



C.R.P.(MD).Nos.1580 & 1581 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.07.2024

DELIVERED ON: 31.07.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).Nos.1580 & 1581 of 2018

CRP(MD).No.1580 of 2018

The Deputy Registrar of Co-operative Societies
No.11/223, Raja Nagar
Lakshmipuram
Palani 624 601
Dindigul District

....Revision Petitioner/Respondent
/Enquiry Officer

Vs

1.P.Malayappan

2.Secretary
A.303 Thennampatti Primary Agricultural
Co-operative Credit Society
Thennampatti
Vedasandur Taluk
Dindigul District

3.S.Alagar Raja
Ex-Joint Secretary

4.B.Andivel

5.K.Kangadharan

1/16



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6.P.Vijayanathan

....Respondents 2 to 6
/Respondents 2 to 6

CRP(MD).No.1581 of 2018

The Deputy Registrar of Co-operative Societies
No.11/223, Raja Nagar
Lakshmipuram
Palani 624 601
Dindigul District

....Revision Petitioner/Respondent
/Enquiry Officer

Vs.

P.Malayappan

...Respondent/Appellant
/party to the Proceedings

PRAYER in CRP(MD).No.1580 of 2018: The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and the decreetal order passed by the Tribunal in C.M.A(CS).No.4 of 2016 dated 17.01.2018 reversing the order passed by the Deputy Registrar of Co-operative Societies, Palani, in his surcharge proceedings Tha.Va.2/2011 Sa.Pa.dated 07.09.2015 by allowing this Civil Revision Petition.

PRAYER in CRP(MD).No.1581 of 2018: The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and the decreetal order passed by the Tribunal in C.M.A(CS).No.43 of 2017 dated 17.01.2018 setting aside the impugned notice issued by the Deputy Registrar of Co-operative Societies, Palanai, U/s 143 R/w 119 and 126 of TNCS Act 1983 and Rules 1988, dated 24.11.2017 issuing form for Auction Sale Notice to the Respondent for realizing the amount ordered in



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in his surcharge proceedings Tha.Va.2/2011 Sa.Pa.dated 07.09.2015 by
allowing this Civil Revision Petition.

(In both revision petitions)

For Petitioner : Mr.D.Gandhiraj
Special Government Pleader

For Respondents : V.O.S.Kalaiselvam for R1
in CRP.No.1580 of 2018 and
sole respondent in CRP.No.1581 of 2018

: Mr.R.R.Kannan for R2
in CRP.No.1580 of 2018

: Given up for R3 to R6
in CRP.No.1580 of 2018

COMMON ORDER

Both the revision petitions have been filed by the Deputy Registrar of Co-operative Societies challenging a common order passed by the Principal District Judge, Dindigul in CMA(CS).No.4 of 2016 and 43 of 2017 dated 17.01.2018.

(A)Facts leading to the filing of these revision petitions are as follows:

2.The first respondent was working as a Secretary in Thennampatti Primary Agricultural Co-operative Society. An enquiry was initiated under Section 81 of Tamil Nadu Co-operative Societies Act as



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against him by proceedings dated 29.06.2010. The enquiry report was submitted on 25.05.2011 with a finding that the Secretary along with others are jointly and severally liable to pay a sum of Rs.15,52,392/-.

3.Based upon the above said enquiry report, a surcharge notice was issued under Section 87 of the Tamil Nadu Co-operative Societies Act on 23.08.2011 indicating that the Secretary has caused financial loss to the Society under six heads. The Secretary had submitted his detailed explanation to the said notice. After giving due opportunity to the parties, a surcharge order came to be passed on 07.09.2015 fixing the liability upon the Secretary of the Society and others to an extent of Rs.62,27,951/- under six heads.

4.Challenging the said surcharge order, the Secretary had filed CMA(CS).No.4 of 2016 before the Co-operative Tribunal, Dindigul. In the meantime, in order to recover the amount stated in the surcharge proceedings, auction sale notice was issued to the delinquent Secretary. Challenging the said auction notice, the Secretary had filed CMA(CS).No. 43 of 2017 before the same Tribunal.



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5.Both the appeals were heard together and a common order was passed on 17.01.2018 allowing both the appeals. Challenging the same order, the present revision petitions have been filed by the Deputy Registrar of Co-operative Society.

(B)Contentions of the counsels appearing on either side:

6.The learned Special Government Pleader appearing for the appellant had contended that the misappropriation by the delinquent Secretary was found out only in June 2010. Immediately, proceedings were initiated under Section 81 of the Tamil Nadu Co-operative Societies Act and thereafter, Section 87 proceedings were initiated. However, the Tribunal had allowed the appeal on the sole ground that the proceedings have been initiated 7 years after the date of occurrence. Though transactions have taken place between 19.11.1998 and 05.10.2002, it came to light only in June 2010. Therefore, the period of 7 years has to be calculated from the date on which the delinquency was found out.

