



WEB COPY



W.P.No.20191 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.20191 of 2023

and

W.M.P.No.19523 of 2023

Rani

...Petitioner

Vs.

The Deputy Registrar of Co-operative Societies,
Salem Region,
Salem-636 001.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the impugned surcharge award dated 17.05.2022 vide proceeding Na.Ka.2247/2020/Sa.Pa issued under Section 87 of the Tamil Nadu Co-operative Society Act, 1983 on the file of the respondent and quash the same as being illegal, arbitrary and unconstitutional.

For Petitioner : Mr.R.Balaramesh
For Respondent : Mr.N.Naveenkumar,
Government Advocate



W.P.No.20191 of 2023

ORDER

WEB COPY

This Writ Petition is filed challenging the surcharge order passed by the respondent holding that the deceased husband of the petitioner is jointly and severally liable to make good the loss caused to Chinnatiruppathi Primary Agricultural Co-operative Society to the tune of Rs.22,74,613/-.

2. The learned counsel for the petitioner assailed the impugned surcharge order mainly on the ground that the same was passed against the dead person namely the husband of the petitioner that too without impleading and issuing notice to the legal representatives of the deceased.

3. It is the case of the petitioner that her husband died on 23.03.2018 and the impugned proceedings have been conducted behind her back and ultimately a surcharge order was passed including the name of her deceased husband.

4. Even in the counter affidavit filed by the respondent, it is stated that the petitioner's husband died on 23.03.2018. The petitioner filed the death certificate of the deceased and a perusal of the same would suggest the



W.P.No.20191 of 2023

petitioner's husband died on 20.03.2018. The impugned surcharge proceedings were initiated based on the enquiry report filed under Section 82 of the Tamil Nadu Co-operative Societies Act, on 27.11.2019. Therefore, the enquiry report itself was filed subsequent to the death of the petitioner's husband Late.E.Ranganathan.

5. It is stated by the learned Government Advocate appearing for the respondent that 82 enquiry notice was issued to the petitioner and she also submitted her explanation that she was not very well acquainted with facts relating to the affairs of the Society and involvement of her husband in the alleged misappropriation. Merely, because a notice was issued to the petitioner in the 82 enquiry, the respondent is not entitled to pass surcharge order without impleading the legal heirs of the deceased in the surcharge proceedings.

6. A perusal of the impugned order would suggest that in the surcharge proceedings initiated under Section 87 of the Tamil Nadu Co-operative Societies Act, notice was issued only to 12 persons, which is found in page No.2 of the impugned order. Therefore, it is clear that notice was not at all issued to the legal representatives of the deceased E.Ranganathan in the



W.P.No.20191 of 2023

surcharge proceedings. However, in the penultimate paragraph of the impugned order, the respondent came to the conclusion that the deceased E.Ranganathan is also jointly and severally liable to meet the loss caused to the Society to the tune of Rs.22,74,613/-. The fastening of liability on the deceased person without issuing notice to the legal representatives is clear violation of natural justice principles and also procedure contemplated under Act. Hence, the same is not binding on the petitioner.

7. In such circumstances, the impugned order is liable to be set aside insofar as deceased E.Ranganathan is concerned. Therefore, the Writ Petition is partly allowed by setting aside the impugned surcharge order passed against the deceased E.Ranganathan. It is open to the respondent to proceed against the other persons in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

18.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
dna



W.P.No.20191 of 2023

To
WEB COPY

The Deputy Registrar of Co-operative Societies,
Salem Region,
Salem-636 001.



WEB COPY



W.P.No.20191 of 2023

S.SOUNTHAR, J.
dna

W.P No.20191 of 2023
and
W.M.P.No.19523 of 2023

18.08.2023