



C.R.P(MD)No.2408 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.09.2023

PRONOUNCED ON : 27.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.2408 of 2015

S.Kaliyaperumal

... Revision Petitioner/Appellant

Vs.

Deputy Registrar,
Deputy Registrar of Co-operative Societies,
Marthadapuram,
2nd Veethi,
Pudukkottai.

... Respondent/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 11.03.2014 in C.M.A.C.S.No.2 of 2012 on the file of the Co-operative Appellate Tribunal (Principal District Judge), Pudukkottai, confirming the order of the Deputy Registrar of Co-operative Societies, Pudukkottai in Na.Ka.No.9334 of 2004 Sa.Pa dated 16.11.2011.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondent : Mr.M.Senthil Ayyanar
Government Advocate



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ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order, dated 11.03.2014 in C.M.A.C.S.No.2 of 2012 on the file of the Co-operative Appellate Tribunal (Principal District Judge), Pudukkottai, confirming the order of the Deputy Registrar of Co-operative Societies, Pudukkottai in Na.Ka.No.9334/2044 Sa.Pa, dated 16.11.2011.

2.The revision petitioner in this Civil Revision Petition suffered an order passed by the Deputy Registrar of Co-operative Societies, Pudukkottai in Na.Ka.No.9334/2044 Sa.Pa, dated 16.11.2011. The petitioner filed a statutory appeal before the Special Tribunal for Co-operative Cases ie., the Principal District Judge, Pudukkottai in C.M.A.C.S.No.2 of 2012. The said Appeal was dismissed by order, dated 11.03.2014. Aggrieved by the order of dismissal of its statutory appeal by the Special Tribunal, the revision petitioner has come before this Court with this Civil Revision Petition.



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3.The learned counsel appearing for the revision petitioner took me through each and every contention putforth before this Court in the grounds.

4.Per contra, the learned counsel appearing for the respondent reiterated every defence which has been raised in the counter-affidavit.

5.Heard Mr.P.Ganapathi Subramanian, learned counsel appearing for the revision petitioner and Mr.M.Senthil Ayyanar, learned Government Advocate appearing for the respondent and anxiously perused the entire materials available on record.

6.The revision petitioner was working as a Secretary of Sengalur Primary Agricultural Co-operative Society from 11.02.1987 to 11.03.2004. During his tenure, certain irregularities/illegalities were brought to the notice of the respondent with respect to the sanction of farm loans, as a result of which, the respondent ordered an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, vide proceedings, dated 20.02.2004. Pursuant to the same, one V.Jayakumar, Co-operative Sub-Registrar was appointed as an enquiry



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officer. The enquiry officer submitted a report, dated 28.07.2004, in which, he listed out 392 loans to the tune of Rs.1,41,66,880/- as bogus loans which were disbursed by the revision petitioner by indulging in various malpractices such as (i) disbursal of loans in the name of bogus members (ii) disbursal of loans without holding of land documents (iii) disbursal of loans with forged land documents and (iv) disbursal of loans in the name of the deceased members. That apart, a sum of Rs. 2,43,000/- was also swindled from the Society in the guise of loans sanctioned to the employees from the provident fund account and in total, the loss assessed by the enquiry officer was Rs.1,44,09,880/- and he recommended to initiate surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 against 85 persons including the revision petitioner, 4 employees of the Society, 2 employees of the Financial Bank and 78 members for retrieving the loss. In furtherance to the same, a surcharge proceedings was initiated vide proceedings in R.C.No.9334 of 2004 and after conducting surcharge enquiry, it was concluded that the Secretary of the Society/revision petitioner herein and 3 other employees of the Society and 2 employees of the Financial Bank were jointly and severally liable for the loss, in addition to 7 members/borrowers of the Society who were also held responsible for



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the loss incurred by the Bank. Accordingly, a final surcharge order came to be passed by the respondent for a sum of Rs.1,44,09,880/- on 17.04.2005.

