



C.R.P.(NPD).Nos.428 & 429 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD).Nos.428 & 429 of 2021

and

C.M.P.Nos.3713 & 3717 of 2021

C.R.P.(NPD).No.428 of 2021:

Mahalingam

.. Petitioner

Vs.

1.The Deputy Registrar of Co-operative
Societies (Housing),
O/o The Deputy Registrar of Co-operative
Societies (Housing), Salem Region,
Salem District.

2.K.K.128, Mettur Industrial Employees
Co-operative Industrial Housing Society Ltd.,
Rep by its Special Officer/President
Metturdam, Salem District

3.G.Viswanathan

.. Respondents



C.R.P.(NPD).Nos.428 & 429 of 2021

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgement and Decreetal Order dated 23.09.2019 made in C.M.A.(CS).No.2 of 2014 on the file of the Principal District Judge, Salem confirming the Surcharge Order passed by the 1st respondent in Na.Ka.No.913/2012/E dated 01.11.2013.

C.R.P.(NPD).No.429 of 2021:

S.Munusamy

.. Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies (Housing),
O/o The Deputy Registrar of Co-operative Societies (Housing), Salem Region,
Salem District.

2.K.K.128, Mettur Industrial Employees
Co-operative Industrial Housing Society Ltd.,
Rep by its Special Officer/President
Metturdam, Salem District

3.G.Viswanathan

4.M.Sivasami

5.Tmt.V.Krishnaveni

.. Respondents



C.R.P.(NPD).Nos.428 & 429 of 2021

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgement and Decreetal Order dated 23.09.2019 made in C.M.A.(CS).No.1 of 2014 on the file of the Principal District Judge, Salem confirming the Surcharge Order passed by the 1st respondent in Na.Ka.No.913/2012/E dated 01.11.2013.

For Petitioner : Mr.K.Raja
(In both CRPs) for Mr.N.Kolandaivelu

For Respondent 1 : Mr.Edwin Prabakar
(In both CRPs) Government Advocate

For Respondent 2 : Mr.L.P.Shanmugasundaram
(In both CRPs)

COMMON ORDER

These two revisions arise out of the surcharge proceedings initiated under Section 87 of the Tamil Nadu Cooperative Societies Act, herein after referred to as the Act. The petitioners were Special Officers of the Mettur Industrial Employees Co-operative Housing Society Ltd., hereinafter referred to as the Society, during various



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periods. While the petitioner in C.R.P.No.428 of 2021 was in service between the years 2003 and 2004, the petitioner in C.R.P.No.429 of 2021 was in service during the year 2007.

2. Claiming that they had caused loss to the Society because of dereliction of duty and certain omissions committed by them while they were working as the Special Officers, surcharge proceedings were initiated against them in the year 2013. The first show cause notice of surcharge under Section 87(1) of the Act was issued on 10.01.2013.

3. The petitioner in C.R.P.No.428 of 2021 was charged with causing loss of income in four different transactions. All the transactions had taken place during the year 2003. The first transaction was on 31.03.2003, the second transaction was on 12.03.2003, the third transaction on 31.07.2003 and the fourth transaction was on 16.05.2003.



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4. All these instance of loss of revenue to the Society in so far as

C.R.P.No.428 of 2021 is concerned arise out of non-recovery of housing loans advanced to various members of the Society during the tenure of office of the petitioner. The main contention of the learned counsel for the petitioner is that the claim under Section 87 of the Act, itself is barred by limitation. Though, such contention was raised before the learned Principal District Judge, Salem, in Civil Miscellaneous Appeals, the learned Principal District Judge has rejected the same on the premise that the limitation prescribed under the proviso to Section 87 (1) is only directory and not mandatory.

5. Mr.K.Raja, learned counsel appearing for the petitioners would invite my attention to two decisions of this Court, one by the ***Hon'ble Mr.Justice N.Kirubakaran*** in ***W.P.No.32116 of 2015 dated 28.06.2016*** and the other by the ***Hon'ble Ms.Justice P.T.Asha*** in ***C.R.P. No. 1214 of 2013 dated 18.11.2019.***



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6. In ***W.P.No.32116 of 2015***, this Court had held that the seven years period prescribed, under the proviso, as limitation for commencement of actions under Section 87 is mandatory and the same cannot be held to be directory.

7. In ***C.R.P.No.1214 of 2013***, the Hon'ble Ms.Justice P.T.Asha after referring to the various Judgments on the issue had concluded as follows:

“17. The proviso to Section 87 of the Act mandates that no action shall be commenced under the Sub Section namely, 87 (1) of the Act, after the expiry of 7 years from the date of any act of omission. The surcharge notice and the surcharge order would clearly indicate that the revision petitioner was charged with reference to the alleged misappropriation which had taken place for the period 2001 and 2002. The surcharge notice has been issued only on 03.07.2009, which was beyond the period of



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7 years. Therefore, the proceedings that have been initiated are clearly beyond the time specified under the proviso to Section 87 (1) of the Act.”

