IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3901 of 2019

P.Krishnan .. Appellant

vs.

1.The Deputy Director of Industries
and Commerce (Industrial Co-operatives)/
(District Registrar of Industrial Co-op),
Guindy, Chennai - 32.

2.Industrial Co-operative Officer
(Liquidation / Surcharge Officer u/s 87),
Rahumania Auto Drivers Industrial
Co-operative Society Limited,
Plot No.52, Vyasarbadi Co-operative Industrial Estate,
E.H. Road, Chennai.

3.N.Shobana,
Industrial Co-operative Officer,
(Liquidation / Surcharge Officer u/s 87),
Rahumania Auto Drivers Industrial
Co-operative Society Limited,
Plot No.52, Vyasarbadi Co-operative Industrial Estate,
E.H. Road, Chennai.

4.IND.No.24/MDS/2009, Rahumania
Auto Drivers Industrial Co-operative Society Limited,
rep. by its Secretary,
Plot No.52, Vyasarbadi Co-operative
Industrial Estate,
E.H. Road, Chennai. .. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 5.8.2019 in W.P.No.13358 of 2019 on the file of this Court.

Prayer in W.P.No.13358 of 2019 :

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Ceritorari to Calling for the records of the surcharge order No.2/ Rahumania /2019 dated 11.03.2019 on the file of the 2nd respondent quash the same.

For Appellant	:	Mr.R.Singgaravelan Senior Counsel for Mr.M.S.Palanisamy
For Respondents	:	Mr.L.P.Shanmugasundaram Spl. G.P. (Co-op) for respondent Nos.1 and 2

JUDGMENT
(Delivered by The Hon'ble Chief Justice)

The appellant was serving as the Managing Director of TAICO Bank i.e., an Apex Body, under which 266 Primary Level Co-operative Societies were being supervised and controlled. The Societies were particularly catering to the improvement of the economic condition of the minority community. Certain loans for purchase of Auto rickshaws were advanced through the Societies and since there were defaults in repayment, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (for brevity, “the 1983 Act”) was initiated, in respect whereof, a report dated 20.03.2015 was submitted. On the strength of such an enquiry, surcharge proceedings were initiated under Section 87 of the 1983 Act culminating in the passing of the order imposing surcharge against the appellant on 11th March 2019. A challenge raised by the appellant against the same in the writ petition, giving rise to the present appeal, has ultimately failed under the impugned judgment dated 5th August 2019.

2. The learned Single Judge, rejecting the contentions on the issue of violation of principles of natural justice and also on the availability of an alternative remedy, has declined to entertain the writ petition that is being assailed by the learned Senior Counsel for the appellant Shri R.Singgaravelan, assisted by Shri M.S.Palanisamy, on the ground that the learned Single Judge has failed to appreciate that the very same Officer who had initiated the enquiry under Section 81 of the 1983 Act, i.e., Mrs.N.Shobana, respondent No.3 herein, also proceeded to

take action as the Surcharge Officer on the strength of her own report that had been prepared by her in the proceedings under Section 81 of the 1983 Act and hence, the entire proceedings are vitiated, as a prosecutor-cum-witness cannot be a Judge in the same cause.

3. He then contends that the appellant was nowhere associated with the enquiry proceedings under Section 81 of the 1983 Act, and had an opportunity been given, the appellant would have explained that he was totally unconnected with the disbursement of the loans and was nowhere responsible either in the occurrence of the default or even thereafter as he had taken appropriate steps for ensuring recovery of the defaulted loans. Thus, this vitiated the proceedings, as no opportunity being given and the principles of natural justice were violated.

4. Substantiating his submissions, learned Senior Counsel for the appellant contends that the principles of fairness enshrined in Article 14 of the Constitution has been given a go-by, inasmuch as the same Officer having conducted the enquiry proceedings as well as surcharge proceedings was outrightly prejudiced and had proceeded with a pre-determined mind without there being any substantive material or evidence available against the appellant, that too on the basis of an assumption of remote collective responsibility of the appellant that had resulted in defaults in payment.

5. It is urged that the charge was absolutely vague, inasmuch as the allegation was that the appellant had failed to take any legal action or any appropriate steps in ensuring an appropriate disbursement of loan and for taking appropriate steps against those who had defaulted. The contention is that this vagueness of the charge itself, with no material to support the involvement of the appellant, vitiates the issuance of the notice under the surcharge proceedings under Section 87 of the 1983 Act.

