



W.P.No.11799 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.11799 of 2022 and
WMP.No.11245 of 2022

C.Subramanyam

... Petitioner

Vs.

- 1.The Deputy Registrar of Cooperative Societies,
Thiruthani Circle, Thiruthani,
Tiruvallur District
- 2.The Junior Inspector / Sale Officer,
O/o.Deputy Registrar of Cooperative Societies,
Thiruthani Circle, Thiruthani, Tiruvallur District
- 3.The President,
J.J.454, Ramapuram Primary Agricultural
Cooperative Credit Society,
Nabalur Village & Post,
Thiruthani Taluk,
Tiruvallur District

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India
praying to issue a writ of certiorari calling for the entire records relating
to the impugned order passed by the second respondent in Award
No.4/1997/E1(1) dated 11.03.1999 in EP.No.41/2000/E1 dated



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28.02.2022 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents

For R1 & 2 : Mr.M.Murali,
Government Advocate

For R3 : Mr.S.Ravichandran

ORDER

This writ petition has been filed challenging the order passed in EP.No.41/2000/E1 dated 28.02.2022 thereby directed the petitioner to pay a sum of Rs.4,02,705/- failing which the petitioner's property shall be subjected for auction sale.

2. The petitioner while working as Secretary in the third respondent society from the period from 1986 to 1992, there was misappropriation of society fund. Therefore, enquiry was ordered under Section 81 of the Tamilnadu Cooperative Societies Act while the petitioner was working as Secretary. Based on the reports submitted under Section 81, criminal case has been registered against the petitioner in CC.Nos.118, 119 & 121 of 2000 on the file of the learned Judicial



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Magistrate, Tiruttani. Subsequently, surcharge proceedings was initiated as against the petitioner under Section 87 of the Tamilnadu Cooperative Societies Act and award has been passed by the first respondent dated 11.03.1999 in award No.4 of 1997 and directed the petitioner and another person to pay a sum of Rs.61,270/- with interest at the rate of 18% which comes to a sum of Rs.3,41,435/-.

3. The learned counsel for the petitioner would submit that for the very same set of charges, the petitioner was prosecuted in three complaints in three criminal cases and he was acquitted from all the cases. Therefore, surcharge proceedings cannot be initiated as against the petitioner. That apart, as per Section 87(1) of the Tamilnadu Cooperative Societies Act, no action shall be commenced after expiry of seven years from the date of any act or omission. Even according to the respondents, the petitioner committed irregularities till 1992 whereas surcharge proceedings was passed on 11.03.1999.

4. Heard, the learned counsel appearing on either side and



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perused all the materials placed before this Court.

5. On perusal of the counter filed by the first respondent and on the submissions of the learned Government Advocate appearing for respondents 1 & 2 revealed that it is a continuous proceedings from 1992. In fact after conducting enquiry under section 81 of the Tamilnadu Cooperative Societies Act and report submitted by the enquiry officer, criminal proceedings was initiated as against the petitioner in CC.Nos.118, 119 & 121 of 2000 in pursuant to the registration of FIR in crime No.2 of 1999. Though the petitioner was acquitted from the criminal charge, loss happened to the society has to be compensated by recovery from the delinquents. The criminal case as well as the surcharge proceedings can be taken simultaneously. The criminal case and the surcharge proceedings are completely different proceedings. It is also made clear that in order to punish the petitioner, criminal case has been initiated and also in order to recover the loss sustained by the society. Therefore, acquittal from the criminal case is nothing to do with the surcharge proceedings. There is no irregularity in proceeding or initiating action as against the petitioner under the provisions of the Tamilnadu



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Cooperative Societies Act. That apart, the petitioner ought to have filed an appeal as provided under Section 152 of the Tamilnadu Cooperative Societies Act before the Tribunal. Without availing statutory appeal remedy, the petitioner cannot approach this Court under Article 226 of the Constitution of India. Further, in the absence of any exceptional circumstances, this Court cannot entertain the writ petition under Article 226 of the Constitution of India. Further, it is only an order passed by the execution court. Therefore, it cannot be said that the recovery order has been passed after period of seven years from the date of the illegality committed by the petitioner.

6. In view of the above, this Court finds no infirmity or illegality in the impugned order. As such, this writ petition is devoid of merits and liable to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

02.09.2024

Neutral citation: Yes/No
Index: Yes/No



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Speaking/Non-speaking order
lok

G.K.ILANTHIRAIYAN, J.

lok

To

- 1.The Deputy Registrar of Cooperative Societies,
Thiruthani Circle, Thiruthani,
Tiruvallur District
- 2.The Junior Inspector / Sale Officer,
O/o.Deputy Registrar of Cooperative Societies,
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