



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2024

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THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.35017 of 2022
and W.M.P.No.34449 of 2022

K.Karunakaran

.. Petitioner

Vs.

1.The Deputy Registrar of Cooperative Societies,
Vellore Circle, Vellore.

2.K.Arutperunjothi

3.The Management of the
VLSPL 129, Synampattadai Primary Agriculture Cooperative Credit Society.
Rep. by its Secretary/President,
Synampattadai, Katpadi Taluk,
Vellore District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in Surcharge No.04/2020 - 2021 Sa Pa {Naa.Ka. 2060 /2020 Sa.Pa (1)} dated 30/06/2022 received on 02/08/2022 under section 87 of Tamil Nadu Co-Operative Societies Act, 1983 and quash the



same in so far as the petitioner is concerned and consequently remand back to the 1st respondent to hold fresh enquiry in accordance with law.

For Petitioner .. Mr.L.P.Shanmugasundaram

For Respondents .. Mr.B.Tamilnithi
Additional Government Pleader
for R1

Mr.T.K.Saravanan
Government Advocate for R3

No Appearance for R2

ORDER

This writ petition has been filed in the nature of certiorarified mandamus seeking records relating to an order of the 1st respondent/Deputy Registrar of the Co-operative Societies, Vellore in proceedings dated 30.06.2022, received on 02.08.2022, and conducted under Section 87 of the Co-operative Societies Act, 1983 and quash the same insofar as the petitioner is concerned. It is also sought that the matter may be remanded back to the 1st respondent to hold fresh enquiry in accordance with law.



2.The petitioner K.Karunakaran was the President of the Synampattadai Primary Agriculture Co-operative Credit Society at Katpadi in Vellore District.

One Venkatesan was the Secretary at that particular period of time. It is contended that a fact finding enquiry was conducted under Section 81 of the Co-operative Societies Act, 1983 to examine the affairs of the society relating to crop loans disbursed by the Society. Based on the report dated 30.07.2020, surcharge proceedings were initiated and Show Cause Notice had been issued under Section 87 of the Act on 02.12.2022 seeking explanation from the petitioner. It had been contended that the impugned order is the result of such enquiry conducted under Section 87 of the Act.

3.The learned counsel for the petitioner stated that a fair opportunity was not granted to the petitioner during the course of such proceedings. It was contended that in the order passed under Section 87 of the Act, there has been mention about the loanees who had returned back the loan amount. Their names have been given. They are totally 25 in number. The amounts which they have returned are given. The receipts numbers under which they had repaid the amounts have been given. The total amount comes to Rs.11,99,348/-. It is contended that it was because of the petitioner who gave information that the Society was able to recover that



amount of Rs.11,99,348/-. It is contended that along with the petitioner herein, the Secretary of the Society, Venkatesan was also charged. He had however appeared before during the enquiry and had undertaken to repay the amount. He had not repaid the amount. Thereafter, a finding was returned both against the said Venkatesan and against the petitioner herein.

4.The learned counsel for the petitioner stated that opportunity must be granted to cross-examine the said Venkatesan and more importantly, the officer who conducted the enquiry under Section 81 of the Act. It is trite in law to point out that any enquiry conducted under Section 81 of the Act is only a fact finding enquiry more like discreet enquiry conducted to determine whether a *prima facie* exist to proceed further with the enquiry under Section 87 of the Act. Once an enquiry under Section 87 of the Act commences, the report filed under Section 81 submerges and is of no value. It has no further value. Any order passed directing payment of amount and determination of amount would be an order only under Section 87 and not under Section 81. The officer who conducts an enquiry under Section 81 determines facts alone. The facts which he has to determine are whether the persons charged, worked in the respective posts held in the Society and whether there has been misappropriations in the society and whether there could be



a reasonable nexus between the misappropriation and the delinquents. Thereafter, an enquiry under Section 87 of the Act commences, every opportunity is granted to the delinquents to seek records and to summon witnesses and also to cross-examine witnesses.

5. In the instant case, the fact that the loanees had repaid the loan is a fact which cannot be denied or disputed. Whether they repaid at the instances of the petitioner or voluntarily, again need not be gone into, since the very fact that they had repaid showed that they had taken that money from the Society. However, Venkatesan is a material witness. He was the Secretary of the Society and had undertaken to repay the amount misappropriated, he had not repaid.

6. It is contended on behalf of the respondents that he had repaid a sum of Rs.5 Lakhs. The petitioner may cross-examine the said Venkatesan. The enquiry may be reopened only to that particular limited extent. Thereafter on the basis of such cross-examination, a fresh order may be passed under Section 87 of the Act.

7. It is brought to the notice of this Court that the petitioner had earlier refused to receive notices and had avoided receiving the notices. It will only be in



the interest of the petitioner to participate and take this opportunity to cross-examine the said Venkatesan, on the date when he appears during the enquiry proceedings. The 1st respondent may issue notice to the petitioner and the said Venkatesan for appearance and thereafter, permit the petitioner to cross-examine the said Venkatesan and on the materials already available and on the basis of the cross-examination conducted by the petitioner of the said Venkatesan, pass fresh orders under Section 87 of the Act.

8.The order impugned is therefore, set aside. The matter is remanded back for that limited purpose. The entire exercise may be completed, within a period of four months from the date of receipt of a copy of this order.

9.This writ petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

12.12.2024

Index:Yes/No
Internet:Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation:Yes/No
ssr



To

WEB COPY

1. The Deputy Registrar of Cooperative Societies,
Vellore Circle, Vellore.

2. The Secretary/President,
Management of the VLSPL 129, Synampattadai Primary Agriculture
Cooperative Credit Society.
Synampattadai, Katpadi Taluk,
Vellore District.



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C.V.KARTHIKEYAN,J.

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