6. With the aid of the judgments cited by him at the bar, learned Senior Counsel counsel contends that a detailed reply was submitted to the show cause notice dated 10th December 2018 on 4th January 2019, but neither is there any discussion, nor finding, nor any conclusion supported by reasons on a consideration of the reply of the appellant and hence, the order dated 11th March 2019 fixing liability on the appellant as well, is clearly vitiated. He submits that the proceedings of surcharge can be initiated only after recording a satisfaction that there was any willful neglect on the part of the appellant. There was no misappropriation, willful neglect or misapplication of funds established against the appellant, either as an outcome of the enquiry, so as to conclude a breach of trust for taking

action against the appellant under Section 87 of the 1983 Act. Hence, the impugned action is vitiated.

7. He has then submitted that the availability of a remedy by way of appeal under Section 152 of the 1983 Act is no bar to the entertaining of the writ petition, inasmuch as once it is established that the notice and proceedings itself are in violation of principles of natural justice for the reasons referred to above, the writ petition filed by the appellant could not be declined to be entertained on the ground of alternative remedy. To substantiate his submissions further, he has urged an additional point, which was neither raised before the Surcharge Officer, nor before the learned Single Judge, on the strength of the Tamil Nadu Co-operative Manual to urge that the Co-operative Sub Registrars cannot proceed to determine surcharge proceedings where the sum involved exceeds Rs.2.00 lakhs, and in such event, the Registrar can himself conduct the enquiry or specially authorize any person to do so.

8. To support his submissions, the following judgments have been cited by learned Senior Counsel for the appellant:

(i) Sathyamangalam Co-operative Urban Bank Limited v. The Deputy Registrar of Co-operative Society and another, reported in 1980 (2) MLJ 17.
(ii) P.Venkatachalam (Deceased) and others v. The Special Tribunal for Co-operative Cases, Madras and others, reported in 1996 (2) MLJ 69.
(iii) S.Subramanian v. The Deputy Registrar of Co-operative Societies (Housing), Cuddalore and others, reported in 2002-3-L.W. 185.
(iv) M.Chella Nadar v. The Deputy Registrar of Co-operative Societies, Thuckalai Post, K.K.District and others, reported in 2002 Writ L.R. 198.

(v) Gabriel v. The Deputy Registrar (Housing), Cuddalore and another, reported in 2003 (3) CTC 23.
(vi) S.Marimuthu and another v. Deputy Registrar of Co-operative Societies (Housing), Madurai Circle and another, reported in (2006) 4 MLJ 86.
(vii) K.Ajay Kumar Gosh and others v. Tribunal for Co-operative Cases, (District Judge of Kanyakumari District) Nagercoil and another, reported in (2009) 4 MLJ 992.
(viii) M.Karuppannan v. The Deputy Registrar (Dairying), office of the Deputy Registrar (Dairying), Erode Taluk and District, Erode-1 and others, reported in 2012 (1) CWC 794.
(ix) State of Madhya Pradesh and others v. Sanjay

Nagayach and others, reported in (2013) 7 SCC 25.

(x) K.Govindasamy v. A.Rajamni and others, C.R.P. (NPD) No.1276 of 2009, decided on 24.06.2013.

(xi) S.Ramadevi v. The Special Officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellore District and others, reported in 2016-4-L.W. 452.

(xii) R.Gandhi v. Deputy Registrar of Cop. Societies, Vellore and others, reported in 2019 (1) MWN (Civil) 353.

(xiii) D.Ganesan v. Commissioner of Sugar and others, reported in 2019 SCC OnLine Mad. 4198 : (2019) 5 CTC 549.

(xiv) A.K.Kraipak and others v. Union of India and others, reported in 1970 AIR SC 150.

9. Opposing the prayer made in this appeal, Shri L.P.Shanmugasundaram, learned counsel for the respondents 1 and 2, relying on the Division Bench judgment in the case of A.Balaraman and others v. The Deputy Registrar of Co-operative Societies, Cheyyar, Thiruvannamalai District and others, 2009 1 LW 681, contends that in view of the specific alternative remedy available under Section 152 of the 1983 Act that has been referred to in the impugned order dated 11th March 2019 itself, there is no occasion on any of the grounds raised in the appeal for interference with the conclusion drawn by the learned Single Judge. The submission is that the entire proceedings have been carried out in accordance with law and no such plea of want of authority in respondent No.3 was ever pleaded before her, nor any personal mala fides were alleged during the surcharge proceedings so as to raise any doubt about the proceedings being conducted by the same Officer, who had conducted the preliminary enquiry under Section 81 of the 1983 Act.

