



WEB COPY

WP No. 26723 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-07-2026

CORAM

THE HON'BLE MR.JUSTICE K. SURENDER

WP No. 26723 of 2026

and

WMP Nos. 29232 & 29233 of 2026

M.Mahendhiran

..Petitioner(s)

Vs

1. The Deputy Registrar of cooperative societies,
Krishnagiri Circle,
Krishnagiri.
2. S.495, Krishnagiri Taluk Agricultural
Producers Cooperative Marketing Society,
Rep. by its Administrator,
Krishnagiri.
3. The Joint sub-Registrar-II
Tirupathur,
Tirupathur District.

..Respondent(s)

Writ Petition filed under Article 226 of Constitution of India seeking Writ of Certiorarified Mandamus to call for the records of the surcharge notice under section 87 of the TNCS Act issued by the 1st respondent in tha.thee.No.02/2026 sa.pa1 dated 21.05.2026 and consequential attachment order passed under Section 167(2) of the TNCS Act in Tha.Thee No.02/2026 sa.pa1 dated 25.06.2026 quash the same and direct the 3rd respondent to raise the order of attachment made in the Encumbrance Certificate in respect of the property bearing S.No.40/1A2A measuring 1.60 acres, Tirupathur Taluk and District.

For Petitioner(s): M.S.Palaniswamy

For Respondent(s): Mr.R.Chakkaravarthy Government Counsel for R1
Mr.J.V.Sakthi Balakrishnan for R2 and R3



ORDER

WEB COPY

This Writ Petition has been filed to quash the surcharge notice under section 87 of the Tamil Nadu Cooperative Societies Act issued by the 1st respondent in tha.thee.No.02/ 2026 sa.pa1 dated 21.05.2026 and consequential attachment order passed under Section 167(2) of the the Tamil Nadu Cooperative Societies Act in Tha.Thee No.02/2026 sa.pa1 dated 25.06.2026 and to direct the third respondent to raise the order of attachment made in the Encumbrance Certificate in respect of the property bearing S.No.40/1A2A measuring 1.60 acres, Tirupathur Taluk and District.

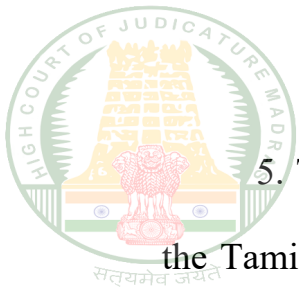
2. Mr.R.Chakkaravarthy, learned Government Counsel takes notice for the first respondent and Mr.J.V.Sakthi Balakrishnan, learned counsel takes notice for the second and third respondents.

3. By the consent of the learned counsel for the petitioner and the learned counsel for the respondents 1,2 and 3, this Writ Petition is taken up for final hearing at the stage of admission itself.

4. The brief facts of the case are that the petitioner is the proprietor of Sri Amman Traders, engaged in the coconut (copra) trading business for the past 25 years. He has been purchasing copra from the second respondent society since



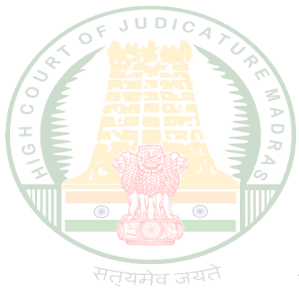
2022 through WhatsApp communications, making payments to the bank account furnished by the society, and claims that there are no outstanding dues payable by him. According to the petitioner, he is neither a member, agent nor employee of the second respondent society and he has never participated in any auction conducted by the society. While so, the first respondent issued a notice under Section 167(1) of the Tamil Nadu Co-operative Societies Act directing him to furnish security for an alleged liability. Thereafter, orders of the attachment under Section 167(2) were passed attaching his immovable properties. The petitioner had earlier challenged one such attachment order in WP.No.20490 of 2026, which is pending. Subsequently, the first respondent initiated surcharge proceedings under Section 87 of the Act alleging that payment relating to the copra transactions were made to an employee's bank account instead of the society's account, causing financial loss to the society. Despite the petitioner's explanation denying the allegations and contending that he is a third party having no connection with the internal affairs of the society, the first respondent proceeded with the surcharge enquiry and issued further notices and attachment orders of different amounts. Aggrieved by the same, the petitioner is before this Court by way of this Writ Petition.



5. The only grievance of the petitioner is that notice under Section 87 of the Tamil Nadu Co-operative Societies Act cannot be issued to a non-member and the wordings in the provisions “other person” will only include the employees of the society who were entrusted with the funds. The present notice that was issued to a non-member seeking an explanation has to be quashed.

6. The learned counsel for the petitioner relied on the judgement of this Court in WP.No.6974 of 2005 dated 06.11.2007. In the said Writ Petition, this Court had found that a notice cannot be issued under Section 87 of the the Tamil Nadu Co-operative Societies Act to a non-member and the relevant paras of the said judgement is extracted hereunder:

“16. In such a case, it is not as though the mischief committed to the society is left uncared for by the law, but effectively the legislators made provisions for curbing such mischief by invoking Section 90 of the Act read with Rule 107 of the Tamil Nadu Co-operative Societies Rules, 1988. When such is a provision, I am at a loss to understand as to why the Government and the Co-operative Society should try to strain the provisions of Section 87 of the Act and make it elastic and try to apply even as against the members. In case, if there is no effective remedy in the Act or Rules itself,



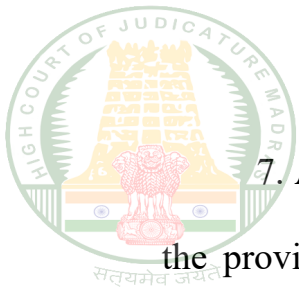
WEB COPY



as against such persons, then at least there would be some justification for applying the words and phrases, to wit, “any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society...” in the existing Section 87 of the Act, and interpreting them in such a manner so as to suppress the mischief, but that is absolutely not required in the facts and circumstances of this case and I am of the considered view that a mere reading of Section 87 of the Act, more specifically, the words and phrases already referred to supra, would not include ‘members’.

