



CRP(MD)No.1761 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.1761 of 2022

and

CMP(MD)No.7791 of 2022

A.Arjunan

: Petitioner

Vs.

The Deputy Registrar of Co-op Societies,
Paramakudi Circle,
Madurai Main Road,
Paramakudi Post and Taluk,
Ramanathapuram District.

: Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India as against the judgment and decree dated 29.10.2021 passed by the Principal District Court, Ramanathapuram, in CMA(CS)No.3 of 2020, confirming the surcharge order dated 07.06.2019 passed by the Deputy Registrar of Co-op Societies, Paramakudi, in SC.No.1/2017-18.



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For Petitioner : Mr.R.Saravanan

For Respondent : Mr.A.Baskaran,
Additional Government Pleader

ORDER

The petitioner is the then Secretary of Q1277 Semanoor Primary Agricultural Co-operative Credit Society. He has filed this revision petition as against the order passed by the Co-operative Tribunal / Principal District Court, Ramanathapuram, in CMA(CS)No.3 of 2020, dated 29.10.2021, confirming the surcharge order passed by the Deputy Registrar of Co-op Societies, Paramakudi, in SC.No.1/2017-18, dated 07.06.2019.

2.The petitioner / Secretary was accused of misappropriating the Society funds and an enquiry u/s.81 of the Tamil Nadu Co-operative Societies Act [hereinafter referred to as 'the Act'] was ordered as against him in the year 2016. The enquiry report u/s.81 of the Act was submitted on 06.01.2017 and thereafter, surcharge proceedings was initiated u/s.87 of the Act in Rc.No.898/2016/SF. A notice was issued to him on 21.04.2017.



Thereafter, a surcharge order was passed as against this petitioner in Rc.No.898/2016/SF dated 20.04.2018. As against that order, the petitioner has preferred an appeal before the Co-operative Tribunal in CMA(CS)No.7 of 2018. The appeal was allowed on the ground of violation of principles of natural justice and the proceedings was remanded back for fresh consideration with a direction to complete the proceedings within a period of two months. Accordingly, an enquiry was conducted u/s.87 of the Act by the respondent in the month of May, 2019 and a surcharge order was passed in Rc.No.898/2016/SF dated 07.06.2019. The petitioner was held responsible for the loss of Rs.18,20,984.70/- and was directed to remit the same with 17.5% interest. As against the same, the petitioner has preferred another appeal before the Co-operative Tribunal in CMA(CS)No.3 of 2020. The same was dismissed by the Tribunal by order dated 29.10.2021, which is impugned in this revision petition.

3.Learned Counsel for the petitioner submitted that the enquiry was conducted without providing the required documents, viz., the enquiry report u/s.81 of the Act. He further submitted that though he sought for



some time, the respondent has not provided sufficient opportunity before passing the surcharge order. The explanations offered by the petitioner were not considered by the respondent. The Tribunal, without considering these material aspects, has erroneously dismissed the appeal and therefore, the same needs to be interfered with.

4.Learned Additional Government Pleader for the respondent submitted that the petitioner / then Secretary of the Society has committed misappropriation to the tune of Rs.24,12,002.20/- during the period from 01.04.2014 to 30.06.2016. He has admitted his liability and also remitted a part amount of Rs.5,28,017.50/-, without any interest, to the Society. He has created false and forged documents in the issuance of agricultural jewel loans during the year 2015-16 and also committed some fraud in the jewel loans. Being a Secretary, the petitioner had power to do expenses only upto Rs.100/- without any order of the Board. However, the petitioner has made several expenses beyond the permitted limit, without the concurrence of the Board and without the knowledge of the President.