10. It is also urged by the learned counsel for the respondents that the proceedings under Section 81 are preliminary in nature, being a fact finding enquiry, to ascertain whether it was worth proceeding to initiate a surcharge process in terms of Section 87 or not, or to take any further action. The said enquiry under Section 81 of the 1983 Act nowhere contemplates of giving of an opportunity and is only a process of collecting information in order to form a prima facie opinion for taking action under Section 81 of the 1983 Act.

11. It is urged that the appellant was given a show cause in the proceedings under Section 87, where he had full opportunity

to defend himself and he submitted a reply that has been considered by the Surcharge Officer, whereafter a conclusion has been drawn with regard to the appellant's involvement in the entire transaction and the inaction in ensuring the recovery of the defaulted amounts was clearly established. Hence, he was liable to be proceeded against on the basis of the material that was available on record. It is therefore submitted that in the event the appellant is aggrieved by any such findings recorded on the merits of the matter, the same can be subjected to an appeal under Section 152 of the 1983 Act.

12. The contention which is now sought to be raised that the appellant has lost an opportunity of defending himself in the proceedings under Section 81, and that he has been prejudiced on account of the same Officer having participated in the surcharge proceedings, as the same denied him an opportunity, is a contention which was never raised before the authorities itself, nor any objection was taken to the participation of the Officer in the surcharge proceedings when it was being conducted. To the contrary, the appellant acquiesced to the said proceedings and after an adverse order has been passed against him, a new plea has now been taken that the same Officer should not have dealt with the matter. Hence, this afterthought, upon being unsuccessful before the Surcharge Officer, should not be entertained and this cannot be pleaded as a ground of violation of principles of natural justice or mala fides or unfairness so as to test the same on the anvil of Article 14 of the Constitution of India.

13. Learned Senior Counsel for the appellant has vehemently urged that in proceedings under Section 87 of the 1983 Act, the concerned authority has to proceed to make a full-scale enquiry, as it empowers the authority to summon, to take evidence etc. at par with and conferred on judicial authorities by applying the principles of the Code of Civil Procedure and Code of Criminal Procedure and therefore, the authority acts as a quasi-judicial authority. The manner of taking evidence, the sifting of facts and recording thereof therefore has to be in the same manner which has not been done in the present case.

14. It is also submitted by the learned Senior Counsel for the appellant that if such are the nature of proceedings that are contemplated under Section 87, then the appellant has lost his opportunity of examining or cross-examining the Enquiry Officer who was none else than the Officer who has conducted the surcharge proceedings. This aspect of the matter has also been overlooked by the learned Single Judge and the same has a direct bearing on the entire proceedings. He therefore submits that the arguments advanced on behalf of the respondents 1 and 2 should not be countenanced as this is a clear case of procedural

and substantive violation of law and consequently, the impugned order and judgment both deserve to be interfered with in appeal. He therefore prays that the impugned order of the Surcharge Officer dated 11th March 2019 being vitiated on all counts, the writ appeal and the writ petition both deserve to be allowed and the said order deserves to be quashed.

15. He submits that the appellant had already retired and he was a Director of the Apex Body with no operational activity involving him in the function of the Societies that had advanced the loans and hence, to indict indirectly, that too even without any material available, is a fruitless exercise conducted somehow or the other to bring the appellant within the net of the proceedings only because he was the Director of the Apex Body viz., TAICO Bank, during the period when loans were disbursed.

16. We have considered the submissions raised and in order to appreciate the controversy, we may put on record that the supervision and control of the Apex Body in disbursing loans is clearly discernible. The contention therefore that the appellant was a Director of the Apex Body and therefore he had absolutely no connection with the transactions which were subject matter of enquiry cannot be rejected outright and is dependent upon the facts and the material that had been brought on record to initiate the proceedings against the appellant.

17. The preliminary enquiry under Section 81 indicates that it was not only the disbursement of loans in which the Apex Body was involved, but it was also the obligation of the Apex Body to have ensured the recovery of the defaulted amounts by acting severely and not by simply referring the cases to arbitration. No strict action worth the name against the defaulters was taken viz., apart from prosecuting them for recovery, no criminal prosecution was launched in the wake of the evidence that had come on record. The allegations were that the loan amounts were disbursed, the recovery whereof was not being indemnified and which indicated the passing of loans in a clandestine manner. This was, therefore, a subject matter of enquiry so as to connect the activities of the Apex Body as well as Societies and the defaulters. At this stage, therefore, it cannot be said that no enquiry could have been made involving the Apex Body or its officials viz., the appellant. The material that was collected during preliminary enquiry under Section 81 reflected on the activities and possible neglect of the Director as well and therefore to say that no enquiry could have been made at all under Section 81 involving the appellant is unacceptable.

