



W.P.(MD) Nos.3810 and 3812 to 3821, 3823 and 3824 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) Nos.3810 and 3812 to 3821, 3823 and 3824 of 2020

and

W.MP(MD)Nos. 3029, 3232 3233, 3236 to 3240, 3241 to 3255, 3257, 3258, 3262, 3263, 9361, 9364 to 9366, 9412, 9413, 9419, 9420, 9424, 9474, 9475, 9376, 15660, 15709, 15784, 15718, 15657, 15720, 15659, 15705 of 2020 796, 3028 and 3524 of 2021

W.P.(MD) No.3810 of 2020

S.Parvathi

... Petitioner

Vs.

- 1.The Registrar of Cooperative Societies,
No.170, E.V.R. Road,
Dr.Radhakrishnan Nagar,
Arumbakkam, Chennai-600 106.
- 2.The Joint Registrar of Co-operative Societies,
Theni, Theni District.
- 3.The Deputy Registrar of Co-operative Societies,
Uthamapalayam, Theni District.
- 4.R.Ramesh Kumar,
Cooperative Sub Registrar/
Audit Officer under Section 82,
M.P.103, Cumbum Panchayat Union,
Primary and Middle School Teachers



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Cooperative Thrift and Credit Society Ltd.,
Balaji Complex,
Kumuli Main Road, Cumbum,
Theni District-625 516.

5.M.P.103, Cumbum Panchayat Union
Primary and Middle School Teachers
Cooperative Thrift and Credit Society Ltd.,
Rep. by its President,
Balaji Complex,
Kumuli Main Road, Cumbum,
Theni District-625 516.

6.The District Educational Officer,
Theni District, Theni.

7.The Block Educational Officer,
Cumbum, Theni District.

8.Sri Muthaiah Pillai Memorial Primary School,
Rep by its Secretary,
Cumbum, Theni District.

9.M.S.S.Vignesh Kanthan,
Secretary,
Sri Muthaiah Pillai Memorial Primary School,
Cumbum, Theni District.

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the third respondent in Na.Ka. 977/2016/Ni.Va., dated 15.07.2019 and the impugned notice issued by the fourth respondent in No.Nil, dated 29.01.2020 and quash the same.



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For Petitioner : Mr.R.Subramanian
For R1 to R3 : Mr.K.S.Selvaganesan,
R6 & R7 Additional Government Pleader
For R5 : Mr.P.R.Prithiviraj

COMMON ORDER

These writ petitions have been filed for issuance of writ of certiorari calling for the records pertaining to the impugned proceedings of the third respondent in Na.Ka.977/2016/Ni.Va, dated 15.07.2019 and the impugned notice issued by the fourth respondent in No.Nil, dated 29.01.2020 and quash the same.

2. The brief facts which are necessary for disposing of this writ petition are as follows:-

(i) All the petitioners are Teachers in the eighth respondent school. The school was founded by one M.S.S.Selva Ganapathy, the father of the 9th respondent. On his demise, on 08.11.2008, the ninth respondent had taken charge as one man educational agency as well as the Secretary of the School. It is the case of the petitioners that in the year 2010, the



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ninth respondent had pressurized the Teachers into signing blank forms for availing loan facility for his business. When they had refused to sign, he had threatened to initiate disciplinary proceedings. The ninth respondent assured the petitioners that the loan would be discharged by him and that he only required their signatures. The petitioners would submit that they had been forced to sign the said forms and they had not directly received the loan amount and the ninth respondent had been directly paying the interest on the loan till December, 2013. Thereafter, he had started committing a default.

(ii) The petitioners also came to learn that the ninth respondent had also actively colluded with the staff and officer bearers of the fifth respondent and obtained a loan from them by using the documents given by the petitioners. A perusal of these documents would clearly indicate that the ninth respondent had directly obtained the loan and none of the statutory requirements have been followed by the fifth respondent for sanctioning the loan. Though the petitioners have signed the forms, money has been directly released to the ninth respondent and further the



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payments were also being made by the ninth respondent to the fifth respondent society.