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5.He further submitted that these frauds have been detected only during the Audit conducted in the Society in the year 2016. The Auditor has pointed out the defects and filed a special report for the year 2014-15 and therefore, the respondent, by his proceedings in Rc.No. 693/2016/PACCCS(1) dated 29.03.2016, ordered for an enquiry u/s.81 of the Act. In the enquiry, it was found that this petitioner has committed mischief and misappropriated the Society funds and a liability was also fixed on him. Consequent to the enquiry report u/s.81 of the Act, surcharge proceedings was initiated as against the petitioner in Rc.No.898/2016/SF. The enquiry was conducted from 21.04.2017 to 20.04.2018. The petitioner did not respond to the surcharge notice and failed to utilize the opportunity provided to him in the surcharge proceedings, however, filed an appeal that he was not provided with any opportunity. Therefore, the initial appeal filed by this petitioner in CMA(CS)No.7 of 2018 before the Co-operative Tribunal was allowed and by order dated 22.01.2019, the Tribunal remitted the matter back to the respondent with a direction to conduct a fresh surcharge enquiry by providing an opportunity of hearing



to the petitioner. The Tribunal has also fixed the time limit to complete the proceedings as two months.

6.He further submitted that the respondent received the records from the Tribunal on 08.04.2019 and issued summons to the petitioner for appearance in the surcharge proceedings on 09.05.2019. The petitioner appeared in the surcharge proceedings, in person, on 09.05.2019 and sought time that he is physically and mentally not well. Since an outer time limit has been prescribed by the Tribunal, the case was adjourned to 21.05.2019. On that day, the petitioner appeared and submitted a letter seeking permission for appointing an Advocate and also demanded certain records. The respondent accepted the request and allowed the petitioner to engage an Advocate and adjourned the proceedings to 30.05.2019. However, on 30.05.2019, the petitioner did not appear nor any Advocate represented the petitioner. Therefore, as directed by the Tribunal, the respondent proceeded further and the surcharge proceedings was completed and a fresh surcharge order has been passed in Rc.No.898/2016/SF dated 07.06.2019. As per this order, this petitioner is held responsible for a loss of



Rs.18,20,984.70/- and he was directed to remit the amount together with interest @ 17.5%.

7. With regard to the non-serving of the enquiry report u/s.81 of the Act, by referring to the provision u/s.87 of the Act, he submitted that the furnishing of this document u/s.81 is not mandated under the Act. However, the principles of natural justice requires the same and therefore, the enquiry report was also furnished to the petitioner along with the original surcharge notice dated 21.04.2017 itself. The petitioner has also made a request before the Officer on 21.05.2019 seeking certain documents, wherein, he has not stated anything about this enquiry report u/s.81 of the Act. However, this ground is now taken to evade the proceedings and to further drag on the proceedings. Therefore, he prayed for dismissal of this revision petition.

8. This Court considered the rival submissions made on either side and perused the materials placed on record.



9.This is the second round of litigation. Now, the main contention of the petitioner is that the enquiry report u/s.81 of the Act, based on which, the surcharge proceedings was initiated was not furnished to him. As rightly pointed out by the learned Additional Government Pleader, in the notice issued u/s.87 of the Act in the year 2017 in Rc.No.898/2016/SF dated 21.04.2017 itself, the respondent has stated that the enquiry report u/s.81 of the Act is enclosed. The petitioner has not disputed the same.

10.Even otherwise, the petitioner has also filed an application before the respondent on 21.05.2019 in the second surcharge proceedings conducted pursuant to the orders of the Tribunal in CMA(CS)No.7 of 2018, dated 22.01.2019, wherein, he has sought for certain documents for proceeding with the surcharge proceedings. In this application, he has not sought for this enquiry report u/s.81 of the Act. Therefore, this Court is not inclined to accede this contention of the petitioner.

11.From the impugned proceedings, it appears that the petitioner was provided with sufficient opportunity. However, he has not availed the



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same properly. Since a time limit has been prescribed by the Tribunal to conclude the proceedings, the respondent has proceeded further and passed the surcharge order in Rc.No.898/2016/SF dated 07.06.2019.

Therefore, this Court is not inclined to entertain this revision petition. Accordingly, this civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Internet : Yes

20.08.2024

Index : Yes / No

NCC : Yes / No

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To

1.The Principal District Judge,
Ramanathapuram.

2.The Deputy Registrar of Co-op Societies,
Paramakudi Circle,
Madurai Main Road,
Paramakudi Post and Taluk,
Ramanathapuram District.



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B.PUGALENDHI, J.

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