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W.P.(MD)NO.165 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.165 of 2015 AND

M.P.(MD)No.1 of 2015

T.Rajammal

... Petitioner

Vs.

1. The Deputy Registrar of Co-operative Societies,
Aruppukottai – 626 101,
Virudhunagar District.

2. The President,
Virudhunagar District Consumers Co-operative
Whole Sale Stores Ltd A.1382,
Aruppukottai Road,
Virudhunagar District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the proceedings of the impugned sale Notice in Ni.Ma.No.77/96-97 dated 03.12.2014 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.G.Prabu Rajadurai

For R-1 : Mr.S.Shanmugavel,
Additional Government Pleader.

For R-2 : Mr.K.P.Krishnadass

* * *



Rs.5,20,250/-. The fairness of the entire process disturbs me.

The SURCHARGE proceeding partakes the character of quasi-criminal proceedings. After the charge is framed, the person who is charged will have to defend himself. In this case, acts are attributed to Thangamani Nadar. He had committed suicide. I fail to understand as to how the petitioner could have even defended the proceedings. She does not appear to be well educated. Be that as it may, she was saddled with an order of SURCHARGE. Two other persons who were also proceeded against in the very same proceedings went before the Cooperative Tribunal and got themselves exonerated. Challenging the same, the society filed writ petitions before this Court but they were dismissed.

4. The petitioner's son was a minor during the relevant time. Subsequently, he has secured a decent employment and the entire principal amount was remitted in November 2010 itself. The present demand is for payment of interest. Auction sale notice was issued in the year 2015. Challenging the same, the present writ petition came to be filed.



5. An interim order of stay was granted. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to set aside the impugned proceedings and grant relief as prayed for.

6. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. The stand of the respondents is that the order of SURCHARGE passed under Section 87 of the Act had attained finality. It is true that even though the SURCHARGE order was passed in the year 1995, the amount demanded from the petitioner was remitted only in the year 2010. The petitioner is liable to pay 18% interest also. The impugned demand is a mere arithmetical calculation and therefore no interference is warranted.

7. I carefully considered the rival contentions and went through the materials on record.

8. The order dated 24.11.2003 passed by the Cooperative



Tribunal / Principal District Judge, Virudhunagar District in C.M.A.(CS)Nos.7/97 and 8/97 has been made available. The learned Judge had observed that the enquiry report under Section 81 of the Act which form the basis of the SURCHARGE proceedings was not made available to them. Even though during the pendency of the appeal proceedings, photocopy of the enquiry reports were filed; one is dated 15.05.1995 while the other is dated 12.06.1995. Section 81 enquiry itself was ordered only on 20.09.1994. By that time, the petitioner's husband had already passed away. In these circumstances, I adjourned the proceedings to enable the petitioner to amend the writ prayer by including the challenge to the SURCHARGE order. The learned counsel for the petitioner on instructions submitted that the petitioner would pay a further sum of Rs.2 ½ lakhs. The circumstances in which the petitioner is placed have already been delineated. Because the petitioner's son obtained good employment, the petitioner was able to settle the principal amount. The learned counsel for the petitioner points out that the property that has been proceeded against is a building comprised in 720 sq.ft. of land.



9. The petitioner is ready to pay interest @ 3% p.a. It would come to around a sum of Rs.2 ½ lakhs. The petitioner is directed to pay the same within a period of eight weeks from the date of receipt of a copy of this order. By recording the said undertaking, the order impugned in this writ petition is set aside. The issue shall be given a quietus, if the petitioner makes a further payment of Rs.2½ lakhs within the time limit mentioned above. If the petitioner fails to make the said payment, the benefit under this order would stand automatically vacated. It would be open to the management of the society to proceed further in the matter. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

24.08.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The Deputy Registrar of Co-operative Societies,
Aruppukottai – 626 101,
Virudhunagar District.



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G.R.SWAMINATHAN,J.

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