BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.6741 of 2020
and
W.M.P.(MD).No.6114 of 2020

Selvam ... Petitioner

Vs

1.Government of Tamil Nadu,
represented by its
Principal Secretary to Government,
Co-operation, Food and
Consumer Protection (CCI) Department,
Secretariat, Chennai-9.

2.The Joint Registrar of Co-operative Societies,
Kanyakumari District.

3.The Secretary,
Kanyakumari District Central Co-operative Bank,
Alexandra Press Road,
Nagercoil-629 001,
Kanyakumari District.

4.The Secretary,
Thalakulam-Eraniel Farmers Service,
Co-operative Society Limited, No.2650,
Monday Market, Neyyoor,
Kanyakumari District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents herein to waive the loan availed by the petitioner and release the title deeds of the petitioner based on G.O.(Ms).No.50, dated 23.05.2016 and G.O.(Ms).No.59, Co-operation, Food and Consumer Protection Department, dated 28.06.2016.

For Petitioner : Mr.R.J.Karthick

For R-1 to R-3 : Ms.Farjana Ghoushia
Special Government Pleader

For R-4 : Mr.V.H.S.Prathap

ORDER

This Writ Petition has been filed for the issue of writ of mandamus directing the respondents to waive the loan amount availed by the petitioner and to release the title deeds deposited by the petitioner towards the loan based on G.O.(Ms).No.50, Co-operation, Food and Consumer Protection (CC1) Department, dated 23.05.2016 and G.O.(Ms).No.59, Co-operation, Food and Consumer Protection (CC1) Department, dated 28.06.2016.

2. The case of the petitioner is that she is a member of the fourth respondent Society. In the year 2014, she applied for a Medium

Term Loan under the Entrepreneur Development Programme 2014-2015 for setting up a diary farm. The application submitted by the petitioner was scrutinized and the District Level Committee selected the petitioner to avail the loan. The District Collector through the proceedings, dated 09.10.2014, recommended the fourth respondent to grant loan to the petitioner and the total loan was sanctioned for a sum of Rs. 2,25,000/- (Rupees Two Lakhs and Twenty Five Thousand only). The loan was approved by the third respondent on 07.08.2015. The fourth respondent insisted for the deposit of title deeds as security of the loan amount and accordingly, the petitioner also deposited the title deeds and the same was also registered on 14.09.2015. Thereafter, the fourth respondent insisted for production of certain other documents from the Nationalized Banks and that was also submitted by the petitioner. The first installment of a sum of Rs.1,12,500/- (Rupees One Lakh Twelve Thousand and Five Hundred only) was disbursed to the petitioner on 12.11.2015. The second installment was disbursed after nearly six months on 28.06.2016. The petitioner had also paid the installments regularly to the tune of Rs.15,000/- (Rupees Fifteen Thousand only) to the fourth respondent.

3. The Government issued G.O.Ms.No.50, Co-operation, Food and Consumer Protection (CC1) Department, dated 23.05.2016 and waived the Outstanding Crop Loan, Medium Term (Agriculture) Loan and Long Term (Farm Sector) Loan issued to the Small and Marginal Farmers by the Co-operative Banks as on 31.03.2016. The Government also issued G.O.Ms.No.59, Co-operation, Food and Consumer Protection (CC1) Department, dated 28.06.2016, in this regard. The petitioner was under the impression that the entire loan was waived and was awaiting for the title documents to be returned back to the petitioner. Since the same was not returned, the petitioner issued a legal notice, dated 08.12.2018 to the fourth respondent, calling upon the fourth respondent to release the title deeds to the petitioner. On receipt of this legal notice, a reply was given by the fourth respondent to the effect that only the first installment of the loan amount is entitled for the waiver and that the second installment that was given to the petitioner on 28.06.2016 fell beyond the cut off period that was fixed by the Government Order and hence, the petitioner was informed that she is not entitled for the waiver of the second installment of the loan.

4. The fourth respondent, thereafter, sent a demand notice on 12.03.2020 and a subsequent demand notice on 13.03.2020 and directed the petitioner to pay a sum of Rs.1,49,528/- (Rupees One Lakh Forty Nine Thousand Five Hundred and Twenty Eight only), failing which, further action will be taken in accordance with law for the recovery of the amount. Aggrieved by the same, the present Writ Petition has been filed before this Court.

5. The fourth respondent has filed a counter affidavit and also an additional counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

> "*4. It is humbly submitted that on 14.09.2015, this petitioner executed registered mortgage in favour of the fourth respondent with Registration No.1342/2015 on the file of Manavalakurichy Sub Registry. On 29.10.2015. the fourth respondent requested the third respondent to disburse the loan at the earliest. On 12.11.2015, the first installment loan of Rs. 1,12,500/- was disbursed to the petitioner. The second installment of Rs.1,12,500/- was*

disbursed on 28.06.2016, after the lapse of six months as per the condition stipulated by the Co-operative Bank for granting loan.

