. After the demise of Thiru.Lala Lajapathi Roy, his legal heirs cleared the jewel loans. They wanted to redeem the pledged jewelry. At this stage, the petitioner filed this writ petition for directing the society management to recover the agricultural produce pledge loan No.5 (2018-2019) for a sum of Rs.3,50,000/- together with accrued interest from out of his assets available with the bank in the form of pledged jewelry.

3. The 5th respondent who is the wife of late.Lala Lajapathi Roy has filed a detailed counter affidavit. The learned counsel appearing for the fifth respondent contested the very maintainability of the writ petition. He would state that the petitioner has no *locus standi* to even maintain the writ petition; the transaction was one between the deceased borrower and the management of the co-operative society; it is for the co-operative society to file a recovery suit.



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4. The learned counsel appearing for the fifth respondent even went to the extent of casting doubt on the genuineness of the agricultural produce pledge loan. He would also question the bonafides of the writ petitioner. He relied on the larger bench decision reported in **(2006) 3 CTC 391 (T.K.Marappan Vs. The Deputy Registrar of Co-operative Societies)** and the principles laid down in **Ajay Hasia's case (1981 (1) SCC 722)** to argue that the present writ petition would not lie.

5. I carefully considered the contentions advanced on either side.

6. In my view, the writ petitioner is very much having the *locus standi* to maintain the above writ petition. As rightly pointed out by the learned counsel appearing for the petitioner, the petitioner is now made to bear the cross. Though the writ petitioner had retired from service, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was held not only against the members of the board but also the petitioner. He has been saddled with the surcharge order dated 16.10.2020. He has been made jointly and severally liable to clear the aforesaid loan liability. Since the petitioner's right is directly affected, he is definitely having sufficient interest to maintain the writ petition.



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7. As regards the issue of maintainability, I have been spared the trouble of having to go into the contentions advanced by the learned counsel appearing for the fifth respondent.

8. The learned Government Advocate appearing for the department as well as the management of the society would state that the society proposes to invoke Section 42 of the Tamil Nadu Co-operative Societies Act, 1983 in the matter. The said provision reads as follows:-

42.Charge and set off in respect of shares or interest of member:-

A registered society shall have a charge upon the share or interest in the capital and on the deposits of a member or past or deceased member and upon any dividend, bonus or profits payable to a member or a past member of the estate of a deceased member in respect of any debt due from such member or pas member or the estate of such deceased member to the society and may set off any sum credited or payable to a member or past member or deceased member in or towards payment of any such debt.

The pledged jewels of Lala Lajapathi Roy would definitely constitute his estate. The agricultural produce pledge loan remains unpaid. Therefore, it would constitute 'debt due'. The said provision is in imperative terms. It states that the society 'shall' have a charge on the estate of the deceased



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member in respect of the debt due from him. Even in *Marappan* case, it has been held that a writ petition against a cooperative society could lie to enforce a statutory provision.

9. Here is a case where the interest of a former employee of the society are directly affected by the transaction in question. He is only calling upon the society management to discharge its statutory obligation.

10. Looked at from this perspective, the present writ petition can overcome the threshold bar created by *Marappan* decision. Of-course, the liability of the fifth respondent cannot be determined in these proceedings. The society management will have to initiate appropriate steps in accordance with law for recovering the agricultural produce pledge loan. If the fifth respondent can demonstrate that no such loan was now availed, then, it is obviously a different matter. Till such determination is rendered by the competent forum or authority, the pledged items will have to remain in the custody of the third respondent society.



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11. The writ petition is allowed on these terms. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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