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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WRIT PETITION NO.10386 OF 2021

AND

W.M.P.NOS.10968 & 10971 OF 2021

R.Krishnaraj

... Petitioner

-Vs-

1. The Deputy Registrar of Co-operative Societies (Housing),  
No.26, