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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2025

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

W.P.No.2502 of 2025
and
W.M.P.No.2825 of 2025

1.A.Jayakodi
2.A.Sakthi
3.A.Chandiravadivu

.. Petitioners

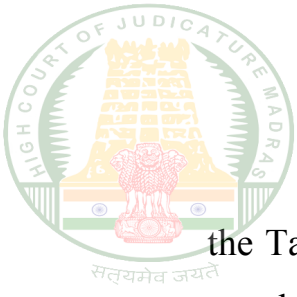
Vs.

1.The Deputy Registrar of Cooperative Societies,
Ariyalur Circle,
Ariyalur,
Ariyalur District.

2.The Management,
Ty. Spl. 105,
Azhagapuram Primary Agricultural Cooperative Credit Society,
Azhagapuram Village,
Kavarappalayam Via,
Ariyalur District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamas, calling for the records of the Surcharge Award No. Na.Ka.3262/2008 Sa.Pa. passed on 15.05.2023 on the file of the 1st respondent and to quash the same as arbitrary, against the principles of natural justice and total inconformity with the provisions of



the Tamil Nadu Cooperative Societies Act, 1983 and consequently, remove attachment over the immovable properties of the petitioners.

For Petitioner .. Mr.K.Vasanthanayagan

For Respondents .. Mr.S.Ravikumar, Spl. Govt. Pleader

ORDER

This Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records relating to Surcharge Award No. Na.Ka.3262/2008.Sa.Pa passed on 15.05.2023 on the file of the 1st respondent and to quash the same. The petitioners claim that the order had been passed violating the principles of natural justice against the provisions of Tamil Nadu Cooperative Societies Act, 1983. The petitioners seek removal of attachment over the immovable properties of the petitioners.

2.In the affidavit filed in support of the writ petition, the petitioners who are the legal heirs of Annadurai who was the Secretary of the 2nd respondent, Cooperative Society, have claimed that a report had been filed under Section 81 of the Tamil Nadu Cooperative Societies Act 1983, whereby, it had been found that the husband of the 1st petitioner / father of the 2nd and 3rd petitioners and another individual one Ramasamy had been



involved in misappropriation of the funds of the society. Surcharge proceedings under Section 87(1) of the Act was recommended to be initiated. Apart from that, criminal proceedings were also initiated against the said Annadurai / husband of the 1st petitioner, father of the 2nd and 3rd petitioners. It is therefore contended that Surcharge Proceedings under Section 87(1) of the Act had commenced by issuing notice.

3.The grievance raised by the learned counsel for the petitioners is that no sufficient opportunity had been granted to the petitioners. It had also been stated that witnesses whose statements had been relied in the enquiry were not examined during the Surcharge Proceedings. It is also contended that therefore, the petitioners did not have an opportunity to cross-examine the witnesses. It is therefore contended that, if opportunity is granted, the petitioners would be able to make out a case during the Surcharge Proceedings.

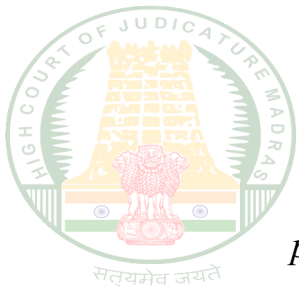
4.In this connection, the learned counsel for the petitioners placed reliance on the order of a learned Single reported in **2014 (2) CWC 615, D.Sathyamoorthy Vs. The Deputy Registrar of Cooperative Societies,**



Uthakamandalam and 2 others, wherein, the learned Single Judge had held

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“8. Now comes the crucial provision contained in Section 87 of the Act. A plain reading of Section 87 would make it abundantly clear that a surcharge proceeding under Section 87 shall be initiated on the basis of audit under Section 80 or inquiry under Section 81, or inspection or investigation under Section 82, or inspection of books under Section 83 or winding up of the society. Therefore, it is crystal clear that for initiation of a surcharge proceeding under Section 87 of the Act, a report submitted under Section 80 or under Section 81 or under Section 82 or under Section 83 is the foundation. The actual adjudication happens only in the surcharge proceeding under Section 87 of the Act. That is the reason why, Section 87 makes it mandatory that before making an order in the surcharge proceeding a reasonable opportunity should be given to the persons concerned. It is only at this stage, witnesses are examined and documentary evidences are tendered and the persons against whom surcharge proceeding has been initiated is allowed to cross examine the witnesses if he so wishes and also to lead evidence on his side, both oral and documentary. Section 87(4) of the Act also makes it clear that the officer who conducts surcharge proceeding shall have all the powers of the civil court in respect of matters enumerated therein such as, summoning and enforcing attendance of any



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person and examine him on oath; requiring the discovery and production of any document; reception of evidence on affidavits; requisitioning any public record from any court or office; and issuing commission for examining of witnesses. Any award passed under Section 87 of the Act is appealable to the Cooperative Tribunal under Section 152 of the Act. The award could be executed like a civil court decree under Chapter XVI of the Act.

