



W.P(MD)No.11585 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **04.08.2022**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.11585 of 2015
and M.P.(MD)Nos.1 and 2 of 2015

M.R.Janarthanan

... Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
Office of the Deputy Registrar of Co-operatives,
Paramakudi Circle,
Singarathoppu Street,
Paramakudi Post,
Ramanathapuram District.

2.Bogalur Primary Agricultural
Co-operative Credit Society,
Rep. by its President,
Bogalur, Ramanathapuram.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned surcharge order passed by the first



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respondent in Na.Ka.No.2988/2013 Sa.Pa in S.C.No.1/2013-2014, dated 13.04.2015 and quash the same as illegal.

For Petitioner : Mr.Jerin Mathew

For Respondents : Mr.P.Thilakkumar
Government Pleader
for Mr.M.Ramesh
Government Advocate

ORDER

The present writ petition has been filed by the Senior Inspector of a Co-operative Society, challenging an order passed under Section 87 of the Tamil Nadu Co-operative Societies Act.

2.According to the learned counsel for the petitioner, enquiry under Section 81 of the Act was initiated as against writ petitioner along with others and a report was submitted by the Enquiry Officer on 10.04.2014. As per the said report, the Secretary of the Co-operative Society was made fully liable for all the misfeasance and malfeasance said to have been occurred in the said Society. The Enquiry Officer has recommended initiation of surcharge proceedings as against one Muruganantham, who was the Secretary of the Society at that point of time.



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3. In the same enquiry report, six officers have been named and they have been found to be delinquent for lack of supervision. The Enquiry Officer has recommended disciplinary proceedings as against the said six officers. The petitioner is one among the said six officers against whom disciplinary proceedings alone were recommended.

4. According to the learned counsel for the petitioner, the Sub-Registrar has issued a notice of enquiry under Section 87 of the Act on 11.08.2014 under a wrong impression that the proceedings under Section 87 of the Act have been recommended even against the writ petitioner also. The writ petitioner has participated in the said enquiry and has raised a defence that no proceedings under Section 87 of the Act was recommended as against the writ petitioner. The said defence has not been considered by the first respondent herein, who passed orders in the surcharge proceedings. Hence, the present writ petition has been filed mainly on the ground that without recommendation in the enquiry report relating to initiation of the proceedings under Section 87 of the Act, the said proceedings cannot be initiated as against an officer of a Co-operative Society.



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5. Normally, this Court would not interfere as against the order passed in surcharge proceedings relegating the parties to approach the Co-operative Tribunal for filing miscellaneous appeal. However, in the present case, it is the contention of the writ petitioner that without any basis for the enquiry under Section 87 of the Act and no recommendation made by the Enquiry Officer, the entire proceedings initiated under Section 87 of the Act are illegal and without jurisdiction. Hence, without availing the said alternative remedy, the present writ petition has been filed.

6. Per contra, the learned counsel for the respondents had contended that a perusal of the enquiry report under Section 81 of the Act will clearly disclose that six officers who are in-charge of the said Society have not taken proper care and have not properly supervised the Secretary of the Society. This lack of supervision has resulted in loss to the Society to a tune of about Rs.1,76,00,000/-. Hence, proceedings were initiated as against the writ petitioner also under Section 87 of the Act. Once the petitioner accepts the said notice and participates in the



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enquiry, he cannot turn around and contend that the surcharge proceedings under Section 87 of the Act could not have been initiated as against him without a report under Section 81 of the Co-operative Societies Act. That apart, since the petitioner has been suffered an order in the surcharge proceedings, he has got an efficacious alternative remedy of filing an appeal before the Co-operative Tribunal under Section 152 of the Co-operative Societies Act. Hence, according to the respondents, the writ petition is not maintainable.

7.I have carefully considered the submissions made on either side.

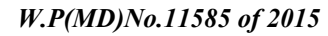
8.A perusal of Section 87 of the Co-operative Societies Act clearly indicates that surcharge proceedings can be initiated as against the officer or servant of the Society who has misappropriated or fraudulently retained any money or other property or being guilty of breach of trust in relation to the Society or caused any deficiency in the assets of the Society by breach of trust or wilful negligence or has made any payment, which is not in accordance with this Act, the Rules or the bye-laws. To summarize, surcharge proceedings can be initiated only in a case where



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financial loss has incurred to the Co-operative Society. In the present case, the enquiry report under Section 81 of the Act, dated 10.04.2014, has clearly arrived at a conclusion that one G.Muruganantham, who was the Secretary of the Society alone was responsible for the financial loss incurred to the concerned Co-operative Society. The other six officers have been named in the enquiry report only for lack of supervision. In fact, the Enquiry Officer has recommended only for initiation of disciplinary proceedings as against the six officials and the petitioner is one among them.

9.However, without properly appreciating the enquiry report, dated 10.04.2014, a notice under Section 87 of the Co-operative Societies Act has been issued to the writ petitioner on 11.08.2014. The writ petitioner has raised the defence that he has not been found to be delinquent under the enquiry report under Section 81 of the Act, for initiating proceedings under Section 87 of the Act. However, the said defence has not been considered by the first respondent herein and he has proceeded to pass an order under Section 87 of the Co-operative Societies Act as against the writ petitioner also.



11. In view of the above said discussion, the impugned order insofar as the writ petitioner is concerned, is set aside and the writ petition is allowed to the extent of the writ petitioner alone. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
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R.VIJAYAKUMAR ,J.

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To

- 1.The Deputy Registrar of Co-operative Societies,
Office of the Deputy Registrar of Co-operatives,
Paramakudi Circle,
Singarathoppu Street,
Paramakudi Post,
Ramanathapuram District.
- 2.The President,
Bogalur Primary Agricultural
Co-operative Credit Society,
Bogalur, Ramanathapuram.

Order made in
W.P(MD)No.11585 of 2015

Dated: 04.08.2022