7. Aggrieved by the same, the revision petitioner and others preferred an appeal before the Co-operative Appellate Tribunal (Principal District Court), Pudukottai in C.M.A.CS.No.1 of 2008. The Co-operative Tribunal, by order, dated 05.12.2008 remitted back the case to the respondent for retrial. In compliance to the said order, a retrial was conducted by the respondent by issuing a show-cause notice, dated 19.11.2010 to the employees, who made an appeal before the Co-operative Appellate Tribunal (Principal District Judge), Pudukkottai. After proper retrial by the respondent, a final order was passed in R.C.No.9334/2001, dated 16.11.2011, wherein, the assessment of loss to the Society was reduced to Rs.1,37,04,755/- from the earlier order of Rs.1,44,09,880/- and the Secretary of the Society/revision petitioner herein and 3 clerks were held responsible for the loss suffered by the Society and others were exonerated. Assailing the same, the revision petitioner again filed an appeal before the learned Co-operative Appellate Tribunal (Principal District Judge), Pudukkottai in C.M.A.CS.No.2 of 2012. The learned Co-operative



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Appellate Tribunal by order dated 11.03.2014 confirmed the order passed by the respondent on 16.11.2011. Assailing the same, the revision petitioner has filed the present Civil Revision Petition seeking to set aside the order of the learned Co-operative Appellate Tribunal (Principal District Judge), Pudukkottai in C.M.A.CS.No.2 of 2012, dated 11.03.2014.

8.The learned Co-operative Appellate Tribunal proceeded to negate all the grounds raised before it. The main ground on the basis of which the revision petitioner attacked the order of the respondent authority is that the subsequent surcharge proceeding by which a re-trial was commenced by issuing a show-cause notice only on 19.11.2010 ie., two years after the date of the order passed by the learned Co-operative Appellate Tribunal in C.M.A.CS.No.1 of 2008 ie., on 05.12.2008. The proviso to Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 provides that no action shall be commenced under sub-Section 87(1) of the Tamil Nadu Co-operative Societies Act, 1983, after the expiry of seven years from the date of any act or omission referred to in the sub-Section. In this case, the surcharge proceedings commenced by the issuance of show-cause notice on 19.11.2010, was not the surcharge proceedings for the first



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instance. After an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, was conducted by one J.Jeyakumar, Co-operative Sub-Registrar as an enquiry officer and consequently, a report dated 28.07.2004 was submitted and surcharge proceedings were commenced at the first instance and orders were passed on 17.04.2005. Assailing the same, an appeal was preferred by the revision petitioner before the learned Co-operative Appellate Tribunal at Pudukottai in C.M.A.CS.No.1 of 2008 and the said Co-operative Appellate Tribunal remanded the same back to the respondent authority for having violated of principles of natural justice by not giving proper opportunity to the revision petitioner to cross-examine the witnesses and by not providing with the documents pertaining to the various allegations against him. Only at the instance of the said remand order, on 19.11.2010, second surcharge proceedings were commenced by the issuance of a show-cause notice and hence, the plea of the revision petitioner attributing the delay on the part of the respondent authority in conducting the surcharge proceedings is not sustainable because the same was conducted on the basis of the judicial order.



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9.It is no more *res integra* that the surcharge proceedings which are mandated to be completed within a period of six months could be extended to a further period of six months or more on appropriate permission/order from the competent authority and hence, the ground raised by the revision petitioner that the surcharge proceedings is bad for not having been concluded within a period of six months will not hold good, because the respondent authority has properly obtained proper extension of time from the Joint Registrar of Co-operative Societies, Pudukkottai, for another period of six months for conclusion of the said surcharge proceedings.

10.The another ground which has been raised by the revision petitioner is that the respondent authority has failed to rectify the mistakes pointed out in the order, dated 05.12.2008 in C.M.A.CS.No.1 of 2008 and even in the second surcharge proceedings, the revision petitioner was not afforded with an opportunity of cross-examining the witnesses and that itself would vitiate the entire surcharge proceedings.



