IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

Wednesday, the 4th day of December 2024 / 13th Agrahayana, 1946

WA NO. 1861 OF 2024

AGAINST JUDGMENT DATED 09/10/2024 IN WP(C) 37239/2023 OF THIS COURT

APPELLANT(S)/PETITIONER

RAJENDRAN UNNITHAN.S, AGED 71 YEARS S/O.SREEDHARAN UNNITHANV.K SARAS, NETTETHARA CHADAYAMANGALAM (PO), KOLLAM 691534 NEW ADDRESS S/O.SREEDHARAN UNNITHAN V.K SARAS, NETTETHARA, CHADAYAMANGALAM (P.O), KOLLAM DISTRICT, PIN - 691534

BY.ADVS.M/S.SRI. R.REJI, ARUN BOSE, B.BIPIN, JEENA A.V., M.V.THAMBAN, THARA THAMBAN, THOMAS THOMAS.

RESPONDENT(S)/RESPONDENTS

1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES, KERALA STATE, JAWAHAR SAHAKARANA BHAVAN, DPI JUNCTION, THYCAUD P.O, THIRUVANANTHAPURAM, PIN - 690014
2. THE JOINT-REGISTRAR OF CO-OPERATIVE SOCIETIES, OFFICE OF THE JOINT-REGISTRAR OF CO-OPERATIVE SOCIETIES, CIVIL STATION, KOLLAM, PIN - 691013
3. THE ASSISTANT REGISTRAR (GENERAL) , OFFICE OF THE CO-OPERATIVE SOCIETIES, OFFICE OF THE ASSISTANT REGISTRAR (GENERAL) PUNALUR, KOLLAM DISTRICT, PIN - 691305
4. THE SECRETARY, THE EDAMULACKAL SERVICE CO-OPERATIVE BANK LTD NO.2047, EDAMULACKAL, ANCHAL (PO), KOLLAM, PIN - 691306
5. *ADDL R5: DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, KOCHI.[SUO MOTO IMPLEADED VIDE ORDER DATED 3/12/2024 IN WA 1861/2024].

BY SENIOR GOVERNMENT PLEADER SRI.T.K.VIPINDAS FOR R1 -R3.

ADV.SRI.SANTHOSH KUMAR FOR R4

SRI.JAISHANKAR V.NAIR FOR ADDL.R5

Prayer for interim relief in the Writ Appeal stating that in the circumstances stated in the appeal memorandum, the High Court be pleased to direct the 4th respondent to release the amounts due to the petitioner, within a time limit that may fixed by this Hon'ble Court, pending disposal of the Writ appeal, in the interest of justice.

This Writ appeal again coming on for orders along with connected cases on 04/12/2024 upon perusing the appeal memorandum and this court's order dated 03/12/2024, the court on the same day passed the following:

EXHIBIT P11: TRUE COPY OF THE ORDER DATED 06.06.2023

IN COM.NO.219 OF 2023 ON THE FILES OF THE

HON'BLE CO-OPERATIVE OMBUDSMAN, THIRUVANANTHAPURAM

AMIT RAWAL & K.V.JAYAKUMAR, JJ.

W.A. Nos.1861 & 1845 of 2024

Dated this the 4th day of December, 2024

ORDER

AMIT RAWAL, J.

1. On 03.12.2024, this Court had passed the following order:

> "1. This is a classic case of aggrandizement at the level of the erstwhile committee of the society, who had not only squandered but played with the money of the depositors, deposited with the aim of getting a little more interest than available in the bank, are being deprived of the fruit of their deposits. Out of many depositors, few of them are facing not only the financial hardship but medical difficulties like cancer and other diseases. The appellant herein is also a cancer patient, as evident from the documents placed on record. When confronted the counsel representing the present society as well as the Government Pleader as to what action had been taken for surcharge as well as the criminal action, we have been apprised that the FIR's have been registered, but the police report is still awaited.
>
> 2. We thus issue the following directions to the

State:

i) Mr. Vipindas is directed to give the details of the FIR or FIS registered against the erstwhile members and also the stage of the FIR.

ii) Shall also give the details of the surcharge proceedings initiated against each and every member of the erstwhile society when in vogue at the time when the amount was siphoned off and the stage of the surcharge proceedings, whether interdicted or otherwise.

