



W.A.(MD) No.1735 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 09.10.2023

CORAM

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD) No.1735 of 2023
and C.M.P.(MD) No.13271 of 2023

The Deputy Registrar of Cooperative Societies,
Office of the Deputy Registrar of Cooperatives,
Paramakudi Circle,
Singarathoppu Street,
Paramakudi Post,
Ramanathapuram District. ... Appellant/1st Respondent

-Vs.-

1.M.R.Janarthanan ... 1st Respondent/Writ Petitioner

2.Bogalur Primary Agricultural
Cooperative Credit Society,
Rep. by its President,
Bogalur, Ramanathapuram. ... 2nd Respondent/2nd Respondent

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent Act, to
set aside the order dated 04.08.2022 made in W.P.(MD)No.11585 of 2015
on the file of this Court.

For Appellant : Mr.N.Satheesh Kumar
Additional Government Pleader



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For 1st Respondent : Mr.C.Jeganathan

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J U D G M E N T

(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**)

This intra-Court appeal has been instituted questioning the validity of the order dated 04.08.2014 passed in W.P.(MD) No.11585 of 2015.

2. By consent of both sides, the Writ Appeal itself is taken up for final disposal at the time of admission. Considering the nature of the order proposed to be passed in this Writ Appeal, protecting the interest of the second respondent also, notice to the second respondent is dispensed with.

3. The facts in nutshell as narrated would reveal that the first respondent was an employee of the second respondent cooperative society. The second respondent is the cooperative society registered under the provisions of the Tamil Nadu Cooperative Societies Act, 1983. A surcharge proceedings was initiated under Section 87 of the Tamil Nadu Cooperative Societies Act and it is not in dispute that the first



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respondent employee participated in the process of enquiry. After conducting the enquiry, the competent authority / Deputy Registrar of Co-operative Societies passed an order under Section 87 of the Act, which was challenged by way a writ proceedings before this Court. The said Writ Petition was allowed on the ground that there is no reference for initiation of surcharge proceedings in the report submitted under Section 81 of the Tamil Nadu Cooperative Societies Act and in the absence of any specific reference against the first respondent, the surcharge proceedings initiated against the first respondent is untenable.

4. The learned Additional Government Pleader appearing on behalf of the appellant mainly contended that Section 81 report would be sufficient enough to institute the surcharge proceedings and it is only a fact finding report based on which the authorities can conduct further enquiry on the allegations of misappropriation, fraud etc., if any occurred in the cooperative societies. Thus, the learned Judge has erred in allowing the Writ Petition.

5. Learned counsel for the first respondent mainly contended that since there was no reference for initiation of surcharge proceedings



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against the first respondent in the Section 81 report, the Writ Petition was allowed on that ground and there is no infirmity.

6. We have Considered the rival submissions made between the parties to the lis.

7. The scheme of the Tamil Nadu Cooperative Societies Act contemplates a statutory enquiry under Section 81 and an inspection under Section 82 of the Act. Under Section 81, an enquiry may be ordered by the Registrar on his own motion and shall, on application of a majority of the board or of not less than one third of the members or on the request of the financing bank or of the District Collector, hold an inquiry, or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to that society or into any particular aspect of the working of that society.



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8. Therefore, it is a statutory enquiry contemplated in order to regulate the affairs and administration of a Cooperative Society under the provisions of the Act. Once an enquiry officer has been appointed under Section 81 of the Act, he is empowered to scrutinize the records of the society and submit his report. Report *per se* would not provide a cause for the employees to move a Writ Petition. Based on the enquiry report submitted under Section 81 of the Act three fold actions are permissible. Firstly, surcharge proceedings may be initiated, if any financial loss has been assessed by the enquiry officer. Criminal prosecution can be initiated by registering a complaint before the commercial investigation wing of the police department. Thirdly, department disciplinary proceedings also can be initiated, if there is any misconduct or violations of service conditions are identified. All the three fold actions are permissible simultaneously and there is no impediment for the authorities to institute proceedings independently and pass appropriate orders by following the procedures as contemplated under the relevant rules and by-laws in force.

9. Therefore, the finding made in the enquiry report under Section 81 is to be considered for the purpose of initiation of all possible



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actions and thus, the findings made by the learned Single Judge that there is no reference in the Section 81 report is immaterial and even in the absence of any such reference, the authorities are empowered to initiate surcharge proceedings, disciplinary proceedings and criminal prosecution, if there are materials available on record for the purpose of initiation of such actions.

10. Section 87 of the Tamil Nadu Cooperative Societies Act denotes surcharge. Sub-section 1 to Section 87 enumerates where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding up of a society, it appears that any person who is or was entrusted with the organization or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment which is not in accordance with this Act, the rules or the by – laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the board,



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Liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the person authorised as aforesaid thinks just.

11. Therefore, Section 81 report alone cannot be a ground to initiate surcharge proceedings under Section 87. Numerous circumstances are enumerated under the provisions of the Act for initiation of actions. Ultimately, misappropriation of funds, fraud or otherwise are identified, the authorities are empowered to initiate action by invoking the provisions of the Act and Rules. This being the very



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object and scheme of the Act, non reference regarding surcharge proceedings in 81 Report cannot be a ground to vitiate the entire proceedings and thus we are inclined to consider the Writ Appeal on hand.

12. Accordingly, the order dated 04.08.2014, passed in W.P. (MD) No.11585 of 2015 is set aside. The first respondent is at liberty to approach the appellate forum / jurisdiction Principal District Judge / Special Tribunal for Co-operative cases under Section 152 of the Tamil Nadu Cooperative Societies Act within a period of 30 days from the date of receipt of a copy of this order. On receipt of any such statutory appeal, the jurisdictional forum may adjudicate and decide the matter as expeditiously as possible without being influenced by the observations made in this Writ Appeal. It is open to the first respondent to raise all the grounds.

13. Accordingly, the Writ Appeal stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[S.M.S.J.] & [V.L.N.J.]
09.10.2023

NCC :Yes/No
Index :Yes/No
SJ



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