....

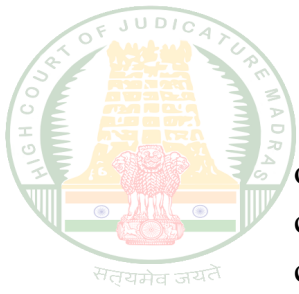
18. In these circumstances, the action initiated by the second respondent as against the members under Section 87 of the act, in my opinion is not correct and it has to be quashed.”



7. As seen from Section 87 of the Tamil Nadu Cooperative Societies Act, the provisions was substituted by the Tamil Nadu Act 32 of 2022 published under in the Gazette on 20.06.2022 with effect from 20th June, 2022.

8. Section 87 of the Tamil Nadu Cooperative Societies Act reads as under:

87. Surcharge.—(1) Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding-up of a society, it appears that, any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society, either on his own or in connivance with any other person, has misappropriated or fraudulently retained “or transferred any money” or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or negligence or has made any payment which is not in accordance with this Act, rules or by-laws, the Registrar himself or any person specially authorised by the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the Board, liquidator or any creditor or contributory, may frame charges against such person or officer or servant or such other person and after giving a reasonable opportunity to the person concerned and in the case of his demise, to his representative who inherits his estate or a person who holds his estate, to answer the charges, make an order requiring him to repay or restore the money or property, or any part thereof with interest at such rate as the Registrar



WEB COPY

or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retention or transfer of money or other property, breach of trust or negligence or payments which are not in accordance with this Act, rules or by-laws as the Registrar or the person authorised as aforesaid thinks just:

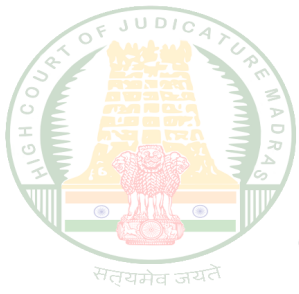
Provided that no action shall be commenced under this sub section after the expiry of seven years from the date of detection of any act or omission referred to in this sub section:

[Provided further that the action commenced under this subsection shall be completed within a period of three months from the date of such commencement or such further period or periods not exceeding one month at a time as the next higher authority may permit but such extended periods shall not exceed three months in the aggregate.

(2) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered as if it were an arrear of land revenue and for the purpose of such recovery, the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act.

(4) The Registrar or the person authorised by him shall, when acting under this section, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:-

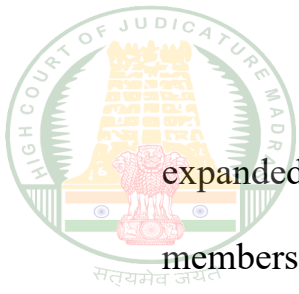


WEB COPY



- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any documents;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any court or office,
- (e) issuing commission for examining of witnesses

9. The changes made in 22 Amendment nor “either on his own or in connivance with any other person” “or transferred any money” and “or such other person” which are underlined above and further or “a person who holds his estate” and “or transfer of money or other property”. These were all the inclusions that were made in the amendment in the year 2022. The words which were introduced would clearly indicate that the reason for introducing the phrase/words was that earlier, the provisions did not provide for taking action against outsiders, who in connivance with the Management or the employees of the Society were involved in any kind of fraudulent activity or misdeed resulting in loss to the Society. The words phrased “any other person” would include a private person who was actively involved or such private person’s acts are participatory in nature. Prior to the amendment, the surcharge jurisdiction was principally directed against the person connected with the Management of the Society also, but after introduction of the above words as mentioned has



expanded the scope and brought into its fold all such persons who are not members of the Society but have knowingly participated in some wrongful actions along with the members of the Society or with the persons who are entrusted with the funds of the Society, to cause loss to the Society and in turn where there is wrongful gain.

10. For the said reason, the private persons who are neither members nor employers of the Society but when acted in collusion/connivance with any such Management or Officers causing loss, can be made part of the enquiry under Section 87 and orders be passed. The surcharge proceedings which would be initiated during an audit under Section 80 or enquiry under Section 81 or an inspection or an investigation under Section 82 or inspection of books under 83 or winding up the Society, action would also lie against a private person, in view of the Amendment or Section 87 that was carried out in 2022.

11. I do not find any infirmity in the impugned notice seeking intervention of this Court under Article 226 of the Constitution of India. Though a notice may not be amenable to writ jurisdiction, however, in view of a legal issue that has been raised regarding non-application of Section 87 proceedings to a private person other than an employee or to a person to whom funds were entrusted, the findings are given.



K.SURENDER J.

JAI/mvs.

WEB COPY

12. Accordingly, this **Writ Petition stands dismissed.** No costs.

Consequently connected miscellaneous petitions are closed.

(K.SURENDER J)
14-07-2026

Index: Yes/No

Neutral Citation: Yes/No

JAI/mvs.

To

1. The Deputy Registrar of cooperative societies,
Krishnagiri Circle,
Krishnagiri.
2. S.495, Krishnagiri Taluk Agricultural
Producers Cooperative Marketing Society,
Rep. by its Administrator,
Krishnagiri.
3. The Joint sub-Registrar-II
Tirupathur,
Tirupathur District.

WP No. 26723 of 2026