3. We have been informed that it is not yet deciphered as to how the siphoned off money has prima facie been parked outside the country, why the proceedings under the Prevention of Money Laundering Act, 2002, have not been initiated against the accused in the FIR, as there is already a predicate offence. We thus suo motu also implead the Enforcement Director and issue notice to Mr.Jaishankar V. Nair, the Standing Counsel for Enforcement Directorate, to appear on 04.12.2024.

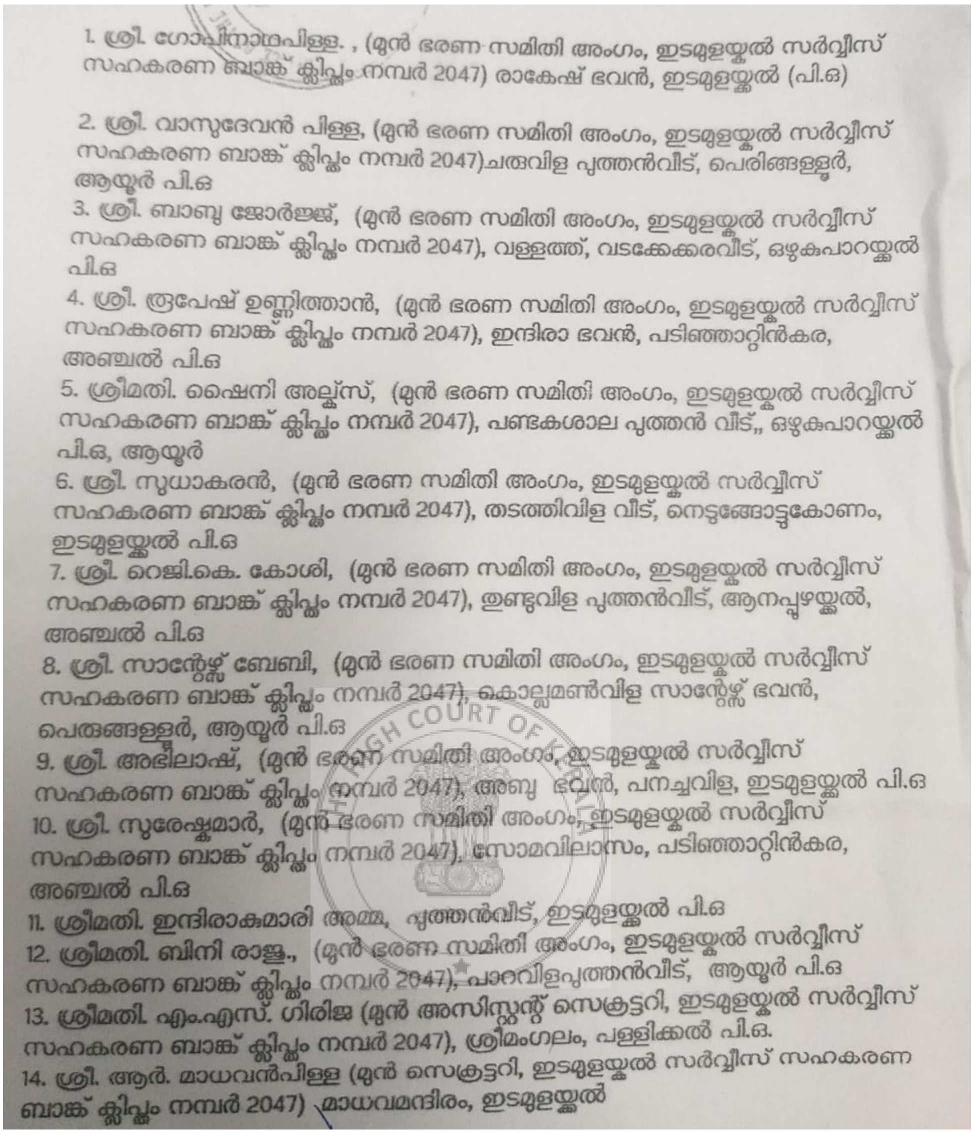
4. Let the copy of the order be handed over to the State counsel, counsel for the present Society as well as the counsel for the Enforcement Directorate. Post on 04.12.2024."

2. The matter was taken up today, learned Senior Government Pleader as per the instructions obtained

from the concerned department has apprised us with following information:

(i) for the period of 2009 to 2014 and 2014 to 2017 the elected members of the Society had not been discharging the duties diligently, rather were negligent resulted into a substantial loss to the Society which had the business of receiving the deposits by granting 2% extra interest than the bank rate.

