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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.07.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.1002 of 2014
and
M.P.(MD)No.2 of 2014

1.P.Selvaraj
2.S.Shanmugaraj

...Appellants

/Vs./

1.The Principal District and Sessions Judge,
(Co-operative Tribunal),
District Court Campus,
Theni District.

2.The Deputy Registrar of Co-operative Societies,
Uthampalayam Post & Taluk,
Theni District.

...Respondents

PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to
set aside the order dated 31.07.2013 passed in W.P.(MD)No.12751 of
2013.

For Appellants	: Mr.M.E.Ilango for Mr.Jerin Mathew
For R2	: Mr.K.S.Selvaganesan Additional Government Pleader



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JUDGMENT

(Judgment of the Court was delivered by **R.VIJAYAKUMAR, J.**)

The writ petitioners are the appellants. The writ petition was filed challenging the order passed by the Cooperative Tribunal in C.M.A. (CS) No.8 of 2006, wherein an order under Section 87 of the Cooperative Societies Act (hereinafter referred to as 'Act' for brevity) was challenged.

2. According to the learned counsel for the writ petitioners, based upon the report submitted under Section 81 of the Act, surcharge proceedings were initiated as against the writ petitioners and two others under Section 87 of the Act. Order passed under Section 87 of the Act was primarily attacked on the ground that report under Section 81 of the Act was not furnished. The learned counsel for the writ petitioners had further contended that there was no deliberate act of misconduct so as to attract surcharge proceedings under Section 87 of the Act.

3. The Writ Court after considering the submissions on either side, found that the writ petitioners have actually colluded with the then



Secretary of the Society and they were responsible for the sanctioning and disbursing of loan amount to the account holders. The Writ Court further found that the writ petitioners have failed to discharge their duties and indulged in irregularity and caused revenue loss to the society. On the said terms, the writ petition was dismissed. Challenging the same, the present writ appeal has been filed by the appellants.

4.The learned counsel for the appellants has reiterated the contention that Section 81 report was not furnished to them, before conducting an enquiry during surcharge proceedings. The learned counsel relied upon the judgment of the Division Bench of this Court in *P.Elango vs. The Administrator, M.R.K.Co-operative Sugar Mills and others* [(2014) 3 MLJ 575], to impress upon the Court that non-furnishing of enquiry report before initiating surcharge proceedings would be fatal to the said proceedings. The learned counsel for the appellant further relied upon the judgment of this Court in *C.Kamaraj vs. Registrar of Cooperative Societies* [(2017) 1 CTC 258] to contend that furnishing of report under Section 81 of the Act is mandatory for initiating proceedings under Section 87 of the Act.



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5.The learned counsel for the appellant further relied upon Section 87 of the Act to contend that surcharge proceedings could be initiated only when the authorities find that the delinquent has committed breach or willful negligence in discharging his duties. In the present case, according to him, the criminal Court in its order dated 08.03.2013 has categorically found that the petitioners have not obtained any monitory benefits out of the said transaction and convicted him under Section 477-A of the Indian Penal Code and therefore, ingredients of Section 87 of the Act have not been satisfied. Hence, prayed for allowing the writ appeal.

6.Per contra, the learned Additional Government Pleader appearing for the authorities pointed out that report under Section 81 of the Act is a result of ministerial act, wherein prima facie case is been made out as against the delinquents in order to initiate proceedings under Section 87 of the Act. Therefore, non furnishing of the said report cannot be a fatal to the proceedings under Section 87 of the Act, which according to him is an independent proceeding. He further pointed out that the appellants having been convicted under Section 477-A IPC, now



cannot contend that there was no deliberate misconduct, especially when the criminal Court found that they have falsified the accounts. Hence, he prays for sustaining the order passed by the Writ Court.

7. We have carefully heard the submissions on either side and perused the records.

8. As far as the contention of the learned counsel for the writ petitioners that report under Section 81 of the Act was not furnished is concerned, the said ground was available to the writ petitioners as and when they received notice of enquiry under Section 87 of the Act. However, without raising any objection, they have participated in the Section 87 enquiry proceedings. That apart, they have not raised the issue of non furnishing of Section 81 report either in the surcharge proceedings or before the Cooperative Tribunal. It has been raised for the first time before the Writ Court. Therefore, we are not inclined to accept the said contention, which has been raised belatedly. We do not find that petitioners were in any way put to prejudice by the non furnishing of Section 81 report.



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9.As far as the contention of the writ petitioners that ingredients of Section 87 of the Act relating to deliberate misconduct has not been satisfied, we are of the opinion that in view of the judgment of the criminal Court in C.C.I.W.197 of 2004 dated 08.08.2017, wherein the petitioners have been convicted under Section 477(A) of the Act for falsification of the accounts, the deliberate misconduct on the part of the writ petitioners has been made out. Therefore, we are not inclined to interfere with the order of the writ Court.

10.The Writ Appeal lacks merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[A.S.M.J.] & [R.V.J.]
31.07.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes
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To

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(Co-operative Tribunal),
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2. The Deputy Registrar of Co-operative Societies,
Uthampalayam Post & Taluk,
Theni District.



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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Order made in
W.A.(MD)No.1002 of 2014

Dated:
31.07.2023