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11.However, a critical perusal of the records would prove the contrary. Vide issuance of the second show-cause notice on 19.11.2010 to the revision petitioner and six others, they were required to offer a written explanation within 15 days. The revision petitioner, who received the notice on 10.12.2010, wantonly refrained from sending his written explanation. Pursuant to that, a summon for the oral enquiry on 04.03.2011 was sent to the petitioner, who in turn received the same on 09.03.2011. However, he did not turn up for the oral enquiry. But out of 7 delinquents one Sangili Muthu, Paramasivam and Financing Bank Supervisors promptly attended the oral hearing. In furtherance to the same, a second opportunity was given to the revision petitioner for an oral hearing on 22.03.2011 by sending a notice by a registered post dated 11.03.2011. Even this time, he deliberately avoided attending the oral hearing and missed his opportunity to utilize the chance of cross-examining the witnesses. This time one Anthonisamy, who was working as an Office Assistant in the Society, appeared for enquiry and confessed that he had received three loans for a sum of Rs.45,000/- each and in total a sum of Rs.1,35,000/- in the names of his wife, sister and brother-in-law by producing bogus documents. Even after that, a third opportunity was

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provided to the revision petitioner requiring him to appear for hearing on 29.03.2011, on which date he did not make his appearance, but sent a telegram asking for documentary evidence. The respondent authority promptly responded vide letter dated 20.10.2011 by informing that all the required documents would be provided during the course of the hearing and that the revision petitioner was at liberty to peruse the entire set of documents at his discretion.

12.That apart, the petitioner in his letter, dated 15.06.2011 agreed that he received Section 81 enquiry report from the respondent. The other charge-sheeted employees, namely Sanglimuthu, Paramasivam, Sundararaj and Ratchagaraj, by their letters, dated 20.12.2010 sought for four documents which were provided to them on 06.05.2011, after getting back the documents from the Judicial Magistrate Court, Pudukkottai which were submitted before the said Court in a Criminal Case No.5 of 2005 involving the same set of facts. The revision petitioner and others were provided with the copy of the documents, which reads as follows:-

“இவ்வழக்கில் அறிவிப்புக்கு உட்படுத்தப்பட்டவர்களுக்கு அவர்களது கோரிக்கையின் பேரில் மின்வரும் ஆவணங்களின் நகல்கள் வழங்கப்பட்டுள்ளன.



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28.03.2011 அன்று வழங்கப்பட்ட ஆவணங்கள்

- 1) சட்டப்பிரிவு 81 விசாரணை அறிக்கை 1 – 42 பக்கங்கள்
- 2) இணைப்புப் பட்டியல் 1 – 34 பக்கங்கள்

06.05.2011 அன்று வழங்கப்பட்ட ஆவணங்கள்

- 1) சட்டப்பிரிவு 81 விசாரணை அறிக்கை 1 – 83 பக்கங்கள்

- 2) மத்திய வங்கி சுற்றறிக்கை 1 – 10 பக்கங்கள்
- 3) உறுப்பினர் புகார் மனுக்கள் 1 – 155 பக்கங்கள்
- 4) சங்கப் பணியாளர்களது வாக்குமுலங்கள்

- 1) திரு.கலியபெருமாள் 1 – 15 பக்கங்கள்
- 2) திரு.ஜான் 1 – 15 பக்கங்கள்
- 3) திரு.சுந்தர்ராஜ் 1 – 9 பக்கங்கள்
- 4) திரு.ரட்சகராஜ் 1 – 29 பக்கங்கள்
- 5) திரு.அந்தோணிசாமி 1 – 8 பக்கங்கள்

08.03.2011 அன்று வழங்கப்பட்ட ஆவணங்கள்

1. மத்திய வங்கி கடன் மனுக்கள்

- 2.கள மேலாளர், சரக மேற்பார்வையாளர்

காசோலைகளுக்கு பரிந்துரை சான்று செய்த ஆவண நகல்கள்

திரு.கலியபெருமாள், திரு.சுந்தர்ராஜ், திரு.ரட்சகராஜ், திரு.பரமசிவம் மற்றும் திரு.சங்கிலிமுத்து ஆகியோர் ஆவணங்களைப் பெற்றுக் கொண்டுள்ளனர்.”