(ii) The surcharge proceedings initiated under Section 68(2) of the Kerala Co-operative Societies Act resulted into an order dated 08.01.2024 whereby a liability of Rs.24,44,95,724/- (Rupees Twenty four crores forty four lakh ninety five thousand seven hundred and twenty four only) has been fastened upon fourteen (14) persons, the details of whom are given hereunder:



1. ശ്രീ. ഗോപിനാഥപിള്ള. , (മുൻ ഭരണ സമിതി അംഗം, ഇടമുളയ്ക്കൽ സർവ്വീസ് സഹകരണ ബാങ്ക് ക്ലിപ്തം നമ്പർ 2047) രാകേഷ് ഭവൻ, ഇടമുളയ്ക്കൽ (പി.ഒ)

2. ശ്രീ. വാസുദേവൻ പിള്ള, (മുൻ ഭരണ സമിതി അംഗം, ഇടമുളയ്ക്കൽ സർവ്വീസ് സഹകരണ ബാങ്ക് ക്ലിപ്തം നമ്പർ 2047)ചരുവിള പുത്തൻവീട്, പെരിങ്ങള്ളൂർ, ആയൂർ പി.ഒ

3. ശ്രീ. ബാബു ജോർജ്ജ്, (മുൻ ഭരണ സമിതി അംഗം, ഇടമുളയ്ക്കൽ സർവ്വീസ് സഹകരണ ബാങ്ക് ക്ലിപ്തം നമ്പർ 2047), വള്ളത്ത്, വടക്കേക്കരവീട്, ഒഴുകുപാറയ്ക്കൽ പി.ഒ

4. ശ്രീ. രൂപേഷ് ഉണ്ണിത്താൻ, (മുൻ ഭരണ സമിതി അംഗം, ഇടമുളയ്ക്കൽ സർവ്വീസ് സഹകരണ ബാങ്ക് ക്ലിപ്തം നമ്പർ 2047), ഇന്ദിരാ ഭവൻ, പടിഞ്ഞാറ്റിൻകര, അഞ്ചൽ പി.ഒ

5. ശ്രീമതി. ഷൈനി അലക്സ്, (മുൻ ഭരണ സമിതി അംഗം, ഇടമുളയ്ക്കൽ സർവ്വീസ് സഹകരണ ബാങ്ക് ക്ലിപ്തം നമ്പർ 2047), പണ്ടകശാല പുത്തൻ വീട്,, ഒഴുകുപാറയ്ക്കൽ പി.ഒ, ആയൂർ

6. ശ്രീ. സുധാകരൻ, (മുൻ ഭരണ സമിതി അംഗം, ഇടമുളയ്ക്കൽ സർവ്വീസ് സഹകരണ ബാങ്ക് ക്ലിപ്തം നമ്പർ 2047), തടത്തിവിള വീട്, നെട്ടയ്ങ്ങോട്ടുകോണം, ഇടമുളയ്ക്കൽ പി.ഒ

7. ശ്രീ. റെജി.കെ. കോശി, (മുൻ ഭരണ സമിതി അംഗം, ഇടമുളയ്ക്കൽ സർവ്വീസ് സഹകരണ ബാങ്ക് ക്ലിപ്തം നമ്പർ 2047), ഉണ്ടുവിള പുത്തൻവീട്, ആനപ്പുഴയ്ക്കൽ, അഞ്ചൽ പി.ഒ

8. ശ്രീ. സാന്റേഴ്സ് ബേബി, (മുൻ ഭരണ സമിതി അംഗം, ഇടമുളയ്ക്കൽ സർവ്വീസ് സഹകരണ ബാങ്ക് ക്ലിപ്തം നമ്പർ 2047), കൊല്ലമൺവിള സാന്റേഴ്സ് ഭവൻ, പെരുങ്ങള്ളൂർ, ആയൂർ പി.ഒ

9. ശ്രീ. അഭിലാഷ്, (മുൻ ഭരണ സമിതി അംഗം, ഇടമുളയ്ക്കൽ സർവ്വീസ് സഹകരണ ബാങ്ക് ക്ലിപ്തം നമ്പർ 2047), അബു ഭവൻ, പനച്ചവിള, ഇടമുളയ്ക്കൽ പി.ഒ

10. ശ്രീ. സുരേഷ്കുമാർ, (മുൻ ഭരണ സമിതി അംഗം, ഇടമുളയ്ക്കൽ സർവ്വീസ് സഹകരണ ബാങ്ക് ക്ലിപ്തം നമ്പർ 2047), സോമവിലാസം, പടിഞ്ഞാറ്റിൻകര, അഞ്ചൽ പി.ഒ

