



W.P(MD)No.5194 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.01.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5194 of 2020
and
W.M.P(MD)No.4544 of 2020

The President,
R-316, Thirukaduthuri Primary Agriculture
Co-operative Credit Society Limited,
Karaipalayam,
Manmangalam Taluk,
Karur District.

... Petitioner

Vs.

- 1.The Registrar of Co-operative Societies,
No.170, E.V.K.Periyar Road,
Kilpauk, Chennai – 10.
- 2.The Joint Registrar of Co-operative Societies,
Collectorate Complex,
Thanthondrimalai,
Karur, Karur District.
- 3.The Deputy Registrar of Co-operative Societies,
Collectorate Complex,
Thanthondrimalai,
Karur, Karur District.



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4.The Sub Registrar of Co-operative Societies /
Enquiry Officer,
Collectorate Complex,
Thanthondrimalai,
Karur, Karur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned surcharge proceedings in Naa.Kaa. 625/2018/Saa.Paa dated 24.2.2020 pending on the file of the third respondent and quash the same as illegal.

For Petitioner : Mr.L.Velpradeep

For Respondents : Mr.M.Lingadurai
Special Government Pleader

ORDER

Heard both sides.

2.The Deputy Registrar of Co-operative Societies, Karur Region issued the impugned notice dated 24.02.2020 proposing action under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. Challenging the same, the present writ petition came to be filed.



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WEB COPY 3. Section 87(1) of the Tamil Nadu Co-operative Societies Act, 1983 reads as follows:

*“87. **Surcharge.** _ (1) Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding up of a society, it appears that any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment which is not in accordance with this Act, the rules or the by – laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the board, Liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits his estate, to answer the*



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charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the person authorised as aforesaid thinks just:

Provided that no action shall be commenced under this sub section after the expiry of seven years from the date of any act or omission referred to in this sub section :

Provided further that the action commenced under this sub section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate.”

A bare reading of the aforesaid provision would indicate that surcharge proceedings can be taken only against the individuals who have caused



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loss to the Society. In this case, surcharge notice has been issued to the office bearers of the Society including its President. The aggrieved persons can only be the noticees. No proceedings is contemplated as against the Society.

4.The learned counsel appearing for the petitioner submits that this writ petition has been filed only by the President of the Co-operative Society. But then, the petition should have been filed in his individual name.

5.However I do not want to non suit the petitioner on this technical ground. I am not inclined to interfere only for the reason that the petition has been filed at the notice stage itself. It is well settled that a notice by itself does not infringe the rights of the noticee. If any adverse order is passed, the petitioner can always move this Court for relief or avail the remedies set out in the statute.

6.I must however take note of the contention advanced by the learned counsel appearing for the petitioner that the proceedings have



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been initiated only because the order passed by this Court was complied with.

7.Surcharge proceedings can be initiated only if the requirements set out under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 are complied with. For compliance of the Court order the person cannot be fastened with liability. But then, the petitioner has to satisfy the third respondent that the amount paid to Mrs.Manimegalai mentioned in the notice was only to comply with the Court's order.

8.The writ petition was filed way back in the year 2020. The petitioner has not offered his explanation. The petitioner is given three weeks from the date of receipt of a copy of this order to offer his explanation. Likewise the other noticees can also avail this benefit. The third respondent is duty bound to consider the petitioner's explanation and afford him. If the third respondent is satisfied that the petitioner has merely complied with the order passed by this Court, the surcharge proceedings will have to be dropped. It does not mean that the petitioner's other defences are foreclosed.



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9. Granting liberty to the petitioner to make out his case before the third respondent, this writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To

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G.R.SWAMINATHAN, J.

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