



W.P. No.5201 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.5201 of 2012

T.B.Srinivasan

... Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies
Tiruvannamalai Circle
Tiruvannamali

2.The Special Officer
Primary Agricultural, Rural
Land Development Bank Ltd., H.H.118
Chengam

3.The Registrar
Co-operative Tribunal,
Tiruvannamalai

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the 3rd respondent pertaining to the order of the Tribunal in C.T.A.No.3 of 2003 dated 28.07.2011 by confirming the order of the 2nd respondent in his proceedings No.1/2000-2001 statutory, dated 31.01.2003 and to quash the same.



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For Petitioner : Mr.T.Sellapandian
For Respondents : Mr.K.Surendran
Government Advocate for R1 & R3
Mr.L.P.Shanmugasundaran
Standing Counsel for R2.

ORDER

This writ petition has been filed seeking writ of certiorari to call for the records pertaining to the order passed in C.T.A.No.3 of 2003 dated 28.07.2011, passed by the Co-operative Tribunal, Tiruvannamali district, confirming the order passed by the second respondent in proceedings No.1/2000-2001 dated 31.01.2003 and quash the same.

2. The brief facts that are relevant for disposal of the case are as under:

The second respondent herein, which is Rural Land Development Limited, sanctioned five jewel loans in favour of five loanees sanctioned by the Secretary of the second respondent. The gold items pledged were appraised by the appraiser, namely, T.Gandhi Achari, and after he verified and certified the same as gold, the jewel loans were granted in favour of 5 loanees. The petitioner herein, who was working as Supervisor in the second



respondent bank, discharged his duties and kept the gold jewel items in sealed cover attested by the Appraiser in the safe locker which was also countersigned. One of the key was kept with the petitioner herein and the other key was kept with the Secretary of the second respondent.

Thereafter, 5 loanees failed to repay the loan amounts and therefore, surcharge proceedings were initiated for recovery of the loan amount and appropriate notice was issued. All the notices addressed to the 5 loanees were returned with the postal endorsement 'no such person'. In view of the same, the bank proposed to sell the gold jewels by way of conducting public auction. At the time of conducting public auction, it was noticed that the articles that were pledged with the second respondent bank were not gold items and hence, the auction was stopped and proceedings under Section 82 of the Tamil Nadu Co-operative Societies Act were initiated by filing a claim before the first respondent against the petitioner herein as well as against the Secretary and the Appraiser. All the three claim petitions were disposed of by the first respondent, by order in proceedings No.1/2000-2001 dated 31.01.2003, holding that the petitioner herein and two others are jointly and severally responsible for the loss caused to the respondent No.2 herein and



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ordered for the recovery of the amount. Aggrieved by the said order dated 31.01.2003, the petitioner herein filed appeal in C.T.A.No.3/03 on the file of the Co-operative Tribunal, Tiruvannamalai. The other two persons also filed appeals in C.T.A.Nos.4 and 5 of 2003. All the three appeals were disposed of by a common order dated 28.07.2011, confirming the order dated 31.03.2003 passed by the first respondent herein. Aggrieved by the said order dated 28.07.2011, the petitioner herein has approached this Court by filing the present writ petition.

3. The specific contention of the petitioner before the first respondent as well as before the Co-operative Tribunal, is that he is only a Supervisor and he has no role in the grant of jewel loan or assessment of the value of the jewels or about the genuinity of the jewels. He also further contented that in terms of Rule 39(vi) of the Tamil Nadu Co-operative Society Rules and Section 11 (3) of the Tamil Nadu Co-operative Societies Act, the Appraiser shall be liable for the loss and not the Supervisor and hence sought for discharging him from the liability.



4. The Tribunal having taken note of the contention of the petitioner, as noted above in para-11 of the impugned order, failed to address the said specific contention raised by the petitioner in the impugned order.

The Co-operative Tribunal, in its order, observed as under:

“ It is also to be stated that the appellant T.B.Srinivasan is the Supervisor, he is in-charge of the Jewels Register and also responsible person with the responsibility to keep the jewels in the locker and also holding one key out of the two keys, while the other key has been kept by the Back Secretary. The other appellant Gandhi Achari is the jewel appraiser, he had categorically admitted that he only assessed the jewel on the date of grant of jewel loans. He also admitted affixing his seal in the cover as GGM-LDB and he also admitted in the enquiry that the seal that was found in the cover which was put into auction is put by him.”

5. The learned Tribunal, having observed as above, and having taken note of the contention raised by the petitioner and having concluded that only the Secretary and Appraiser of the second respondent, are responsible for the sanction of the jewel loans and for appraisal of the same, without assigning any reason come to the conclusion that all the three



appellants have acted in wilful and deliberate manner and they committed wrong in accepting the jewel and granting of loan for the members inducted in violation of the Rules for a non-gold articles. The reason for arriving at such a conclusion and holding that petitioner herein is also responsible for the sanction of loan for non gold jewel items is not spelled out in the entire order.

6. There is no dispute that the Appraiser had admitted his guilt and also paid an amount of Rs.50,000/- instantly, on the very next day of identifying that the jewels are not gold items. Further, the Secretary of the second respondent submitted that though he is not the authority for sanction of the loans, since the President of the second respondent refused to sanction the jewel loans, the Secretary has sanctioned the loans contrary to the Rules and the Appraiser had admitted that he confirmed the same as gold items. Considering the entire facts and circumstances of the case, absolute and there is nothing to show that the petitioner has played any role in the grant of loan and his role is admittedly very limited to the extent of maintaining the gold loans register and safeguarding the gold items that were kept in the sealed



cover in safe custody. The petitioner was maintaining one key with him and the other key was with the Secretary of the second respondent. In the entire award was passed by the Co-operative Tribunal, there is no specific finding about the involvement of the petitioner herein. Therefore, the question of making the petitioner liable for the loss caused to the Bank along with two other delinquent, does not arise. Thus, the order passed by the first respondent as well as the Co-operative Tribunal are perverse and based on no evidence. In the circumstances, the impugned order is wholly unsustainable, insofar as the petitioner herein is concerned and the same is accordingly set aside.

7. The objection that is raised by the learned counsel for the respondent about the maintainability of the petition, under Article 226 of the Constitution of India, by placing reliance on the decision of the Division Bench of this Court is concerned, there cannot be any dispute about the law laid down by the learned Division Bench of this Court and the finding of this Court in **E.S.Sundaram Mahalingam Vs. The Special Tribunal for Co-operative Cases (District Judge) Tirunelveli**, reported in 2020 (1) C.W.C



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Pg.417 (W.A.No.4021 of 2019, dated 22.11.2019). However, taking into consideration, the fact that this writ petition was filed in the year 2012 and the decision of this Court relied upon was rendered on 22.11.2019, this Court is of the considered view that the writ petition cannot be thrown out on that ground. However, this Court is of the considered view that this writ petition can be *suo motu* converted as C.R.P. under Article 227 of the Constitution of India. Accordingly, the Registry is directed to convert this writ petition as C.R.P. under Article 227 of the Constitution of India.

8. In view of the above, this writ petition is allowed. If any amount is recovered from the petitioner, pursuant to the impugned order, all such amount shall be refunded to the petitioner as expeditiously as possible, at any rate, within a period of six weeks from the date of receipt of a copy of this order with interest at 9% per annum. The miscellaneous applications, if any, shall stand closed. No costs.

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Speaking Order : Yes/No
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