7.The learned Special Government Pleader had further contended that the principles of natural justice were strictly followed and a copy of the enquiry report under Section 81 of the Act was furnished to



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him. There is no allegation of non-furnishing of enquiry report either in explanation submitted to Section 87 notice or in the grounds of appeal preferred before the Tribunal.

8.The learned Special Government Pleader had further contended that the records have been created as if loan has been disbursed to 132 employees of the Mill to an extent of Rs.50,76,762/-. When the Government announced waiver of interest, the said amount is shown to have been credited in the book of accounts. However, the amount were actually credited to the Bank account on different dates from 31.03.2010 onwards totalling a sum of Rs.41,50,000/-. Therefore, it is clear that in order to take advantage of the waiver of interest, the delinquent Secretary has deposited the amount on his own. Though the book of account reflects an entry of Rs.50,76,762/-, only a sum of Rs.41,50,000/- has been credited to the bank account. Therefore, there is a misappropriation of a sum of Rs.15,52,392/-. The said amount has to be recovered along with interest.

9.He had further contended that the second head relates to non initiation of legal proceedings for recovery of the loan amount which had resulted in being time barred. He had further contended that the



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delinquent Secretary had retained a sum of more than Rs.40,000/- on various dates in violation of bye-laws of the Society. In view of the retention of those amounts in hand, the Society has incurred loss towards interest.

10.The learned Special Government Pleader had further contended that though the loan granted to the employees of V.B.T Mill has been completely settled on 28.06.2006, the delinquent Secretary had created vouchers on 02.11.2006, 31.08.2007, 22.10.2007 and 16.10.2009 as if he had travelled by Taxi to reach the Mill to collect the dues. The Secretary has also created voucher for travelling allowance.

11.The learned Special Government Pleader had further contended that he had disbursed salary to some of the employees till June 2004 in excess of their entitlement. Instead of availing the insurance towards gratuity, the society amount has been utilised for payment of gratuity to one of the employees resulting in loss to the society.



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12.The learned Special Government Pleader had further contended that for several employees's surrender leave and Provident Fund amount have been sanctioned without proper records or resolution passed by the Society. The learned Special Government Pleader had further contended that when the delinquency come to light only in June 2010, the proceedings initiated under the provisions the Co-operative Societies Act are in time and therefore, the order passed by the Tribunal by setting aside the surcharge order is not legally sustainable. Hence, he prayed for allowing appeal.

13.The learned counsel appearing for the Society had contended that though all the delinquencies had happened before October 2002, they come to light only in June 2010 and therefore, the initiation of proceedings under Section 87 of the Co-operative Societies Act cannot be found fault with. He had extensively taken the Court through Section 81 enquiry report and the order in the surcharge proceedings to contend that a huge financial loss had occurred to the Society due to the delinquency of the Secretary of the concerned society. The proceedings initiated under the Act are well within the time and therefore, the order of the Co-operative Tribunal is liable to be set aside.



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14.Per contra the learned counsel appearing for the respondent/delinquent had contended that even as per the allegations made in the surcharge notice, the alleged delinquency had happened between 19.11.1998 and 05.10.2002. The proceedings under Section 87 were initiated only on 23.08.2011 which is more than 9 years from the date of occurrence. Therefore, the proceedings under Section 87 of the Act are clearly barred under the first proviso to Section 87(1) to Tamil Nadu Co-operative Societies Act, 1983. He had further contended that the enquiry report under Section 81 of the Act has not been furnished to him and therefore, he was not in a position to properly defend himself in the 87 proceedings. The Tribunal has rightly appreciated the factual and legal position and has allowed the appeal. Hence, he prayed for sustaining the order passed by the Tribunal.

15.I have considered the submissions made on either side and perused the material records.

(C) Discussion:

16.A perusal of the order passed by the Co-operative Tribunal reveals that the appeal has been allowed mainly on the following grounds:



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(i)The proceedings initiated under Section 87 of the Co-operative Societies Act are barred by limitation.

(ii)The enquiry officer under Section 81 of the Act was not examined and his report was not exhibited in the surcharge proceedings. The delinquent was not furnished with a copy of the enquiry report under Section 81 and no reasonable opportunity was given to the delinquent to defend himself.