8. As I had already pointed out, the transactions, the subject matter of the surcharge order dated 01.11.2013, in respect of the petitioner in C.R.P.No.428 of 2021 have happened in the year 2003. Therefore, the time available for the respondents to proceed under Section 87 was seven years from the date of the transaction i.e., at the best till, 2010.

9. Admittedly, the first surcharge notice itself was issued only in the year 2013. Therefore, the claim as against the petitioner in C.R.P.No.428 of 2021 is clearly barred by limitation. The learned Principal District Judge, Salem, was therefore not right in concluding that the limitation prescribed under the proviso was only directory and not mandatory. Such a conclusion is not in tune with the Judicial



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pronouncements of this Court noted above. Hence, the surcharge proceedings against the petitioner in C.R.P.No.428 of 2021 cannot be sustained. The Revision succeeds.

10. As regards C.R.P.No.429 of 2021, the petitioner therein has been accused of causing loss to the Society on six different occasions. As far as the Item No.6, which transaction had happened on 30.03.2007, it is claimed that the petitioner had granted the loan without proper documents. It is also pointed out that there is a mistake in the membership number assigned to the loanee, V.Radhika. It is claimed that a sum of Rs.1,02,230/- is the loss that has occurred to the Society due to the omission on the part of the petitioner in obtaining proper documents. As regards Item Nos.11, 12, 13 and 14, it is claimed that the loans were advanced without proper inspection and the loanees have not put up construction as required, resulting in financial loss to the Society.



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11. It is not stated that as to how the petitioner is responsible for the loss. The surcharge order passed by the Deputy Registrar of Cooperative Society, does not reflect that there was any negligence or callous indifference on the part of the petitioner in discharging his duties, so as to make him liable for surcharge under Section 87 of the Act.

12. This Court had on various occasions examined the scope of Section 87 of the Act. A Hon'ble Division Bench of this Court in ***Ajay Kumar Gosh and others Vs. Tribunal for Cooperative Cases – 2009 (4) MLJ 992***, has held that in order to surcharge a person under Section 87, *an employee of the Cooperative Society should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with supine indifference without taking due care and caution ordinarily expected from a reasonable and prudent man.* However, if we examine the



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order of the Deputy Registrar surcharging the petitioner for the loss caused to the Society, the above ingredients are totally absent.

13. The order proceeds in a mechanical fashion saying that the petitioner had issued the cheques without ensuring that construction was put up by the loanes. In one of the instances, namely, Item No.12, the loanee had deposed that she has not received the loan but the then Secretary V.Vishwanathan has taken the loan amount. There is no answer to such a charge raised by the loanee in the surcharge order. The surcharging officer cannot mechanically reproduce the contents of the surcharge notice and mulct the liability on the employees of the Society. He is bound to examine the evidence positively and independently and record his findings to the effect that the officer concerned or the employee concerned had committed an act of omission or commission with supine indifference and without taking due care and caution.



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14. Every case of non-repayment of the loan cannot provide a cause of action for surcharge under Section 87 of the Act. Section 87 of the Act is an enabling provision, where there is a financial loss to the Society because of commission and omission of the employees, to recover the same by way of surcharge. The way in which the surcharging officer, namely, the Deputy Registrar of Cooperative Society has proceeded shows that he has mechanically initiated surcharge proceedings against the petitioner. He has not adverted to the requirements of Section 87 of the Act before passing the surcharge orders.

15. A reading of Section 87 of the Act would show that, in order to invoke the said Section, it must be shown that, *“an officer or servant of the Society has mis-appropriated 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*



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is not in accordance with the Act, Rules or by-laws”.

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16. Therefore, apart from the fact showing that there has been a loss to the Society, the Surcharge Officer must go one step further and record a finding that such loss has been caused due to willful negligence or callous indifference on the part of the officer concerned. In the absence of such finding, as rightly contended by the learned counsel for the petitioner, surcharge proceedings cannot be sustained.

17. Unfortunately, the learned Principal District Judge, Salem who heard the appeal as against the order surcharging the petitioner has not considered this aspect. It will be useful to refer to the Judgement of the ***Hon'ble Mr.Justice N.Sathish Kumar***, in ***C.R.P.Nos.19 to 22 of 2010***, wherein, also in similar proceedings it was held that unless willful negligence or callous indifference is established, proceedings under Section 87 cannot be sustained. In view of the above, the order of surcharging the petitioner is set aside.



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18. In the result, the Civil Revision Petitions are allowed. The surcharge orders are set aside. Consequently, connected Civil Miscellaneous Petitions are also closed. No costs.

19. The setting aside of surcharge orders will be confined to the petitioners in these revisions alone.

29.11.2021

kan/shr
Index :No
Internet: Yes
Speaking order

To:-

The Principal District Judge,
Salem.

13/14



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R.SUBRAMANIAN, J.

kan/shr

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