18. The second ground taken is that no opportunity was given

at the stage of Section 81 proceedings. This argument is bereft of any legal backing, inasmuch as the nature of enquiry under Section 81 is only a fact finding enquiry which would be evident from perusal of the provisions of Section 81 of the Act, which is extracted herein under:

> "81.Inquiry. - (1) The Registrar may, of his own motion and shall, on the application of a majority of the board or of not less than one third of the members or on the request of the financing bank or of the District Collector, hold an inquiry, or direct some person authorised by him by order in writing in this behalf to hold an inquiry in to the constitution, working and financial condition of a registered society or any alleged 54 misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to that society or into any particular aspect of the working of that society.
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> (2) The Registrar or the person authorised by him under sub-section (1) shall have the following powers, namely:__
>
> (a) He shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the society and may summon any person in possession of, or responsible for the custody of, any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof.
>
> (b) Where any person summoned under clause (a) fails or refuses to produce any record or property of the registered society as specified in the summons, any Metropolitan Magistrate or any Judicial Magistrate of the first class in whose jurisdiction the office of such society or the records and properties of such society is or are situated , shall on application by the Registrar or the person authorised by him under sub-section (1), direct the delivery to the Registrar or such person of the possession of the records and properties of such society :
>
> Provided that no such application shall be made by the person authorised under sub - section (1) without the previous sanction of the Registrar.

(c) He may seize the books, accounts or documents of the society, if he considers that such seizure is necessary to ensure the safety of such books, accounts or documents or to facilitate his inquiry, and shall give the person from whose custody the books, accounts or documents have been seized a receipt for the same:

Provided that the books, accounts or documents seized shall be retained by him only for so long as may be necessary for their examination and for the purpose of inquiry:

Provided further that the books, accounts or documents shall not be retained for more than three months at a time except with the permission of the next higher authority.

(d) He may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society and may examine such person on oath and may summon any person to produce any books, accounts or documents belonging to him or in his custody if the Registrar , or the person authorised as afore said has reason to believe that such books, accounts or documents contain any entry relating to transactions of the society.

(e) (i) He may, notwithstanding any rule or by - law specifying the period of notice for a general meeting of the society or for a meeting of the board, require any officer or officers of the society to call a general meeting or a meeting of the board at such time and place at the headquarters of the society or any branch thereof to consider such matters as may be specified by him and the provisions 55 of sub - clauses (i) and (ii) of clause (b) of sub-section (4) of section 32 shall apply to any meeting called under this sub-clause as if it were a meeting called in pursuance of a requisition under clause (a) of sub-section (3) of that section.

(ii) If the officer or officers of the society refuses or refuse or fails to call such meeting or if in the opinion of the Registrar there is no board or officer or officers competent under this Act, the rules or the by-laws to call such meeting, or if there be an order of the Registrar or of the Civil Court restraining the board to function, the Registrar or the person authorised by him under sub-section (1) shall have power to call the meeting himself and the provisions of clause (b) of sub-section (4) of section 32 and sub- section (5) of that section shall apply to such meeting as if it were a meeting called under clause (a) of the said sub- section (4).

(3) When an inquiry is held under this section, the Registrar shall within such time as may be prescribed communicate the result of the inquiry __

(i) in case the Government have subscribed directly to the share capital of the registered society or in case any moneys are due from the registered society either to the Principal State Partnership Fund or to the Subsidiary State Partnership Fund referred to in chapter VI, to the Government or to any officer appointed by the Government in this behalf;

(ii) to the financing bank, if any, to which the society is affiliated; and

(iii) to the society concerned.

(4) The inquiry shall be completed within a period of three months from the date of ordering the inquiry or such further period or periods not exceeding three months at a time as the next higher authority may permit provided that such extended periods shall not exceed six months in the aggregate.

(5) It shall be competent for the Registrar to withdraw any inquiry from the person authorised by him under sub-section (1) and to hold the inquiry himself or entrust it to any other person as he deems fit.

(6) The Registrar may, by order in writing, direct the registered society or any officer of the society or its financing bank to take such action as may be specified in the order to remedy, within such time as may be specified therein, the defects, if any, disclosed as a result of the inquiry."