11. ശ്രീമതി. ഇന്ദിരാകുമാരി അമ്മ, പുത്തൻവീട്, ഇടമുളയ്ക്കൽ പി.ഒ

12. ശ്രീമതി. ബിനി രാജു., (മുൻ ഭരണ സമിതി അംഗം, ഇടമുളയ്ക്കൽ സർവ്വീസ് സഹകരണ ബാങ്ക് ക്ലിപ്തം നമ്പർ 2047), പാറവിളപുത്തൻവീട്, ആയൂർ പി.ഒ

13. ശ്രീമതി. എം.എസ്. ഗിരിജ (മുൻ അസിസ്റ്റന്റ് സെക്രട്ടറി, ഇടമുളയ്ക്കൽ സർവ്വീസ് സഹകരണ ബാങ്ക് ക്ലിപ്തം നമ്പർ 2047), ശ്രീമംഗലം, പള്ളിക്കൽ പി.ഒ.

14. ശ്രീ. ആർ. മാധവൻപിള്ള (മുൻ സെക്രട്ടറി, ഇടമുളയ്ക്കൽ സർവ്വീസ് സഹകരണ ബാങ്ക് ക്ലിപ്തം നമ്പർ 2047) മാധവമന്ദിരം, ഇടമുളയ്ക്കൽ

Out of 14, 12 are the former elected members, 13th is the former Assistant Secretary and 14th is the former Secretary.

3. As per the provisions of the Kerala Co-operative Societies Act, the surcharge notices are appealable under Section 83(1) of the Act; the appeals are pending, matter was heard on 16.11.2021 and listed

for December, 2024 for submission of the written arguments.

4. On initiation of the recovery proceedings five (5) persons out of 14 had approached this Court vide Writ Petition No.38345 of 2024 challenging the recovery proceedings. This Court vide judgment dated 05.11.2024 directed the Secretary of Co-operative Society for expeditious disposal of the appeals and till such time, the recovery proceedings have been ordered to be kept in abeyance. Similarly, another set of five(5) debtors/surcharge persons had also approached this Court vide Writ Petition No.3381 of 2024. That writ petition is pending consideration in this Court on 20.12.2024 and there is stay of recovery, and as per the order, the service on the respondents has not been effected.

5. As far as criminal prosecution is concerned, one FIR bearing No.1812 of 2017 under Sections 406, 409 and 420 of the erstwhile Indian Penal Code was registered on 12.09.2017 against only one former

Secretary – Madhavan. Investigation in the aforementioned case has been referred to Vigilance & Anti Corruption Bureau, Kollam in the year 2021 by assigning a new number, No.3 of 2021. The stage of investigation is not forthcoming. Recently, at the instance of one of the depositors another FIR bearing No.1640 of 2023 under Section 120 of the Indian Penal Code in Anchal Police Station, Kollam has been registered against three accused i.e., K.C.Ibrahim, Rajalakshmi (in the FIR she has been branded as an Acting Secretary) and former General Secretary Madhavan. The aforementioned FIR has been also clubbed with the pending Vigilance case number 3 of 2021 and 13/1 and 13/2 of the Prevention of Corruption Act.

6. On perusal of the order passed as extracted above, it is evident that the FIR has been only registered firstly against only the Secretary. It is wholly intriguing as to how and in what manner the other surcharge persons has been let off with no criminal case. We would

like to have the information from the Home Secretary and Additional Chief Secretary, Co-operative Societies by way of an affidavit, explaining the circumstances and the reasons of not registering the FIR against the other persons, as it is settled law that both criminal and civil proceedings for recovery can go side by side which will also state the stage of investigation or submissions of final report in the aforementioned FIRs..

7. Prima facie, it is a case of breach of trust and cheating which is a predicate offence as per the provisions of Section 3 of the Prevention of Money Laundering Act, 2002. Since we had issued a notice to Mr.Jayasankar, Standing Counsel for the Enforcement Directorate, we thus direct the Enforcement Director to register an ECIR as provided under the Act against all the persons involved, for misappropriation, breach of trust, cheating as well as offences under the PC Act forthwith.

