



CRP. NPD.No.2205 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.11.2024

Pronounced on: 06.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP. NPD. No.2205 of 2020
and CMP. No.13900 of 2020

Chellakannu

... Petitioner

Vs

1.The Deputy Registrar of Cooperative Societies,
O/o.The Deputy Registrar of Cooperative Societies,
Attur Circle, Attur, Salem District.

2.S.425, Seeliyampatty Primary Agricultural
Cooperative Thrift Society,
Seeliyampatty, Attur Taluk,
Salem District.

... Respondents

Prayer: The Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the order passed in CMA (CS) No.21 of 2018, dated 18.11.2019 on the file of the Principal District Judge, Salem confirmed in Na.Ka.No.2054 of 2004 SA.PA. dated 26.03.2018.

For Petitioner

: Mr.C.Prakasam

For Respondents

: Mr.V.Ramesh,
Government Advocate for R1
Mr.L.P.Shanmugasundaram,
for R2.



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ORDER

The revision has been preferred at the instance of the second appellant in CMA.C.S. No.21 of 2018, aggrieved by the judgment and decree of the learned Principal District Judge, Salem, dated 18.11.2019, confirming the order of surcharge passed against the second appellant, who was the 6th defendant before the Deputy Registrar of Cooperative Societies, Attur Circle, in proceedings Na.Ka.No.2054 of 2004 SA.PA., dated 26.03.2018.

2. I have heard Mr.C.Prakasam, learned counsel for the Petitioner and Mr.V.Ramesh, learned Government Advocate for the first respondent and Mr.L.P.Shanmugasundaram, learned counsel for the second respondent.

3. Mr.C.Prakasam, learned counsel for the petitioner would first and foremost submit that the enquiry report under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 (in short 'Act') was not furnished to



the petitioner and on this ground alone the revision needs to be allowed.

Without prejudice to the above preliminary contention, Mr.C.Prakasam further submit that the Section 87 proceedings had been initiated belatedly, beyond the period of 17 years and therefore, even on the ground of limitation, delay and latches, the proceedings would have to go. The learned counsel for the revision petitioner would further contend that after the surcharge order, more than 50% of recovery has been made and therefore, the subsequent events will also have to be taken into account while passing orders. These apart, Mr.C.Prakasam would further submit that under Section 87(1) it is mandatory to establish willful negligence on the part of the delinquent officer.

4. According to Mr.C.Prakasam, there is absolutely no proof adduced by the respondents in this regard and further, the revision petitioner is only one of the signatories along with other Board of Directors, all elected representatives and signatories to the proceedings. Therefore, the petitioner alone cannot be singled out and the action appears to be vindictive in nature. He would place reliance on orders passed by this Court in CRP. No.1491 of 2009, dated 19.09.2017.



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5. Per contra, the learned counsel for the respondents would submit that the allegations levelled against the petitioner are serious in nature, being forgery. When he was the President between 1996 and 2001, he had issued crop loans which were all unrecovered and rightly, the original Authority below had passed the surcharge order which also came to be confirmed in CMA (CS) No.21 of 2018 before the learned Principal Sessions Judge. The respondents would also rely on the Enquiry Report, dated 04.05.2023, in support of their contentions to establish the gravity of offences committed by the revision petitioner.

6. I have carefully considered the submissions advanced by the learned counsel on either side and I have also perused the records.

7. With regard to the first contention that the copy of the enquiry report has not been furnished, I find that the petitioner has raised a specific ground regarding the same even in his memorandum of grounds of appeal as well as before this Court in revision. Unfortunately, the learned Principal Sessions Judge sitting in Appeal over the order of the original Authority did not even discuss the same and straight away



proceeded to confirm the order on merits, by holding that the petitioner had misappropriated a sum of Rs.4,77,600/- by creating false records and thereby, he had caused loss. It is mandatory to furnish a copy of the enquiry report to the delinquent officer to enable him /her to meet the same by putting forth appropriate explanation. Failure to issue a copy of the enquiry report denies a fair hearing or opportunity to the delinquent officer. Even with regard to the merits of the claim, though it is alleged that the petitioner has misappropriated a sum of Rs.4,77,600/- when he was the president of Society between 1996 and 2001, the Section 87 order came be passed only on 26.03.2018 after a lapse of 17 years. The proceedings are therefore clearly belated and absolutely no explanation is forthcoming on the part of the respondents for such delayed action. Therefore, even on the ground of delay and latches, the revision petitioner is entitled to succeed.

8. Even with regard to the findings of the original Authority as well as the appellate Court, there is no specific finding that there was any willful negligence on the part of the revision petitioner. In this connection, the learned counsel would rely on the decision of this Court



in *CRP.No.1491 of 2009, dated 19.09.2017*, where this Court relying on decision of the Hon'ble Supreme Court as well as our High Court held that, in surcharge proceedings, it must be proved that an actionable wrong had been committed or omitted, in a deliberate and reprehensible manner, with reckless callousness and supine indifference, without taking due care and caution, which prudent and reasonable man would take in such circumstances. Any failure to do the same, would be fatal to the proceedings.

9. Both the original authority as well as the appellate Court have rendered findings regarding misappropriation and loss being caused by the Society. However, there is absolutely no reason or discussion with regard to the deliberate intention on the part of the petitioner who caused such loss to the Society. Further as already discussed above, the non supply of the enquiry report, coupled with the facts that despite the enquiry report being filed way back on 04.05.2003, there is absolutely no acceptable explanation on the side of the respondent as to why the Section 87 proceedings came to be ordered only after lapse of 15 years, that is, in the year 2018. If really the respondents were serious



enough with the allegations made against the petitioner, they should have prudently taken necessary steps to follow the procedure and pass final orders under Section 87 without any unreasonable delay. However in the present case, as already seen above, despite adverse findings rendered by the Enquiry Officer against the petitioner, the respondents have taken up the Section 87 proceedings only in the year 2018 and passed final orders on 26.03.2018. In fact, I find from the counter affidavit filed by the first respondent that Section 87 notice was issued way back on 27.05.2004 to the revision petitioner. Admittedly, the revision petitioner did not approach this Court invoking the Writ jurisdiction and it was only the accountant and the cashier who had filed the writ petitions and obtained stay. There was absolutely no legal impediment to proceed with surcharge notice issued to the writ petitioner. Therefore, the only explanation offered by both the respondents that for no fault of the respondents but only because of the stay order granted by this Court surcharge proceedings could not be taken, cannot be countenanced, especially, in so far as the revision petitioner who did not file any writ petition before this Court.

10. For all the above reasons, the petitioner is entitled to succeed



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and consequently, the judgment and decree in CMA.(CS). No.21 of 2018, dated 18.11.2019 is set aside and the impugned proceedings on the file of the first respondent in Na.Ka.No.2054 of 2004 SA.PA. dated 26.03.2018 stands quashed. Consequently, connected Miscellaneous Petition is closed. No costs.

06.12.2024

Index:Yes/No
Speaking order/Non-speaking order
rkp

To

1. The Principal District Judge, Salem.
2. The Deputy Registrar of Cooperative Societies,
O/o. The Deputy Registrar of Cooperative Societies,
Attur Circle, Attur, Salem District.
3. S.425, Seeliyampatty Primary Agricultural
Cooperative Thrift Society,
Seeliyampatty, Attur Taluk,
Salem District.
2. The Section Officer, VR Section,
Madras High Court, Chennai.

P.B.BALAJI, J.



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Pre-Delivery Order in
CRP. NPD. No.2205 of 2020
and CMP. No.13900 of 2020

06.12.2024