19. The learned Single Judge while dealing with the subject matter has dealt with this in detail. Reference to the judgment in the case of S.V.K.Sahasramam v. The Deputy Registrar of Coop. Societies, W.A.No.949 of 2008, decided on 29.8.2008 to contend that no opportunity was given for participation in the proceedings under Section 81 is an argument which has to be rejected keeping in view the terminology used, which does not provide for any such procedure. The facts can be collected from any source and a mere collection of facts under Section 81 does not in per se prejudice a person unless the same is utilized against a person, who is subsequently put to notice in surcharge proceedings, where he has full opportunity to explain himself. Therefore, the contention that the appellant ought to have been given an opportunity during the preliminary enquiry under Section 81 does not legally hold water.

20. We further find from the reply given by the appellant on 4.1.2019 during the surcharge proceedings to have contained his full rebuttal in defence in respect of all the material that was subject matter of enquiry under Section 81 and it therefore cannot be said at this stage on a prima facie basis that any prejudice was caused to the appellant on this count.

21. Coming to the issue of the same Officer having acted as the Surcharge Officer, what we find in addition to the reasons given by the learned Single Judge on facts and law is that the appellant in his objections to the show cause notice nowhere raised even a little finger much less a plea in this regard that the same Officer should not have conducted the surcharge proceedings either on account of personal mala fides or otherwise or want of authority or any procedural unfairness in the Officer to hear the matter. There is a complete absence of any such plea having been raised during the surcharge proceedings and to the contrary, we find that the concluding part of the explanation dated 4.1.2019 categorically recites in the penultimate line that the appellant requests the Officer to accept the reply and relieve him of all the allegations as contained in the enquiry report that was made the basis of the proceedings. The appellant therefore had acquiesced to the jurisdiction and authority of respondent No.3 without raising any demur or any objection either by way of a complaint to any higher authority or raising a challenge to the same at that stage before any competent forum assailing the authority of respondent No.3 to proceed with the matter under Section 87 of the 1983 Act. Thus, this issue of alleged mala fide or want of authority or unfairness of procedure was never complained of or any material placed to demonstrate any prejudice.

22. To the contrary, having fully participated in the

proceedings, and having been indicted, the appellant has now turned around to raise this issue which cannot be permitted. This can be viewed from another angle that the appellant took his chance and was hopeful of success before the authority and may be for this reason no motives or processual unfairness on account of the same Officer proceeding with the matter was raised before the authority itself. Thus, having taken a chance and then having failed, does not enable the appellant to raise this plea thereafter on the ground that the appellant had been treated unfairly. It was open to the appellant to have made a request for any evidence or examination or any such relief which the appellant wanted before the authority itself. In the absence of any such effort on the part of the appellant or any inclination expressed either orally or in writing, it will be difficult to presume or infer unfairness on the part of the same Officer having acted as Surcharge Officer.

23. A man hardly delves into his own prejudices and that is why it is difficult to get rid of first impressions. Ignorance or obstinate or deliberate desires motivate deep seated preferences that stick, and cannot be easily shed off as they are self created notions of personal belief confirmed/unconfirmed or logically unsound or selfish desires. The appellant did not doubt the fairness of respondent No.3 during the proceedings and is now, as Justice Louis Brandeis said in New State Ice Co. v. Liebmann, 285 US 262, 311 (1932) "erecting his own prejudice into a legal principle".

24. On legal principles, the learned Single Judge has dealt with this issue in detail and instead of adding anything further, we concur with the view taken by him on this count that the same Officer did not suffer from any disqualification, nor there was any legal bar in the same Officer having proceeded with the surcharge proceedings. On a perusal of Section 87, we do not find any such inhibition, either implied or express that the Surcharge Officer should not be the same Officer who may have conducted the enquiry in the proceedings under Section 81 of the 1983 Act. To appreciate this, Section 87 is extracted herein 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 has misappropriated or fraudulently retained 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 willful negligence or has made any payment which is not in accordance with this Act, the rules or the by - laws, 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 and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits 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 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 to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not in accordance with this Act, the rules or the 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 any act or omission referred to in this sub section :

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.

(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 this 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:__
(a) summoning and enforcing the attendance of any person and examining 59 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."

25. A perusal of the aforesaid Section would reveal that the Registrar or an Officer authorized by him was entitled to proceed with the matter. In the absence of any such legal prohibition, we are unable to accept the contention of the learned Senior Counsel for the appellant on this count.