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13. Thereafter, on 17.05.2011, 15.06.2011 and 27.10.2011 the revision petitioner appeared for oral enquiry and offered his written explanation on 15.06.2011 and 27.10.2011. In his written explanation, he had explained that Section 81 enquiry officer had failed to delete the amount of Rs.1,39,81,008/- from the surcharge amount, which was remitted by the Society with Keeranur Branch of Pudukottai District, Central Co-operative Bank from 01.04.2001 to 31.12.2003. Had the said amount been taken into account along with the loan waiver amount given to the 21 borrowers of Rs.6,15,000/- + salary expenditure for Rs.16,08,497 in total Rs.1,62,04,505/-, there would be no loss to the Society. He further added that a sum of Rs.7,00,000/- collected as share capital was also not taken into consideration.

14. In response to the same, the respondent authority clarified to him that the amount of Rs.1,39,81,008/- was remitted before 31.12.2003 and the Section 81 enquiry is with respect to the issuance of loans only on or after 01.04.2004 and enquiry was conducted by the enquiry officer only for those loans that stood in balance as on 01.04.2004. The petitioner, as a Secretary, ought to have presented all the loan documents related to the outstanding loans, but no reliable documents were produced by the revision



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petitioner. However, on enquiry it was revealed that bogus, fabricated papers with fake names as listed in the impugned order and in the Section 81 enquiry report have been utilized for the issuance of loans. With regard to the claim about the share capital amount, it was found correct during retrial and reduced the amount to Rs.1,37,04,755/- from an earlier order of Rs.1,44,09,880/-. Thus it is evident that the respondent authority properly resumed the surcharge enquiry as per the directive of the learned Co-operative Tribunal, after providing a reasonable and fair opportunity to the petitioner and others concerned. Though the petitioner appeared for hearing on 17.05.2011, 15.06.2011, 27.10.2011 and 10.11.2011 having recorded his oral statement, the revision petitioner tactfully left the place without affixing his signature in the recorded deposition.

15.The entire Civil Revision Petition rests on the ground that the revision petitioner was not given with an opportunity to cross-examine the witnesses in the second surcharge proceedings, which is not true. It is only the petitioner who consciously avoided various hearings required by the respondent authority to appear before them and missed the opportunity of cross-examining the various witnesses. That apart, he also never made an application to recall the



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witnesses for cross-examination by him even when he appeared for enquiry at a later period of 17.05.2011, 15.06.2011 and 27.10.2011 despite the respondent authority furnishing him with all the necessary documents as required by him. 30 members out of 85 appeared in the oral enquiry and deposed before the respondent authority. Had the petitioner promptly appeared for the hearing as directed and required by the respondent authority, automatically he would have been provided with an opportunity of cross-examining them. Having refrained from doing the same, now the revision petitioner cannot raise that as a ground in the Civil Revision Petition.

16. Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 reads as follows:-

"87. Surcharge.____ (1) 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 organisation 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



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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, 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:

Provided that no action shall be commenced under this sub section after the expiry of seven years from the date of any act or omission referred to in this sub section :



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Provided further that the action commenced under this sub section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate.

(2) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered as if it were an arrear of land revenue and for the purpose of such recovery the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by this act.

(4) The Registrar or the person authorised by him shall, when acting under this section, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:___



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(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any documents;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any court or office,

(e) issuing commission for examining of witnesses.”

17.It is only as against any person who is or was entrusted with an organization or management of the Society or any past or present has misappropriated or fraudulently retained any money or has caused any deficiency in the assets of the Society by breach of trust or wilful negligence or has made any payment which is not in accordance with this Act, the Rules or bye-laws, surcharge proceedings after conducting an enquiry by the appointment of an enquiry officer under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 and on the basis of the enquiry report furnished by the said enquiry officer a surcharge proceedings under Section 87 could be initiated.