9.From the above provisions of the Act, there can be no dispute that no adjudication takes place during an audit under Section 80, or inquiry under Section 81, or inspection or investigation under Section 82, and inspection of books by financing Bank under Section 83 of the Act. In other words, these proceedings are aimed to find out the facts and to submit a report to the Authority concerned for initiation of proceedings. Mere Report under any of these provisions will not result in any Civil consequence.”

5.It had been contended that in any proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, opportunity must be granted which would also include examination of the witnesses and cross-examining the witnesses and summoning of witnesses and also discovery of production of documents. In effect, it had been stated that procedures as enunciated under the Code of Civil Procedure should be followed.



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7. Once Execution Petition has been filed, the petitioners will have to file their claims before the appropriate authority with respect to the property which had been attached. It had also been contended on behalf of the respondents that the legal heirs of the co-delinquent had paid a sum of Rs.4,46,954.46/- which included the principle amount of Rs.1,34,035.98/- and interest of Rs.3,12,918.48. It had been stated that since the petitioners herein had not satisfied the decree which had already been passed consequent to the completion of the enquiry under Section 87 of the Act, Execution Petition has also been filed. It had been very categorically stated that notices had been issued on 13.12.2022, 18.04.2023 and again on 02.05.2023. The onus was then on the petitioners to participate in the enquiry and file an application to summon the witnesses and seek permission to cross-examine the said witnesses.



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8. The learned counsel for the petitioners claimed that the petitioners had participated on one hearing date during the Surcharge proceedings and thereafter, sent representations. But that will not take the petitioners anywhere. The petitioners must participate in the enquiry proceedings and file application seeking witnesses to be examined and permission to cross-examine the witnesses. Having failed to take up that particular opportunity and waited for orders to be passed, the petitioners cannot turn around and claim that they have been prejudiced by non-examination of witnesses or by not affording opportunity of cross-examination. This is one significant factor distinguishing the facts relied on by the learned counsel in ***D.Sathyamoorthy, 2014 (2) CWC 615***, referred *supra*.

9. Here the petitioners participated once in the enquiry and thereafter they avoided appearance before the enquiry officer.

10. In the judgment referred, it had been stated that the petitioners had participated and on the particular date when he participated 30 witnesses



were in attendance, since the petitioners were not prepared for cross-examining the witnesses, the matter was adjourned and there were further 23 witnesses who were present. The petitioners had refused to cross-examine them. Thereafter, the enquiry officer had proceeded to enquire with the proceedings.

11.It is thus seen that in the case referred by the learned counsel for the petitioners, there were as many as 30 witnesses who were present on one day and 23 witnesses who were present on the other day and it can be very clearly seen that cross-examination of all these witnesses would be an impossible task. It was under those grounds that the learned Single Judge had stated that principles of natural justice had been violated by the respondents.

12.In the instant case, the petitioners had participated only once for the enquiry and thereafter, they had only sent representation. They should physically be present during enquiry. Now, much water has flowed by. The order had been passed and Execution Petition had also been filed. The petitioners may therefore, participate at least in the Execution Petition and



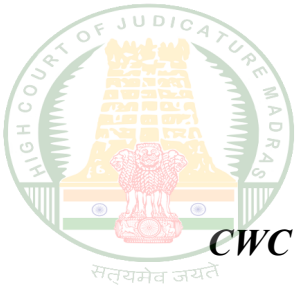
put forth their case with respect to why the decree should be set aside.

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13. It must be kept in mind that the legal heirs of the co-delinquent had paid up the amount which had been charged as against the said co-delinquent. The petitioners seek that the properties which are subject matter of attachment must be released from attachment. Then, they must make out a case as to why the said attachment should be released and not put into effect.

14. These are issues which the petitioners can always adjudicate in the Execution Petition, but the relief claimed in the writ petition can never be granted as the Surcharge proceedings have attained finality. The petitioners also have an opportunity to file an appeal provided, if they are within the period of limitation. These are all avenues available for the petitioners, but certainly under Section 226 of the Constitution of India, the scope is extremely narrow since the Tamil Nadu Cooperative Societies Act, 1983 is an inbuilt Act providing representations to be made within the provisions of the Act and appeals to be filed in provisions within the Act.

15. The reliance placed on the order in *D.Sathyamoorthy, 2014 (2)*



CWC 615 referred *supra* is misplaced since the facts therein are totally distinguishable from the facts of this case. I am not inclined to grant the relief sought in this Writ Petition.

16. With the above reasonings, this Writ Petition stands dismissed with liberty to participate in the Execution Petition in manner known to law. No costs. Consequently, connected Miscellaneous Petition is closed.

28.01.2025

Index: Yes/No
Internet: Yes/No
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