



WEB COPY

W.P.(MD)No.13247 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.13247 of 2017

and

W.M.P. (MD)Nos.10316 and 15297 of 2017

K.Sivashanmugam

... Petitioner

Vs.

- 1.The Joint Registrar,
District Co-Operative Societies,
Sivagangai, Sivagangai District.
- 2.The Deputy Registrar,
Co-Operative Societies,
Karaikudi Region, Sivagangai District.
- 3.The Special Officer,
R.D.145, Tamil Nadu State Transport
Corporation Workers,
Co-op Thrift & Credit Society Ltd.,
Kovilur, Karaikudi, Sivagangai District.
- 4.The Secretary,
R.D.145, Tamil Nadu State Transport
Corporation Workers,
Co-op Thrift & Credit Society Ltd.,
Kovilur, Karaikudi,
Sivagangai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned surcharge notice issued by the 2nd respondent in Na.Ka.634/2009/saba dated 19.05.2017 and quash the same.

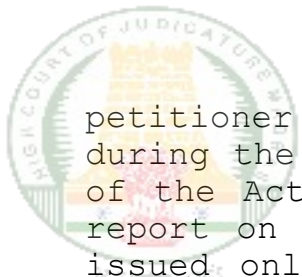
For Petitioner	: Mr.R.Balakrishnan
For Respondents	: Mrs.S.Srimathy, Special Government Pleader

O R D E R

Heard the learned counsel on either side.

2.The petitioner challenges the notice issued under Section 87 of the Tamil Nadu Co-operative Societies Act. The case of the

<https://hcservices.ecourts.gov.in/hcservices/>



petitioner is that the petitioner worked in the society concerned during the year 1997 to 2001. The enquiry officer under Section 81 of the Act was appointed on 16.02.2009. He submitted his enquiry report on 26.06.2009. The notice under Section 87 of the Act was issued only on 19.05.2017. In the meanwhile, the petitioner had retired from service. The proceedings under Section 87 of the Act will have to be commenced within seven years from the date when the cause of action arose. Even a fair reading of the impugned notice would indicate that the cause of action arose long before and that the surcharge proceedings have been initiated after the expiry of seven years period. Surcharge notice talks about the event that had taken place during the year 1998-1999. For the cause of action that arose in the year 1998-1999, surcharge proceedings cannot be initiated 18 years later. It is patently hit by limitation. Useful reference can be made to Section 87 of the Tamil Nadu Co-operative Societies Act, which 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 organization 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 wilful 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 authorized 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 any such rate as the Registrar or the person authorized as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not accordance with this Act, the rules or the by-laws as the Registrar or the person authorized 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

<https://hcservices.scds.gov.in/hcservice/>

shall be completed within a period of six months from the



date of such commencement or such further period or periods as a 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 his act.

(4) The Registrar or the person authorized 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 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."

3. Since the bar of the limitation is so apparent and obvious, the petitioners are entitled to move this Court at the show cause notice stage itself. The impugned show cause notice is quashed as it is hit by the bar of limitation. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

- 1.The Joint Registrar,
District Co-Operative Societies,
Sivagangai,
Sivagangai District.
- 2.The Deputy Registrar,
Co-Operative Societies,
Karaikudi Region,
Sivagangai District.
- 3.The Special Officer,
R.D.145, Tamil Nadu State Transport
Corporation Workers,
Co-op Thrift & Credit Society Ltd.,
Kovilur, Karaikudi,
Sivagangai District.
- 4.The Secretary,
R.D.145, Tamil Nadu State Transport
Corporation Workers,
Co-op Thrift & Credit Society Ltd.,
Kovilur, Karaikudi,
Sivagangai District.

W.P. (MD) No.13247 of 2017
04.08.2020

ias/dss

SDS (14.08.2020) 4P-5C