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18.This is a typical case where the revision petitioner served as a Secretary of the Society concerned who was entrusted with the organization and management of the Society and during the period from 11.02.1987 to 11.03.2004 he indulged in several irregularities/illegalities. Though the words 'wilfulness' or 'wantonness' imports pre-meditation or knowledge and consciousness that an injury or loss is likely to result from the act done or from the omission to Act, a constructive intention resulting in a probable loss should also prevail.

19.The order passed by the respondent in surcharge proceedings dated 16.11.2011 is elaborated with precise findings as to the details of the loans disbursed:-

(i) 47 Bogus loans in the name of bogus members to the tune of Rs.18,28,780/-.

(ii) 133 Bogus loans in the name of defunct members to the tune of Rs.46,74,600/-.

(iii) 111 renewed bogus loans for an enhanced amount to the tune of Rs.39,62,000/-.

(iv) 11 bogus loans disbursed before 01.04.2001 for an amount of Rs.2,97,500/-.

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(v) bogus loans disbursed in the name of 13 deceased members for an amount of Rs.5,43,000/-.

(vi) bogus loans disbursed in the name of employees of the relatives for an amount of Rs.10,21,000/-.

(vii) 9 bogus loans disbursed without proper asset proof in the name of the members for an amount of Rs.3,43,000/-.

(viii) 45 bogus loans for the purpose of issuing loans to the tune of Rs.14,97,000/- for fake title deeds.

(ix) Loans issued to the members of the Provident Fund Employees for an amount of Rs.2,43,000/-.

20. Being the Secretary of Sengalur Primary Agricultural Co-operative Societies, the revision petitioner had been certainly at the helm of affairs of the said Society and he had committed a breach of trust with respect to the assets of the Society and has made innumerable payments, which is not in accordance with the Act, the relevant rules and the bye-laws and the respondent has duly proved the same by fairly conducting a surcharge proceedings as per the directives of the learned Co-operative Tribunal in C.M.A.CS.No.1 of 2008 after furnishing all the documents as required by the revision petitioner and giving him appropriate opportunity to defend his case.

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Hence, there is no error in the order passed by the learned Co-operative Appellate Tribunal in C.M.A.CS.No.2 of 2012. Though the order of the Co-operative Appellate Tribunal in C.M.A.CS.No.2 of 2012 is not very elaborate, since the second surcharge proceedings vide its order dated 16.11.2011 has been elaborately conducted by the respondent grasping the crux of the same, the learned Co-operative Appellate Tribunal, fully in consonance with the order passed by the respondent, had dismissed the said C.M.A.CS.No.2 of 2012 and I am also of the considered view that the revision petitioner being the custodian of the trust of the Society to which he was the Secretary has miserably failed in the conduct of his duty as a Secretary in Sengalur Primary Agricultural Co-operative Societies and I am also not inclined to interfere with the fair and decreetal order, dated 11.03.2014 in C.M.A.C.S.No.2 of 2012 on the file of the Co-operative Appellate Tribunal (Principal District Judge), Pudukkottai and the order of the Deputy Registrar of Co-operative Societies, Pudukkottai in Na.Ka.No. 9334/2044 Sa.Pa, dated 16.11.2011.

21. Accordingly, the fair and decreetal order, dated 11.03.2014 in C.M.A.C.S.No.2 of 2012 on the file of the Co-operative Appellate Tribunal (Principal District Judge), Pudukkottai and the order

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of the Deputy Registrar of Co-operative Societies, Pudukkottai in Na.Ka.No.9334/2044 Sa.Pa, dated 16.11.2011 are confirmed and this Civil Revision Petition is dismissed. There shall be no order as to costs.

27.09.2023

NCC : Yes
Index : Yes
Internet : Yes
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To

- 1.The Co-operative Appellate Tribunal (Principal District Judge),
Pudukkottai.
- 2.The Deputy Registrar,
Deputy Registrar of Co-operative Societies,
Marthadapuram,
2nd Veethi,
Pudukkottai.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

ps

Pre-Delivery Order made in
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