5. It is humbly submitted that while so, on 30.06.2016, the Registrar of Co-operative Societies issued Waiver Circular No.36365/16 in pursuance of G.O.(Ms).Nos.50 and 51 of Tamil Nadu Government Co-operative Food and Consumer Protection Department. According to the G.O and subsequent circular, the agricultural and allied mid-term loans pending upto 31.03.2016 are eligible for waiver. This petitioner availed Rs.1,12,500/- only on 28.06.2016, so it is after lapse of three months from the crucial date of 31.03.2016. So the loan availed after 31.03.2016 is not comes under the purview of G.O.(Ms).Nos.50 and 51. Therefore, this petitioner is not entitled to get waiver for his second installment of loan.

6. It is submitted that the delay in disbursing loan was on account of petitioner's reluctance to executed mortgage deed in favour of the fourth respondent. The Executive Committee of the fourth respondent passed *resolution on 07.11.2014 recommending loan to the petitioner. But petitioner registered mortgage deed only on 10.09.2015.*

7. It is humbly submitted that since the second installment of loan is not comes under the purview of waiver plan, petitioner is duty bound to repay the loan. Accordingly, she repaid loan installment amount of Rs.15,000/- on five occasions on 07.01.2016, 03.02.2016, 04.03.2016, 20.04.2016 and 07.05.2016. The remaining loan amount with interest Rs.1,24,888/- is unpaid. If the petitioner repays the entire balance loan amount, the deeds will be returned at once by the fourth respondent."

6. The relevant portions in the additional counter affidavit are extracted hereunder:

"*4. It is humbly submitted that only on 20.06.2016, this petitioner produced the second sale paper (விலைச் சீட்டு). On 22.06.2006, the fourth respondent inspected the petitioner along with Manager of THADCO. On 23.06.2016, the fourth respondent submitted his report and sought assent from the District Central Co-operative Bank approved the second installment of loan.*

On 28.06.2016, the second installment of Rs. 1,12,5000/- was disbursed to the vendor of cow Mrs.Valliammal. On 22.09.2016, the Government of Tamil Nadu reimbursed the waiver amount to the Society. The entire waiver reimbursed the waiver amount to the Society. The entire waiver and process was over by this. So, this second installment of loan of Rs.1,12,500/- is not eligible for waiver. The subsidy amount of Rs.33,750/- and share contribution of Rs.7875/- as a total of Rs.41,625/- was adjusted and the remaining loan amount of Rs.66,278/- accumulated interest thereon is Rs.63,350/-. Thus, a total sum of Rs.1,29,628/- is now due. If this amount is repaid the documents will be returned to the petitioner.

5. It is humbly submitted that this petitioner filed this petition only on 03.06.2020 after lapse of four years, hence this petition is bad for latches. This petition is filed after paying two installments, hence it is an afterthought. Any dispute between the Society and its member is entertain-able before this quasi-judicial forum headed by the Deputy Registrar of Co-operative Societies under Section 90 of the Tamil Nadu Co-operative Societies Act. This alternative remedy *is not exhausted. There is no delay or negligence on the part of the fourth respondent."*

7. Heard the learned counsel appearing for the petitioner as well as learned Special Government Pleader appearing for respondent Nos.1 to 3 and learned counsel appearing for the fourth respondent.

8. On carefully going through the guidelines that was annexed along with G.O.Ms.No.59, Co-operation, Food and Consumer Protection (CC1) Department, dated 28.06.2016, it is seen that the loan that is entitled for waiver is the entire agricultural loan outstanding including the principal, interest, penal interest and all other charges as on 31.03.2016 for the various categories of the agricultural loans given by the Co-operative Societies. It is very clear that a person in order to avail the waiver should have an outstanding loan by way of principal, interest, penal interest and other charges as on 31.03.2016. It is an admitted fact that the first installment that was released to the petitioner fell within this cut off period and accordingly, the loan that was disbursed to the petitioner on 12.11.2015 was waived. There is also no dispute with regard to the fact that the second installment of the loan amount was deposited to the petitioner only on 28.06.2016.

9. The learned counsel for the petitioner submitted that the entire loan amount of Rs.2,25,000/- (Rupees Two Lakhs and Twenty Five Thousand only) was approved by the third respondent as early as on 07.08.2015 and that there was a delay on the part of the fourth respondent in disbursing the loan amount and hence, the same should not be put against the petitioner, who is seeking to get a waiver of the entire loan amount in line with the relevant Government Orders. The learned counsel for the petitioner submitted that there was absolutely no reason for the fourth respondent to delay the payment of the second instalment upto 28.06.2016 and the manner in which the loan amount was disbursed by the fourth respondent was not in line with the proceedings of the TAHDCO which were issued in the year 2014-2015. Hence, it was contended that a beneficial Government Order has been issued and hence, the petitioner should not be deprived from taking advantage of the beneficial Government Order while seeking for waiver of the loan amount.