(iii) The petitioners would further submit that on 04.10.2014, the ninth respondent had issued a single cheque for Rs.18,62,772/- and another cheque, dated 16.12.2015 for a sum of Rs.70,94,161/- towards the settlement of the loan amounts. The two cheques have been returned with an endorsement 'insufficient funds'. No action has been initiated by the society in respect of these cheques that had been dishonoured. The fifth respondent society thereafter addressed a letter to the seventh respondent as well as the Headmaster of the school to recover the amounts from the petitioners' salary. It was only when they came to learn about the recovery that the petitioners had become aware of the fact that the ninth respondent had not settled the loan account. It is also their case that the fifth respondent had sent a letter dated 18.12.2015 and 27.01.2016 to respondents 3 and 6 for the above purpose and calling upon them to take steps to recover the amount from the salary of the petitioners. In these letters, the fifth respondent had contended that on



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enquiry, they have come to learn that the loan was obtained by the petitioners and that they had defaulted in paying the same.

(iv) On 20.06.2016, the seventh respondent has passed order of recovery. Challenging the same, the petitioners had filed writ petition and this Court was pleased to stay the recovery order. In the said order, this Court has clearly mentioned that the ninth respondent had misused his position as Secretary and obtained the signatures in the blank forms. The ninth respondent has not only obtained signatures in the blank sheets, but also obtained a loan on the basis of this. The petitioners have also moved a writ seeking the issue of a mandamus directing the first respondent and others to take action to recover money from the ninth respondent. Notice was ordered and both these writ petitions are pending. In this back ground, the petitioners had been served with the surcharge proceedings under Section 82 of the Tamil Nadu Co-operative Societies Act (hereinafter called as 'the Act'). Therefore, the petitioners have come forward with the instant writ petitions.



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3. The first respondent has filed a common counter *inter alia* contending that there is no relief claimed against the first respondent and the first respondent is an unnecessary party to the proceedings.

4. The respondents 3 and 4 have filed a common counter affidavit *inter alia* contending that the writ petitions are not maintainable and the impugned orders are nothing, but an action initiated on the basis of the records available. It is only a notice calling upon the writ petitioners to submit their response and without submitting their response, the writ petitioners have rushed to this Court. They would deny the allegations made by the writ petitioners against ninth respondent and his collusion with the fifth respondent society. They have also denied the statement of the petitioners that the loan facilities have been extended without following proper statutory norms. The respondents 3 and 4 would further submit that the disbursal was against the provision of the Act and that apart, the challenge is only to a circular of the second respondent, in and by which, the fourth respondent has been appointed as an Inspection Officer, since the second respondent had ordered inspection under



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Section 82 of the Act. It is in pursuance of this circular, that notice has been sent to the petitioners as huge public money is involved and therefore, it is only after the enquiry that the true facts would come to light.

5. It is necessary to put into perspective the events that had transpired in this Court prior to the passing of the final order. When the matter had came up before this Court on 20.03.2023, the learned counsel for the petitioners submitted that they are trying to work out a settlement with the respondents and sought time to report settlement. They had also made an offer that the petitioners, who had not taken even a penny from the loan, are ready to pay the principal amount and that interest would be collected from the ninth respondent. The learned Government Advocate was directed to get necessary instructions in this regard and also to produce the records showing the disbursement of the loan and the statement of the account. The matter was adjourned to 11.04.2023. On 11.04.2023, once again, the documents have not been produced by the respondents. The matter was posted on 02.06.2023. On 02.06.2023, for the first time, it was informed that the entire records were with the fourth



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respondent and the matter was directed to be listed on 06.06.2023. On 06.06.2023, it was represented that the records relating to the repayment of loan are not available with the fourth respondent and that it is available with the fifth respondent society, since it was the society enquiring into the disbursement of loans. Thereupon, a direction was issued that the Society should submit all the papers that was handed over to the Enquiry Officer. However, the learned counsel appearing for the Enquiry Officer would submit that no records have been handed over to him and he was, therefore, directed to file an affidavit to that effect.

6. This Court also noticed that although two of the cheques issued by the ninth respondent had bounced, no steps whatsoever were taken to initiate proceedings against him and steps have not even been taken to collect the amounts from him. Once again, the petitioners offered to pay the principal amount submitting that the balance may be recovered from the ninth respondent. It was also seen that the Enquiry Officer has not initiated any action against the ninth respondent, though he is the person who has initiated the entire transactions. The statement of account



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showing the receipt of money was produced, which shows that except a sum of Rs.22,050/- on 10.01.2014, the rest of the amounts has been paid only by the ninth respondent, which clearly proves the ninth respondent's direct involvement in these transactions.