8. Mr.Santhosh Kumar, learned counsel appearing on behalf of the Society respondent No.2 in both the writ

appeals submitted that vide order dated 26.04.2023, the resolution for degrading the Society to Class V has been passed. Appendix 3 of the Co-operative Societies Rules provides that the Co-operative Societies should have reflected the following amount in the balance sheet:

Working capital 2 crores, but less than 4 crores,

Deposit 1.5 crores, but less than 3 crores

Outstanding loan 1 crore, but below 3 crores

9. The aforementioned resolution has been approved by the department in August, 2024. We have been informed that as per the subsequent notification only six staff members are permissible to be retained in the society but before the degradation there were 12 employees. He further raised the objection qua maintainability of the writ petition in view of the Division Bench Judgment of this Court referred to by the Single Bench as the remedy for recovery of the amount lied on the invocation of provisions of Sections 69 of the Co-operative Societies Act.

10. It was also pointed out that Government had already promulgated a revival scheme called Kerala Co-operative Revival Fund Scheme, 2024 wherein the eligibility of Co-operative Society registered under the Act has been defined in Clause 'Terms and conditions of financial assistance' and in terms of that, a direction has been issued by the Single Bench commanding the Society to apply for application for obtaining the assistance.

11. In other words, it appears that despite the promulgation of the scheme Co-operative Society had so far not submitted any scheme for revival much less had also not submitted an application for financial assistance to the extent of 50% as per the insertion of paragraph No.5A of Kerala Co-operative Deposit Guarantee Scheme 2008 with effect from 03.09.2024. We thus direct the Society to apply such applications for assistance forthwith.

12. Learned counsel appearing on behalf of the petitioners submitted that the objection qua maintainability would not be sustainable for the reason

that as per the provisions of the Kerala Co-operative Ombudsman Scheme, 2010 paragraph No.7, any person aggrieved for non deposit of the amount is entitled to approach the Ombudsman and in both the cases, Ombudsman has passed the orders dated 05.10.2021 Exts.P1 to P6 in W.A.No.1845 of 2024 and dated 06.06.2023 Ext.P11 in W.A.No.1861 of 2024, and as per the amended provisions of Section 76 of the Co-operative Societies Act, the aforementioned orders are executable under Revenue Recovery Act.

13. When the recovery proceedings were initiated as the power to entertain the application for recovery of the revenue vests with the District Collector or to be delegated to the Tahsildar. But the District Collector, for the reason best known, referred the matter to the Joint Registrar who has no authority under the Act to take steps for recovery of the amount. We thus call the explanation of the District Collector, Kollam through Mr.T.K.Vipindas, learned Senior Government Pleader to file an affidavit in this regard giving reasons for not

entertaining the execution petition in the manner and mode prescribed under the statute.

14. Rajendran Unnithan S. concededly as per the medical records placed on record before the Single Bench, an appellant in the writ appeal, is suffering from a malignancy/cancer. He is in immediate need of money and matured amount according to his calculation is about Rs.9,40,000/- and in Savings Bank Account Rs.56,370/-. Since the Grade IV society has a deposit of minimum Rs.1,50,00,000/-, we direct the Society to immediately either issue a pay order or transfer the amount through RTGS in the account of the petitioner as he is in immediate need to meet the expenses of the treatment.

15. Let the affidavits as indicated above, be filed before and on the date of the hearing. Post this matter on 12.12.2024.

16. W.A.No.1845 2024, the liability of the five petitioners are to the extent of Rs.1,47,000/-, Rs.2,69,000/-, Rs.21,60,000/-, Rs.1,38,000/- and

Rs.4,01,823/- except the petitioner whose liabilities are to the extent of Rs.21,60,000/-. Thus, we direct the Co-operative Society to release 50% of the outstanding amount to all the four petitioners and a sum of Rs.10,00,000/- to the petitioner to whom the amount of Rs.21,60,000/- is due. The disbursement of the remaining amount shall be considered on the next date of hearing.

17. In the affidavit directed to be filed on behalf of the State, it is also to be stated whether on registration of the FIR, the accused persons have been arrested, released on bail or not or otherwise. We also direct the affidavit would also disclose the steps taken by the Government to ascertain the assets, both movable or immovable of all the surcharge persons and till such time, the surcharged persons are restrained from creating third party rights, alienation of the movable and immovable assets.

18. Mr.Jayasankar, before the next date of posting shall also file an affidavit regard the steps taken after

registration of the ECIR.

19. Taking in view of the predicament of all the petitioners, we thus order the listing of the writ petition 3381 of 2024 as it also pertains to the matter in controversy and incidental to the matter pending before us after obtaining orders from the Honble the Chief Justice.

H/o. Sd/-

AMIT RAWAL JUDGE

Sd/-

K.V.JAYAKUMAR, JUDGE

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