26. One of the issues which has been orally raised and has been noted by us without the same having been raised either before the Surcharge Officer or the learned Single Judge or even as a ground in this appeal is about the pecuniary jurisdiction on the strength of the Tamil Nadu Co-operative Manual, the extract whereof has been handed down to the Court. We may re-produce the commentary of the said Manual contained in para-2 which is extracted herein under:

"2. The Registrar or any person specially authorized by him in this behalf may pass an order of surcharge under section 87 either of his own motion or on the application of the board, liquidator or any creditor or contributory. The powers of the Registrar under this section have been conferred on Joint Registrars, the Deputy Registrars and the Co-operative Sub-Registrars. The conferment of the powers on the Co-operative Sub-Registrars is, however, restricted to cases involving a sum not exceeding Rs.2,00,000. Under this section, the Registrar may himself conduct the inquiry and pass an order of surcharge or specially authorise any person to do so. Earlier Cooperative Sub-Registrars were entertaining arbitration claims etc as Extension Officers (Cooperation) but this practice has been done away with. At present all references under section 87 & 90 irrespective of the amount involved are entertained by, enquired into and disposed only by the Circle Deputy Registrars. In cases that are within the financial limit prescribed for a Cooperative Sub-Registrar, the Deputy Registrar after entertaining such cases, may refer it to Cooperative Sub-Registrars for inquiry and disposal. Further, surcharge claims for sums exceeding the financial limit prescribed for a Cooperative Sub-Registrar and filed by the Circle Deputy Registrar when he was working as a Chief Executive of a society in his circle may also be referred to a Cooperative Sub-Registrar working under him who is capable of dealing with such cases for inquiry and disposal. As the exercise of this power under section 87 will involve careful assessment of the various facts leading to the passing of an order of surcharge the Deputy Registrars and Co-operative Sub-Registrars on whom the powers of a Registrar have been conferred should themselves function under this section and should not under any circumstances authorize any other person by virtue of the powers vested in them. When suo motu proceedings have been instituted under section 87, Registrar (Deputy Registrar) can also direct, of his own motion, conditional attachment of properties of the persons concerned under section 167. In such cases, the provisions of rules 116 to 141 under the Rules, in so far as they are not repugnant tot he subject or context, will apply to the conditional attachment of property directed under section 167 and no execution fees need be collected from any party.”

27. A perusal of the said para, does not raise any such pecuniary bar in the respondent No.3 to proceed with the matter, as the same is clearly in consonance with Section 87, where the Registrar can authorize any Officer to deal with surcharge proceedings irrespective of the amount involved.

28. The argument of learned Senior Counsel for the appellant is that in the absence of any evidence or satisfaction of willful neglect, misappropriation or financial irregularity or otherwise any administrative lapse on the part of the appellant, there was no ingredient available on the basis whereof it could be said that the surcharge proceedings could be initiated against the appellant. It is the contention of learned counsel for the appellant that in spite of a clear explanation having been given, there is no discussion, finding or reason in support of the conclusions drawn against the appellant.

29. We are unable to accept this contention as well, inasmuch as the show cause notice clearly indicates calling upon the appellant to explain about the inaction and the lapse on his part. Apart from this, the entire reply of the appellant has been considered from page 238 onwards of the typed set of papers filed by the appellant himself. The same continues to discuss the same and also indicate the nature of involvement of the appellant up to page 242 of the said typed set of papers. We are extracting the same for ready reference:

> "Thiru.P.Krishnan, Additional Director (Industries Cooperatives) (Retired)
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> He worked as Managing Director, TAICO Bank from 06/07/2011 to 31/05/2016. Section 81 Enquiry Officer stated that main reason for financial loss is bank officers did not take legal action and failed to perform their duties properly.
>
> He has given following statement and report during the enquiry held on 07/12/2018, wherein it was stated that,
>
> (01) during the period when he worked as Managing Director, for not taking legal action against members who failed to pay instalment,
>
> (02) fixed responsibility for financial loss of Rs.46,04,510 incurred by the society for purchase and issuance of non-saleable autos to members,
>
> (03) Even though he was not called for Section 81 Enquiry, he voluntarily came forward to given statement.
>
> (04) Autos were issued before he joining in the bank as Managing Director
>
> (05) He stated that Secretary of the society to collect outstanding instalment. Further, conditions laid down by the bank was accepted by the Society Secretary and Management Committee.
>
> (06) If instalment become outstanding the same can be informed to the Director through Branch Manager.
> (07) During his period only action for extension of TAMCO loan was taken.
>
> (08) Quite often conducted performance meeting and society which failed to pay instalments circulars

was sent informing Society Secretary and Branch Managers are responsible. Such performance meetings was conducted on 10/10/2011, 28.09.2012, 16/11/2012, 31/12/2012 and 30/06/2014 and issued performance reports.

(09) In his letter No.L3/TAMCO/2011-12 dated 29/12/2011 he informed that if Branch Managers fail to collect loan outstanding amount, they will be held responsible.