7. The learned counsel appearing for the first respondent submitted that the entries would clearly show that 21 payments have been only by the ninth respondent. When a question is put to him, the learned counsel appearing for the society would submit that the Secretary, namely, the ninth respondent would recover the amounts from the salaries of the petitioners and collectively deposit it. Therefore, this Court had directed the petitioners to provide their respective statement of accounts to clarify as to whether their bank accounts, to which, the salaries were being remitted would show these recoveries. All of them have produced the statement of accounts. A perusal of the statement of accounts would clearly show that no amount has been deducted from their accounts at the relevant point of time when the amounts setout in the payment schedule produced was made. The learned counsel appearing for the society



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would submit that they are not willing for the settlement as suggested by the petitioners. Therefore, this Court is proceeding to pass orders on merits.

8. The challenge is primarily on the ground that except for affixing their respective signatures in the forms, amounts have not been received by the petitioners and it is only the ninth respondent, who has withdrawn the entire amounts. The contention of the petitioners is supported by the fact that it is the ninth respondent has deposited the interest/instalments from 30.04.2012 to 09.10.2013. If the borrowal was not by the ninth respondent and it was only by the petitioners, there was no necessity for the ninth respondent to make these payments. Further, the statement of account produced on the side of the petitioners would clearly show that no amount has been withdrawn from their accounts on the dates when payments are said to have been made. Further, the ninth respondent has issued two cheques one on 04.10.2014 for a sum of Rs.18,62,772/- and another cheque on 16.12.2015 for a sum of Rs.70,94,161/-. There was no necessity for the ninth respondent to issue the cheques for such a huge



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amount, if he was no way connected with the borrowals. The very fact that he has deposited these cheques in his individual capacity is only to buttress the claim of the petitioners that they have been forced into signing the forms to enable the ninth respondent to borrow money.

9. The collusion between the fifth respondent society and the ninth respondent is writ large from the fact that although the cheques issued by the ninth respondent were dishonoured even in the year 2015, no steps whatsoever have been initiated to-date to question him regarding the same, nor proceedings under N.I. Act have been initiated. To add insult to injury, the fifth respondent society has allowed the ninth respondent to retire and receive all his retiral benefits. All of which, would speak volumes about how the fifth respondent society is in complicity with the ninth respondent by their in action in not taking steps to recover the dues. They have further caused loss of public money to the society.

10. The petitioners have now offered to pay the principal amount. Although the respondents are not willing to accept the offer, this Court



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with an intent of mitigating the loss of the society and taking into account the fact that from the very perusal of the documents it is crystal clear that it is the ninth respondent, who had borrowed the amounts, all the Writ Petitions with the following directions:-

(i) The society shall receive the principal alone from the petitioners, taking into account the fact that no action has been initiated by them against the real culprit and by their inaction they have managed to allow the main culprit goes scot-free. The said principal amount will be deposited within a period of two weeks from the date of receipt of a copy of this order.

(ii) The second respondent shall initiate action against all the concerned officials. It is also seen that despite the cheques having been dishonoured, not even a notice under Section 138 of N.I. Act has been issued by the society in question to the ninth respondent. Therefore, it is crystal clear that the society is hand in glove with the culprit in question and compliance of that action shall be reported to this Court.



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(iii) It is needless to state that as and when proceedings are initiated against the officials concerned, the petitioners will cooperate with the trial.

11. With the above directions, these Writ Petitions are disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

26.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

- 1.The Registrar of Cooperative Societies,
No.170, E.V.R. Road,
Dr.Radhakrishnan Nagar,
Arumbakkam,
Chennai-600 106.
- 2.The Joint Registrar of Co-operative Societies,
Theni, Theni District.
- 3.The Deputy Registrar of Co-operative Societies,
Uthamapalayam,
Theni District.



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4.The District Educational Officer,
Theni District, Theni.

5.The Block Educational Officer,
Cumbum, Theni District.



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P.T.ASHA, J.

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