

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, MAYILADUTHURAI.

Present: Thiru P.Elango, B.Sc., M.L.,

Additional District Judge

Wednesday, the 27th day of July 2022

I.A. No.62/2015 in Co.C.M.A No.22/2015

M. Elangovan

. . .

. . . Petitioner / Appellant

Vs

Deputy Registrar of Cooperative Societies,
Mayiladuthurai.

. . . Respondent / Respondent

This petition is coming up before me on 14.07.2022 for final hearing in the presence of Tr. Manojkumar, advocate for the petitioner / appellant and Government Pleader for the respondent / respondent and upon hearing both side and considering the connected records, this Court made the following

ORDER

This petition is filed u/s 152(6) T.N.Co-Operative Societies Act seeking stay.

1. The averments of petition affidavit in short:

The petitioner is the appellant in the main appeal. The petitioner working as a clerk in the Kondal Primary Agricultural Co-operative Credit Society. The society has undertaken the works relating to crop insurance scheme besides the issue of jewel loans and crop loans. On the false premise (as it is) that there had happened certain irregularities in passing on the benefits under crop insurance scheme, agricultural jewel loans etc., the respondent caused an inquiry u/s 81 of the Tamil Nadu Co-operative Societies Act. The inquiry turned out to be a farce and lopsided. It was not conducted in the manner and method of holding such inquiries. Based on that improper and unfair inquiry, the respondent issued a notice of surcharge for the recovery of an amount of Rs. 50,61,817-. The respondent also failed to conduct a detailed enquiry into the allegations without a proper appraisal of facts and provisions of law. The respondent has passed the order for the recovery of the amount from the appellant and another. The petitioner has challenged the said order dated 29.05.2015 by means of appeal u/s 152 Tamil Nadu Co-operative Societies Act. The petitioner has made out a good case therein and has got fair chance and success. In the meantime, the Deputy Registrar proceed with the implementation of his illegal order. He has already made attachment before judgment of the properties of the petitioner worth several lakhs of rupees in his order No. CEP.24/2014-15 dated 15.07.2014. This attachment is still in force.

Therefore the petitioner prays to grant an order of stay of execution of order dated 29.05.2015 pending disposal of the main appeal.

2. The averments of counter of respondent in short:

The order of the lower Court is proper, legal and based on evidence and facts. The lower Court only after considering the oral and documentary evidence passed the surcharge order after giving reasonable opportunity to the petitioner. The lower Court has followed the principles of natural justice, fair play and good conservice before passing the surcharge order. The order of surcharge is in accordance with the provisions u/s 87 of the Tamil Nadu Co-operative Societies Act 1983. The petitioner / appellent working as secretary, ZB.63 Kondal PACCS and now under suspension. The petitioner approached the Court without clean hands. The contention of the petitioner that u/s 81 report was not given to him. The enquiry was not conducted properly, surcharge order is not proper u/s 81 report was rejected to him despite his approach several times with the Circle Deputy Registrar Office, Mayiladuthurai, permission not granted to him to engage a lawyer on his behalf and the summon for final surcharge hearing received by him are not true. The petitioner was allowed to see the relevant records needed by him to give explanation. It is mentioned in the surcharge notice. There is no necessity for petitioner to write a letter requiring u/s 81 report necessary particulars and surcharge items were given as per Rule 104(7) of TNCS rules 1988 in brief. The petitioner has nothing to defend himself u/s 81 enquiry was done properly. It is not correct that the surcharge order is not proper and it is defective. The petitioner is a joint custodian regarding jewel loans issue and for its safety. He has his role in preparation of documents, reports, recording facts in registers, disbursement of cash to customers and beneficiaries. So he is also accountable regarding this issues. Though the revenue certificates are issued by revenue department officials, the petitioner also becomes responsible for the reasons given below regarding. The agri. jewel loan No.1443 of the said society, the R.S. No.354 noted in the revenue certificate is that of Government poramboke land. Regarding agriculture jewel loan No.1438 dated 30.12.2011 the loanee Mrs P. Geetha has informed in her deposition obtained u/s 81 enquiry officer that the sign in the document is not put-in by her. Again regarding surcharge item No.3 while the crop insurance amount received by this Society was only Rs.3,84,435- the disbursed amount was Rs.7,73,667. The amount of Rs. 3,89,232- was disbursed in excess. Like these items, the petitioner is

responsible to other several items in the surcharge order. So he is liable to compensate the financial loss made. The petitioner committed serious irregularities regarding government funds and society fund. The petitioner is then chief executive of the society and responsible for maintenance of records as per u/s 84 of TNCS Act 1983. A criminal case is registered with CCIW CID, Nagapattinam vide Cr.No. 1/2015 date 29.04.2015 and investigation is going on. Further the respondent prays to dismiss this stay petition filed by this petitioner. The petitioner has filed this appeal with a view to delay the due process of law for the recovery of the amount. The petitioner has filed the appeal with no valid reason. The said recovery to the tune of Rs.11.81 lakhs will be put to heavy loss if the stay of operation of the respondent order is granted. Hence respondent prays to dismiss this stay petition.

3. The points for determination is:

Whether the petitioner is entitled for the prayer as sought for?

4. Solution:

The petitioner side stated that the respondent based on an improper and unfair enquiry, issued the surcharge notice for the recovery of an amount of Rs.50,61,817-. The petitioner side further stated that the authority concerned without proper appraisal of fact and provision of law the respondent has passed the order for the recovery of the above said amount. Meanwhile the petitioner filed this appeal under the provision of section 152 Tamil Nadu Co-operative Societies Act and he is having a chance of success. Further the petitioner seeking a stay of operation of the order passed in RC. No.1770/2014 *vs.* dated 29.05.2015 pending disposal of this main appeal. In this situation the respondent side strongly objects that the surcharge order was passed in accordance with law and in order to evade the execution of the same the petitioner filed this kind of petition. In this situation on perusal of records this application is pending from 2015 onwards. Further the main appeal itself is ripe for argument. But the petitioner side did not come forward to get an order on merit on this application in spite of nearly 7 years already passed. In considering all the above circumstances and in particular the main appeal itself is ripe for argument there is no necessity arising to stay the operation of the surcharge order as stated above. Hence it is decided to dismiss this application.

In result this application is dismissed accordingly. No cost.

Dictated to the steno-typist, transcribed and computer typed by her and corrected and pronounced by me in the open Court today this the 27th day of July 2022.

Sd/- P. Elango.
Additional District Judge,
Mayiladuthurai.

Order: (Fair & Draft)
I.A. No.62/2015 in
Co.CMA No.22/2015
Dated: 27.07.2022