



C.R.P.No.326 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.03.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.326 of 2021 &
C.M.P.No.2822 of 2021

K.Krishnan

... Petitioner

Vs.

1. The Deputy Registrar of Co-operative Societies,
Omalur Division,
Salem District

2. The Special Officer,
(Now the President)
S.420, Ramamurthy Nagar PACB
Ramamurthy Nagar
Omalur Taluk, Salem district

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India against the Judgment and Decretal Orders passed in C.M.A.C.S.No.13 of 2011 dated 28.03.2018 on the file of the learned Principal District Judge, Salem confirming the surcharge award passed by the Deputy Registrar of Co-operative Societies.



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For Petitioners : Mr.S.Kamadevan

For Respondents : Mr.B.Tamilnidhi for R1
Additional Government Pleader
Mr.P.S.Sivashanmugasundaram for R2

ORDER

The present Civil Revision Petition has been filed against the Judgment and Decreetal Orders passed in C.M.A.C.S.No.13 of 2011 dated 28.03.2018 on the file of the learned Principal District Judge, Salem confirming the surcharge award passed by the Deputy Registrar of Co-operative Societies.

2. The brief facts of the case are as follows:-

The petitioner, who is the then Secretary of Ramamoorthy Nagar PACB from 10.08.2001 to 16.05.2002, while disbursing the agricultural crop loans to the members, had created false and forged documents and in the sale of insecticides and fertilizers, had malpracticed a sum of Rs.23,89,556.77/-. Therefore, enquiry was initiated and based on the enquiry, surcharge proceedings under Section 87(1) of the Tamilnadu Co-operative Societies Act [hereinafter referred to as 'Act'] was passed on 21.11.2008 and held that the petitioner was responsible for repayment of the said amount with future interest at the rate of 17% p.a., from the date of



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malpractice, in case of failure of payment, directed the plaintiff/1st respondent to realise the said amount with costs from the petitioner. As against the same, the petitioner preferred an appeal in C.M.A.C.S.No.13 of 2011 before the learned Principal District Judge, Salem and by an order dated 28.03.2018, the said learned Judge confirmed the order passed by the 1st respondent dated 21.11.2008 and dismissed the said Appeal. Aggrieved by such an order, the appellant has preferred the present Revision Petition.

3. The learned counsel for the petitioner submitted that the 1st respondent failed to see that under Section 81 of the Act, enquiry and its report is mandatory or basis for the initiation of the surcharge proceedings. Hence the report submitted under Section 81 of the Act, the documents relied upon and the statement of witness examined should be furnished to the concerned person for submitting effective explanation. As the 1st respondent failed to follow the said procedure, the surcharge award is an outcome of denial of reasonable opportunity and also passed in violation of principles of natural justice. The making of application under RTI Act requesting the copy of the same will not be relevant to the issue raised by the petitioner in question.



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4. The learned counsel for the petitioner also submits that the 1st respondent failed to see that the enquiry and passing an award under Section 87 of the Act are penal in nature and the same should be based on relevant records. Even if the allegations are supported by relevant materials, the authority, after giving a reasonable opportunity to the person concerned to answer the charges, shall pass the orders, however, the same has not been done. The 1st respondent also failed to adhere the statutory procedure as required under Section 87(4) of the Act.

5. The learned counsel for the petitioner further contends that the 1st respondent failed to see that the surcharge order could be passed against a person, who has entrusted with the affairs of the society and also for the proved wilful negligence. But, in the instant case, the petitioner is the Secretary of the 2nd respondent and above him, there was a Special officer, who was administering the affairs at the relevant point of time in the absence of the elected board. However, no action was taken against him as he being a government servant. The isolated action against the petitioner is nothing but a victimisation and also for extraneous considerations.



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6. The learned counsel for the petitioner in support of his contention, has relied on the following judgments:-

(i) Judgment of First Bench of this Court reported in 2016-4-L.W.452 [S.Ramadevi Vs. The Special Officer, Vellore District & Others]

(ii) Order passed by this Court in W.P.(MD) No.23582 of 2022 [P.Malaiyappan Vs. The Deputy Registrar of Co-operative Societies, Dindigul District]

(iii) Order passed by this Court in W.P.No.27003 of 2016 [P.Anandam Vs. The Deputy Registrar of Co-operative Societies and another]

(iv) Order passed by this Court in W.P.No.23373 of 2004 [M.Karuppannan Vs. The Deputy Registrar (Dairying), Erode Taluk and District and others]

7. Per contra, it is the submission of the learned counsel for the 1st respondent that the petitioner was permitted to peruse the relevant documents and to obtain copies as requested by him during office hours on 15.09.2008, 29.09.2008, but the petitioner failed to grab the opportunity to peruse and obtain the copies sought by him for the reasons best known to him. In order to comply with the principles of natural justice, the 1st



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respondent issued summons to the petitioner to appear for personal hearing on 03.10.2008, 20.10.2008, 30.10.2008 and 21.11.2008. Though the petitioner received the summons, he failed to appear for personal hearing and missed the golden opportunity.