(10) Further, vide his circular dated 25/04/2012 and 26/07/2012 he insisted that instalment amount to be immediately collected.

(11) On 30/04/2013 he directed the Deputy Director, Chennai to collect instalments which have become default and remit to the bank.

(12) On 26/08/2013 he informed the Deputy Director to fix responsibility with Society Secretaries.

(13) Due to his follow up actions, 17 autos were confiscated on 20/11/2012 and 21/11/2012 and thereafter many more autos were confiscated, sold through auction and that amount was remitted to bank.

(14) Based on his advise only, Ex.Deputy Director issued order on 24/06/2014 for Section 81 enquiry and that report was received on 20/03/2015. In that Enquiry Report, the Enquiry Officer recommended to take surcharge action against President and Management Committee, cases to be filed and if society is unable to function it should be dissolved. On that enquiry order was issued to conduct surcharge enquiry on 28/11/2017. In that situation, he is raising a question, again Section 81 enquiry and Section 81 surcharge is legally valid.

(15) He informed 45 cases were filed.

(16) He has stated that, because of his follow up action only considerable improvement was shown in collection of outstanding, number of autos confiscated and sold for a reasonable price. He further stated that statement of Section 81 Enquiry Officer that he did not take legal action is not totally correct. Further, purchase of poor quality

autos and resultant loss he is not responsible and hence such allegations are baseless.

His statements was examined based on the documents.

Section 81 Enquiry Officer did not fix responsibility on him for purchase of poor quality of autos and resultant loss. Expressing his denial is unnecessary.
Further there is no mention in the Tamil Nadu Cooperatives Act 1983 that in a society more than one enquiry should not be conducted.

But, his reply with regard to charges i.e. he did not take legal action with regard to collection of outstanding loan amount is not acceptable for the following reasons:

Society only filed cases against its members. Bank did not take any action against the society. In societies where it is having immovable properties TAICO Bank filing of case, confiscating assets for recovery of loans. But in this case, the fact is that bank did not take any action for collection outstanding loan amount from the society. Society is having moveable assets i.e. autos and bank did not take action for confiscatiion of autos. Hire Purchase agreement not fully executed. No action was taken against bank branch manager or officers of credit section. During TAMCO loan period of five years, he is the bank Managing Director. While he conducted series of performance meeting and written letters, why he did not take even a single legal action, because bank did not execute complete Hire Purchase agreement. Further, in his statement he stated that bank was not informed about confiscation and sale of autos. Autos are property of the bank, If autos original R.C. book and duplicate keys etc. available with bank, without knowing how much autos are sold and releasing original R.C. books as fault.

Further for non collection of TAMCO loan, the bank should have appointed one Collection Officer for which TAMCO informed that they can pay aid of Rs.2000 per month for one society. But there is no such officer appointed. This shows total irresponsibility.

Further NABARD Bank in its xviii Report dated 31/03/2017, with regard to TAMCO loan, the following was mentioned:-
(a) Bank during its inspection period did not conduct any inspection.
(b) Bank failed to collect insurance amount for the autos from the society.
(c) Original R.C. book not collected from some members.
(d) Duplicate key not collected from all the members.
(e) Bank failed to confirm final beneficiary of the loan amount. No inspection was carried out after insurance of loan.

Thus, NABARD bank pointed out defects in its report which shows bank irresponsibility. He was Managing Director for five years and his statement of saying filing of case by society and Section 81 Enquiry is recovery activities cannot be acceptable.

Further, Section 81 Enquiry Officer is Industries Cooperative Officer (Supervisor), Section 87 Enquiry Officer is Industries Cooperative Officer (Dissolution). Further, it was not stated in Tamil Nadu Cooperatives Act that Section 87 Enquiry Officer should not be Section 81 Enquiry Officer.

Hence, Section 81 Enquiry Report that he is liable for the loss of Rs.46,04,510/- individually and collectively with others."

30. Thus, to accept the said contention would be virtually re-appreciating the facts which can only be gone before the appropriate forum of appeal and not by us. Prima facie, the said approach of the Surcharge Officer in dealing with the issues cannot be said to be perverse as whatever worth material was available has been mentioned and considered. It therefore cannot be said that there is a total non-application of mind.

31. Learned Senior counsel for the appellant vehemently urged that this enquiry should have proceeded applying the principles of Code of Civil Procedure, inasmuch as the consequences are not only penal, but also may end in prosecution. It is therefore urged that there should have been a step-wise examination by applying the said procedure in order to sift the facts and appreciate the evidence.

