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W.P. No. 2294 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 2294 of 2017

and

W.M.P. Nos. 2281 and 2282 of 2017

G.Suresh

... Petitioner

-VS-

1. The Deputy Registrar/Arbitrator
O/o. Deputy Registrar of Co-operative Societies
Tiruchengode, Namakkal District.
 2. The General Manager
S.351, Tiruchengode
Agriculture Producers Co-operative Sales Society Ltd.
Tiruchengode, Namakkal District.
- Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records of the award in Tha.Va.No.33/2013-14 dated 17.07.2014 on the file of the First Respondent quash the same so for the Petitioner is concern.

For Petitioner : Mr. V.Ravichandran

For Respondents : Mr. P.Sathish, AGP (R1)
Mr. R.V.Dinesh Kumar (R2)



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ORDER

Heard Mr. V.Ravichandran, Learned Counsel for the Petitioner, Mr. P.Sathish, Learned Additional Government Pleader appearing for the First Respondent and Mr. R.V.Dinesh Kumar, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The father of the Petitioner, viz., P.Govindan, was working as Officer-in-charge of the jewel section of the Co-operative Society of the Second Respondent from 29.11.2009 to 13.04.2013 during which period it was noticed that there were various acts of misappropriation of the pledged jewels with his connivance, and in respect of which the Second Respondent had raised dispute before the First Respondent under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short). The Petitioner was implicated as a party to the said proceedings on the footing that the said P.Govindan had fraudulently transferred his property in favour of the Petitioner by settlement-deed dated 23.10.2013. The First Respondent by Order in Thava No. 33/2013-14 dated 17.07.2014 in the said proceedings has held that the said P.Govindan along with the Petitioner and 3 others were jointly and



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severally liable to the Second Respondent for a sum of Rs. 1,16,27,216/- in addition to future interest. The said P.Govindan as well as the Petitioner had preferred separate appeals in C.M.A. C.F.R. Nos. 610 and 611 of 2014 before the Special Tribunal for Co-operative Cases/Principal District Judge, Namakkal (hereinafter referred to as 'the Special Tribunal' for short) with a delay of 98 days in filing them. The Special Tribunal by order dated 16.12.2015 in the applications in I.A. Nos. 1 and 2 of 2014 in the said appeals required them to deposit a sum of Rs. 18,24,800/- as condition for condoning the delay in filing the said appeals, which were challenged in the Writ Petitions in W.P. Nos. 6888 and 9148 of 2016 respectively before this Court. The said Writ Petitions were disposed by order dated 14.03.2016 passed by this Court, which reads as follows:-

10. Accordingly, the Writ Petition is partly allowed by modifying the order passed by the Tribunal by directing each of the petitioners to deposit a sum of Rs.1,00,000/- (Rupees one lakh only) before the Cooperative Tribunal in CMA CFR No.610 of 2014 and CMA CFR No.611 of 2014 within a period of three weeks from the date of receipt of a copy of this order. If the petitioners comply with the said condition, then, the Cooperative Tribunal shall condone the delay and direct the appeals to be numbered, if it is, otherwise in order and post the stay petitions for hearing which shall be considered by the Tribunal uninfluenced by any of the observations made in this writ petition. If the petitioners fail to comply with the condition imposed by this Court within the time limit permitted, the benefit of this order will not



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enure to the petitioners and the Writ Petitions would stand dismissed automatically and consequently, the Tribunal is entitled to take further action in the matter.

Since the Petitioner did not comply with the condition of depositing Rs. 1,00,000/- as required in the said order passed by this Court, the appeal preferred by him could not be taken on file and stood automatically rejected for non-compliance of the said condition imposed. However, the appeal filed by the said P.Govindan was taken up on merits and after elaborate discussion of the rival contentions of the contesting parties, it was dismissed by order dated 26.02.2020 in C.M.A. C.S. No. 204 of 2016 by the Special Tribunal, which has attained finality.

3. In the meanwhile, the Petitioner has preferred this Writ Petition challenging the Order in No. dated 17.07.2014 passed by the First Respondent raising the contention that the Second Respondent could not have invoked Section 90 of the TNCS Act to recover the dues claimed from him as he was not its member, placing reliance on the decision of this Court in ***P.Periyannan -vs- Deputy Registrar of Co-operative Societies, Krishnagiri*** (Order dated 09.01.2009 in W.P. Nos. 23696 and 19680 of 2008). However, it is not possible to countenance the said contention for several reasons.



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4. Firstly, when the Petitioner has preferred appeal against the impugned order before the Special Tribunal and it has been rejected as time barred, he cannot re-agitate the matter under the guise that the impugned order was without jurisdiction. In view of the doctrine of merger as explained by the Hon'ble Supreme Court of India in *Kunhayammed -vs- State of Kerala* [(2000) 6 SCC 359], it is the appellate order which is enforceable and in the absence of any challenge thereto, it would not be possible to entertain any challenge to the validity of the impugned order.

5. Secondly, the impugned order has also been confirmed on merits by the Special Tribunal in the appeal filed by the said P.Govindan, which would bind the Petitioner also, even if no separate appeal filed by him had been taken on file.

6. Thirdly, the contention that Section 90 of the TNCS Act could not be invoked in this case against the Petitioner is misconceived. The claim against the Petitioner in the impugned proceedings was that the said P.Govindan, who was its employee, had fraudulently transferred his property in favour of the Petitioner to defeat the rights of the Second Respondent, meaning thereby that it



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would be a case falling within Section 90(1)(c) of the TNCS Act between the Second Respondent, on one side and the said P.Govindan and the Petitioner, who was claiming through him, on another. Moreover, the First Respondent has adjudicated the matter after affording full opportunity of personal hearing to all the parties concerned (including the Petitioner) and as such, he cannot claim that any prejudice has been caused to him. Even if it is assumed for the sake of argument without accepting that Section 90 of the TNCS Act would not be applicable to the Petitioner, it would certainly be a case for surcharge proceedings under Section 87 of the TNCS Act before the First Respondent. In this context, it would be useful to refer to the ruling of the Hon'ble Supreme of India in *N.Mani -vs- Sangeetha Theatre* [(2004) 12 SCC 278], where it has been held as follows:-

9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.

7. In view of the foregoing discussion, there does not appear to be any infirmity in the impugned order passed by the First Respondent warranting



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interference by this Court in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution.

In the result, the Writ Petition, which is devoid of merits, is dismissed.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

11.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

Maya

To

1. The Deputy Registrar/Arbitrator
O/o. Deputy Registrar of Co-operative Societies
Tiruchengode, Namakkal District.
2. The General Manager
S.351, Tiruchengode
Agriculture Producers Co-operative Sales Society Ltd.
Tiruchengode, Namakkal District.



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P.D. AUDIKESAVALU, J.

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