8. Further, the learned counsel for the 1st respondent submits that the petitioner had preferred the W.P.No.15950 of 2005 challenging the impugned notice issued under Section 87 of Surcharge proceedings raising the same plea, but later, the said Writ petition was dismissed on 09.07.2008. As per the bye-law of the Society, the Secretary is a person, who is incharge of day today administration of the society and he is custodian of the properties of the society. The petitioner was working as secretary of the 2nd respondent from 15.05.1989, hence he cannot put blame upon the other staff members, thereby pleaded to set aside the orders passed by the 1st respondent as well as the appellate authority.

9. The learned counsel for the 1st respondent has relied on the following Judgment to substantiate his contentions

(i) The Judgment of the Hon'ble Apex Court in Esha Bhattacharjee Vs. Managing Commtee of Raghunathpur Nafar Academy & Others reported in Manu/SC/0932/2013



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10. Resisting the contention of the learned counsel for the petitioner, the learned counsel for the 2nd respondent submits that as the Secretary of the Society, he is in charge of the day today administration of the society including all cash transactions. The petitioner had misused his power and position to commit misappropriation on a large scale and violating the bylaw provision without the involvement other employees. Further, the petitioner has submitted that no action has been taken against the Special Officer, Board of Directors and the employees of the society, which shows that he was victimised, however, the board of management is the management authority, who take policy decisions. But the petitioner is in charge of the day-to-day administration of the society including financial matters and he is the costodian of the assets of the society. Therefore, prays to dismiss the present Revision.

11. Heard the learned counsel for the petitioner as well as the respondents and perused the citations referred by both the parties and judgments passed by the court below.



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12. It is alleged by the respondents that the petitioner, who is the then Secretary of Ramamoorthy Nagar PACB from 10.08.2001 to 16.05.2002, while disbursing the agricultural crop loans to the members, had created false and forged documents and in the sale of insecticides and fertilizers, thereby malpracticed a sum of Rs.23,89,556.77/-. Therefore, enquiry was initiated and based on the enquiry, surcharge proceedings under Section 87(1) Act was passed on 21.11.2008 and held that the petitioner was responsible for repayment of the said amount with future interest at the rate of 17% p.a., from the date of malpractice.

13. At this juncture, it is pertinent to point out that though the 2nd respondent may be placed before the petitioner, but as per bye-laws of the society, the Secretary is a person, who is in charge of the day-to-day administration of society and hence the petitioner cannot plead ignorance stating that he is not responsible for the administration of the society. That apart, from the records, it could be seen that the staff members were also enquired and it was concluded that on 12.05.2001, the incharge of the fertilizer section was handed over to the petitioner, as per Resolution No.5.



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14. It is important to note that one Rajarathinam, senior clerck stated in his statement and the petitioner instructed first to withdraw the amount in the name of the members, then he will fillup the disbursement register, later on the petitioner took amount in the name of 18 members. Thus it is clear that the petitioner had taken over charge of certain section and the records were in his custody, thereby fraudulently misappropriated the amount.

15. As far as the plea that no personal hearing / opportunity was granted to the petitioner to putforth his case is concerned, it is seen from the case papers that the petitioner was permitted to peruse the relevant documents and to obtain copies as requested by him during office hours of the Society on 15.09.2008, 29.09.2008 by the respondents, but the petitioner failed to grab the opportunity to peruse and obtain the copies sought by him for the reasons best known to him. In order to comply with the principles of natural justice, the 1st respondent issued summons to the petitioner to appear for personal hearing on 03.10.2008, 20.10.2008, 30.10.2008 and 21.11.2008. Though the petitioner received the summons, he failed to appear for personal hearing, therefore, the contention that no opportunity was given to the petitioner cannot be accepted.



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16. It is to be noted that there is no material to show that the petitioner has sought for arrangement of an advocate for defending himself and no such proof has been made other than the oral submission, however, a copy of the letter dated 10.11.2008 addressed by the petitioner to the 1st respondent, seeking arrangement of an advocate has been submitted before this Court, in the said letter, there is no endorsement of receipt or acknowledgment made by the 1st respondent is produced and the said statement is not accepted.

17. Considering the above said facts and circumstances of the case and taking note of the fact that almost 75 members were examined and their statements were recorded and the fact that the petitioner himself given a statement admitting his liability and agreeing to pay the amount during enquiry under Section 81 of the Act, and that the opportunity of personal hearing was also granted to the petitioner on several occasions, further there is no material available to show that the petitioner has sought for arrangement of an advocate for defending himself and no such proof has been made other than oral submission, further, the copy of the letter seeking arrangement of an advocate, which is submitted in this Court, has no endorsement of receipt or acknowledgement that the same was



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received by the 1st respondent, therefore, this Court is of the view that the order passed by the learned Principal District Judge, Salem in C.M.A.C.S.No.13 of 2011 dated 28.03.2018 is perfectly valid in the eye of law and does not require any interference.

In the result, the present Revision is dismissed and the order passed by the court below in C.M.A.C.S.No.13 of 2011 dated 26.03.2018 is affirmed. Consequently, connected miscellaneous petition is closed. No costs.

24.03.2023

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order
ssd

To

1. The Deputy Registrar of Co-operative Societies,
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Salem District
2. The Special Officer,
(Now the President)
S.420, Ramamurthy Nagar PACB
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V.BHAVANI SUBBAROYAN, J.,

ssd

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