17.As far as the first charge is concerned, the delinquent Secretary is alleged to have disbursed loan to 132 persons to a tune of about Rs.50,76,762/- during the period between 19.11.1998 and 05.10.2002. On 31.03.2010, it is alleged that the entire loan amount of Rs. 50,76,762/- has been remitted to the account of society on a single day. From 2002 till 2010, there was no recovery from any of the borrowers.

18.Though book of account reflects that Rs.50,76,762/- has been repaid on 31.03.2010, only a sum of Rs.7,00,000/-was credited to the bank account on 28.06.2010, another Rs.33,00,000/- on 03.07.2010 and finally Rs.1,50,000/- on 06.07.2010 totalling a sum of Rs.41,50,000/- has been credited to the bank account on various dates. Therefore, it is clear that only in the book of accounts, the entry of repayment of Rs.50,76,762/- is



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reflected on 31.03.2010, but the said amount has not been credited to the bank on the said date. A sum of Rs.41,50,000/- has been deposited on various dates, three months after the entry of repayment made in the book of accounts. Only for recovering the balance amount of Rs.15,52,392/- charge No.1 has been levied upon the delinquent Secretary.

19.The dates and events narrated above will clearly show that the delinquency had happened only on 31.03.2010 by forging the day book as if the entire loan amount of Rs.50,76,762/- has been remitted back by the borrower. When the delinquency had happened on 31.03.2010, the proceedings initiated under Section 87 of the Act on 23.08.2011 is clearly within the period of limitation as contemplated under the first proviso to Section 87(1) of the Co-operative Societies Act. The Co-operative Tribunal had misdirected itself by taking into consideration the period during which the loan amount were disbursed (19.11.1998 to 05.10.2002) to calculate the period of limitation.

20.A perusal of the charges indicate that the proceedings under Section 87 of the Act has been initiated only for the delinquency that had



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happened on 31.03.2010 by creating forged entries in the book of account and there months thereafter, credited the said amount to the bank. Therefore, the findings of the Tribunal that the Charge No.1 beyond the period of limitation is not legally sustainable.

21.As far as the second charge is concerned, the allegation as against the delinquent Secretary is that, he has not initiated any action to recover the loan amount of Rs.9,05,000/- which has become time barred. As far the third charge is concerned, the delinquent is alleged to have handled cash on hand for the period between 31.03.2010 to 03.07.2010 and has caused loss of interest. As far as fourth charge is concerned, the delinquent is said to have created fake vouchers for transportation expenses between November 2006 to October 2009. The proceedings under Section 87 of the Act having been initiated in August 2011 is clearly within the period of limitation. As far as the fifth charge is concerned, he has paid the excess amount towards salary to various employees and has paid gratuity amount from and out of the society account without availing the insurance policy. This has happened in June 2004. As far as the sixth charge is concerned, it relates to payment of surrender leave on 06.07.2010.



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22.The above referred discussion will clearly indicate that except Charge Nos.2 and 5, all other charges fall within the limitation period prescribed under the first proviso to Section 87(1) of the Co-operative Societies Act. Therefore, the Co-operative Tribunal was not right in allowing the appeal in entirety. Therefore, the surcharge order passed by the appellant herein has to be sustained with regard to Item Nos. 1, 3, 4 and 6.

23.When the delinquent Secretary is liable to pay the amount as per the surcharge order for the above said extent, the Tribunal was not right in setting aside the auction sale notice in entirety. The appellant is entitled to proceed with the auction sale for the recovery of the amount as far as Charge Nos.1,3,4 and 6 are concerned.

(D)Discussion:

24.In view of the above said deliberations, this Court is inclined to pass the following orders:

(a)The order of the Co-operative Tribunal in CMA(CS).No.4 of 2016 is set aside insofar as Item Nos.1, 3, 4 and 6 of the surcharge order dated 07.09.2015 are concerned and the order of the appellant with regard to the above said items are restored.



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(b)The order of the Tribunal in CMA(CS).No.4 of 2016 with regard to Item Nos.2 and 5 of the surcharge order dated 07.09.2015 are hereby confirmed.

(c)The order the Tribunal in CMA(CS).No.43 of 2017 is hereby set aside and the appellant would be entitled to proceed with the auction sale for recovering the amount mentioned in Item Nos.1,3,4 and 6 of the surcharge order dated 07.09.2015 and not with regard to item Nos.2 and 5 in surcharge order.

25.In the result, both the Civil Revision Petitions are partly allowed to the extent as stated above. No costs.

31.07.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

- 1.The Principal District Judge
Dindigul
- 2.The Deputy Registrar of Co-operative Societies, Palani
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery common order made in
C.R.P.(MD).Nos.1580 & 1581 of 2018

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