10. Per contra, learned counsel for the fourth respondent submitted that the loan amount had to be disbursed in installments.

Accordingly, the first installment of Rs.1,12,500/- (Rupees One Lakh Twelve Thousand and Five Hundred only) was disbursed on 12.11.2015 and the second installment can be disbursed only after a period of six months. Accordingly, after the completion of the formalities, it was disbursed only on 28.06.2016. The learned counsel further contended that the second installment will not fall within the time limit prescribed by the relevant Government Order and that the petitioner is not entitled for the waiver of the same and therefore, the petitioner must be directed to pay a sum of Rs.1,24,488/- (Rupees One Lakh Twenty Four Thousand Four Hundred and Eighty Eight only) and on such payment, the title deeds itself will be returned by the fourth respondent to the petitioner.

11. In the instant case, the short issue that arises for consideration is as to whether the petitioner will be entitled to take advantage of the Government Order and seek for waiver of the second installment of the loan amount which was disbursed to the petitioner on 28.06.2016.

12. The object behind the issuance of G.O.Ms.No,50, Co-operation, Food and Consumer Protection (CC1) Department, dated 23.05.2016 and G.O.Ms.No.59, Co-operation, Food and Consumer Protection (CC1) Department, dated 28.06.2016 are to grant relief to the Small and Marginal Farmers by extending waiver to the outstanding loan amount which was availed from the Co-operative Banks. These Government Orders made it clear that the loan amount must be outstanding as on 31.03.2016. The language used in the Government Order is clear and unambiguous and therefore, it is not necessary for this Court to refer to the object of the Government Order and expand the scope of the benefit that has been given under the Government Order.

13.There is no dispute with regard to the fact that the second installment of the loan amount was disbursed to the petitioner only on 28.06.2016. Hence, this amount will not come within the scope of the relevant Government Orders and it cannot be considered to be outstanding as on 31.03.2016. The grievance that has been expressed on the side of the petitioner is that there was a delay in the disbursal of the second installment of the loan amount and the same should not be put against the petitioner. If this grievance is acted upon and the waiver is extended to the second installment of the loan amount, this Court will be expanding the scope of the relevant Government Orders which only granted the waiver for the outstanding loan amount. The petitioner may be having a genuine grievance on the delay in the disbursal of the second installment of the loan amount. However, that by itself will not entitle the petitioner to seek for waiver of the loan amount which was ultimately disbursed after 31.03.2016. If any such interpretation is given and the scope of the Government Order granting waiver is expanded, it will open floodgates. The petitioner, who is seeking to take advantage of the Government Order must be able to bring her case within the scope of Government Order since the Government Order grants waiver in the payment of the outstanding loan amounts on 31.03.2016. If the petitioner is not able to bring the case within the scope of the Government Order and the second installment itself has been paid much after 31.03.2016, it will go beyond the scope of the Government Order to extend the waiver even for the second installment that was granted to the petitioner only on 28.06.2016. Hence, this Court is not in agreement with the submissions made by the learned counsel in this regard. This Court finds that the reason assigned by the fourth respondent in not extending the waiver of loan for the second installment, is reasonable and it is well within the scope of the relevant Government Orders.

14. In the light of the above discussion, this Court does not find any ground to interfere with the demand notice made by the fourth respondent from the petitioner by directing the petitioner to repay back the amount that is due and payable. On such repayment, the fourth respondent has undertaken to return back the title deeds to the petitioner. The petitioner was under the impression that she is entitled for the waiver of the loan amount and hence was asking the fourth respondent to return back the original documents. The same is clear from the legal notice issued by the petitioner on 08.12.2018. Ultimately, only when the fourth respondent issued the reply notice, dated 12.01.2019, the petitioner came to know that the fourth respondent was not agreeable to waive the loan amount. Subsequently, the demand notice was issued to the petitioner in the year 2020. In view of the same, it will be more appropriate to direct the petitioner to pay a sum of Rs.1,12,500/- (Rupees One Lakh Twelve Thousand and Five Hundred only) along with interest from 01.04.2020

onwards till date of repayment of the entire loan amount. Once this amount is repaid, the fourth respondent shall return back the original title deeds to the petitioner.

15. In the result, this Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

04.10.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
tsg
To
1.The Principal Secretary to Government,
Government of Tamil Nadu, Co-operation, Food and Consumer Protection (CCI) Department,
Secretariat, Chennai-9.

2.The Joint Registrar of Co-operative Societies,
Kanyakumari District.

3.The Secretary,
Kanyakumari District Central Co-operative Bank,
Alexandra Press Road,
Nagercoil-629 001,
Kanyakumari District.

N.ANAND VENKATESH, J.

tsg

W.P.(MD)No.6741 of 2020

04.10.2023