

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.4486 of 2004

Sivajipuram Co-operative Building Society
Rep. by Giri Raju Srinivasapuram Thanjavur Town,
By Special Officer, Q.Abdul Rasheed. ... Petitioner

- Vs -

1. P.Dharmalingam
2. The Regional Deputy Registrar of Societies (Housing) Thanjavur.
3. The Principal District Judge, Thanjavur / Special Tribunal for Co-operative Cases, Thanjavur. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari Mandamus, calling for the records on the file of the third respondent in connection with the order passed in C.M.A.No.46/2001 dated 18.09.2002 and to quash the same and consequently give direction to restore the order passed by the second respondent in Na.Ka.No.240/99 Sa.Pa. Dated 30.12.99.

For Petitioner सत्यमेव जयते : Mr.G.Sankaran

O R D E R

This writ petition is filed to call for the records on the file of the third respondent in connection with the order passed in C.M.A.No.46/2001 dated 18.09.2002 and to quash the same and consequently give direction to restore the order passed by the second respondent in Na.Ka.No.240/99 Sa.Pa. Dated 30.12.99.

2. The facts of the case are as follows:-

The petitioner society initiated the surcharge proceedings dated 31.12.1998. In the surcharge proceedings, the 2nd respondent namely the Regional Deputy Registrar of Societies

(Housing) has passed the surcharge proceedings dated 31.12.2009 challenging the surcharge orders, the 1st respondent has filed an appeal before the learned Principal District Judge, Thanjavur, in C.M.A.No.46 of 2001 dated 18.09.2002. After entertaining the appeal against the surcharge proceedings, the 3rd respondent/Principal District Judge, Thanjavur, has passed an order only on the ground that the initiation of surcharge proceedings after six months without prior permission for extending from the higher authority is bad in law. On the sole ground the petition is allowed and the surcharge proceeding order was quashed.

3. Though notice was served on the 1st respondent, after service the name of the 1st respondent was also printed in the cause list for his appearance, the matter was passed over to 2.30 p.m., even after passed over the 1st respondent has not appeared.

4. Heard the learned counsel for the petitioner.

5. The learned counsel for the petitioner submits that the issue is squarely covered by a decision of this Court in the case of S.V.K.Sahasramam v. Deputy Registrar of Co-operative Societies reported in (2008) 8 MLJ 231 wherein paragraph Nos.10 to 13 are as under:

'10. Before the learned Judge of the writ court, the appellant relied on two learned single Bench judgments of this Court rendered in the case of T.V.Ekambaram v. Co-operative Tribunal-cum-District Judge, Madurai 2000 (2) CTC 659 and in the case of Gabriel v. Deputy Registrar (Housing), Cuddalore (2003) 2 MLJ 624 : 2003 (3) CTC 23. In both these two judgments, the provisions of Section 87 of the said Act which relate to surcharge proceedings were examined and the learned Judges in both the aforesaid judgments construed the following proviso to Section 87:

'Provided further that the action commenced under this sub-section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate.'

Considering the said time limit of six months, the learned Judges came to the conclusion that the said period of six months is mandatory.

11. We are constrained to hold that even though no appeal has been taken to us from the said judgments, yet having regard to the well settled legal position which has been referred to

hereinabove, the finding of the learned Judges in these two judgments that the period of six months in the second proviso to Section 87 of the said Act is mandatory is not a correct finding in law. We find that even though before the learned Judge of the writ Court those two judgments of the learned single Bench were cited, the learned Judge of the writ Court was not swayed by those two decisions and came to a correct finding, relying upon the well settled proposition laid down by the Supreme Court as pointed above hereinabove.

12. We, therefore, affirm the order of the learned single Judge in this case. We are of the view that in a case where there are allegations of embezzlement and misappropriation of public funds, the members of general public who have been cheated have no control over those who hold the enquiry in respect of the time limit. To hold that such an enquiry which has been continued beyond the time limit is bad would cause great injustice.

13. Therefore, if such enquiry is continued beyond the time limit mentioned in the relevant statute, the said time cannot be held to be mandatory in view of the principles laid down in *Montreal Street Railway Company v. Normandi* (Supra), which has been affirmed by the Supreme Court.'

6. Subsequently, the learned Single Judge of this Court followed the Division Bench judgment held in 2012 WLR 934, wherein paragraph No.8 as under:

'8. It is pertinent to note that the First Bench of this Court in the case of *S.V.K.Sahasramam v. Deputy Registrar of Coop. Societies, Tiruvannamalai and others* reported in (2008) 8 MLJ 231, held that Second Proviso to Section 87(1) of the Act is only directory and not mandatory. A learned Single Judge of this Court has also elaborately dealt with the said question of limitation in respect of the Second Proviso to Section 87(1) of the Act in *H.Rajasekar & Others v. The Deputy Registrar of Cooperative Societies, Krishnagiri & Others* reported in 2009-4-L.W.427. Therefore, it is now well settled that the provisions relied by the Tribunal, namely, Second Proviso to Section 87(1) of the Act is only directory and not mandatory and as such, it cannot be contended that the surcharge proceedings have been barred by limitation. In view of the fact that the said point is in respect of question of law, there is no bar for considering the decision rendered by the First Bench of this Court in respect

of the surcharge proceedings initiated earlier. Therefore, merely because the proceedings have not been completed within the period of six months from the date of commencement, the proceedings cannot be held to have been vitiated.''

7. Wherein this Court has held that the period of six months is not mandatory it is only directory. Hence, I am inclined to allow the writ petition on the ground that the allegation made by the society cannot go without any adjudication, I am inclined to allow the writ petition to the limited extent.

8. Hence, this Court remand this matter back to the learned Principal District Judge for fresh adjudication and pass orders on merits without influencing any of the observation made in this writ petition within a period of four months from the date of receipt of a copy of this order.

Accordingly, this writ petition is allowed. No costs.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

ssn

To

1. The Regional Deputy Registrar of Societies (Housing) Thanjavur.

3. The Principal District Judge, Thanjavur / Special Tribunal for Co-operative Cases, Thanjavur.

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