32. It is evident that the nature of power to be exercised

under Section 87 of the 1983 Act may be quasi-judicial in nature, but, it cannot be said that there is a non-consideration of any evidence that was placed on record or the explanation of the appellant. The appellant has not indicated anywhere as to what evidence he further wanted to adduce and the procedure which he wanted to be followed for which any inclination was shown by moving any application before the surcharge authority. In the absence of any such material before us or even before the learned Single Judge, it cannot be said that any procedural violation has been committed by the authority. But, as indicated above, this would again be a question of fact which the appellant has an opportunity to contest in the event he files an appeal before the appropriate forum.

33. On the issue of filing of an appeal in terms of Section 152 of the 1983 Act, it is not disputed by the learned Senior Counsel for the appellant that an appeal lies. But he contends that on the facts of the present case, his claim should not be thrown out on the ground of alternative remedy. It is on this issue that learned Senior Counsel for the appellant has vehemently advanced his submissions relying on the judgments that have been cited by him. The thrust of the submissions have been advanced mainly in the light of the findings and the conclusions drawn in the judgments that have been cited to urge that keeping in view the unfairness of procedure, and non-recording of any satisfaction of willful neglect, the remedy of appeal need not necessarily be availed of by the appellant.

34. The charge against the appellant is of not having taking appropriate steps, which is a charge of neglect. Whether it is willful or otherwise has to be concluded on the basis of the material taken on record. While passing the order impugned in the writ petition, the Surcharge Officer has arrived at a conclusion that there was willful neglect on the part of the appellant. The finding may possibly be falling in error or may be subject to criticism in appeal on facts, but, it cannot be said that the charge against the appellant was not of willful neglect. Consequently, to say that it was not a cause worth enquiry or further examination in an appeal is an unacceptable argument at least on the facts of the present case. It is for this reason that we have extracted the conclusions drawn in the impugned order of the Surcharge Officer herein above to indicate an appreciation of the issue involved.

35. None of the judgments cited at the bar are a precedent in relation to the availability of remedy of a statutory appeal as involved in the present case. Learned Senior Counsel has insisted on the judgment in the case of State of Madhya Pradesh v. Sanjay Nagayach and others, reported in (2013) 7 SCC 25, paragraphs 20, 21 and 34 to 36, to contend that similar powers

were available to the Registrar in the matter of supersession of Board of Directors under Section 53 of the Madhya Pradesh Cooperative Societies Act, 1960, which was under consideration.

36. Drawing a parallel, the learned Senior Counsel for the appellant contends that in the matter of supersession, an appeal is also provided under Section 152 of the 1983 Act. This comparison, in our opinion, is misplaced. A substantive right of appeal was not in issue before the Apex Court in the case of State of Madhya Pradesh (supra). It was not a case with regard to the indictment in surcharge proceedings. In the instant case, the Appellate Authority has co-extensive powers to look into and pass appropriate orders in an order arising out of imposition of surcharge under Section 87 of the 1983 Act. This is, therefore, a complete and effective remedy provided by the statute itself. The judgment in the case of State of Madhya Pradesh (supra), therefore, does not squarely apply keeping in view the nature of powers involved herein and the substance of the enquiry and the nature of the proceedings.

37. The learned Senior Counsel for the appellant then relied on the judgments of this Court as referred to above to contend that a writ petition would be entertainable. It is correct that the writ petition in the case of S.Marimuthu and another v. Deputy Registrar of Co-operative Societies (Housing), Madurai Circle and another, reported in (2006) 4 MLJ 86, did arise out of surcharge proceedings, but, we do not find any discussion on the issue of alternative remedy under Section 152 of the 1983 Act in the judgment, even though the said issue had been raised before the learned Judge as indicated in paragraph 10 of the judgment. However, no finding or conclusion was drawn thereon to indicate that a writ petition would still be entertainable in spite of the availability of the alternative remedy. The issue having been raised and not decided, cannot be a precedent on the said proposition.

38. For all the reasons above, we see no reason to interfere and the appeal is accordingly dismissed. The observations made by us are not to affect the challenge that may be raised on merits in an appeal by the appellant. No costs. Consequently, C.M.P.No.24534 of 2019 is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Director of Industries
and Commerce (Industrial Co-operatives)/
(District Registrar of Industrial Co-op),
Guindy, Chennai - 32.

2.Industrial Co-operative Officer
(Liquidation / Surcharge Officer u/s 87),
Rahumania Auto Drivers Industrial
Co-operative Society Limited,
Plot No.52, Vyasarbadi Co-operative Industrial Estate,
E.H. Road, Chennai.

pp co
A.SK(21/02/2020)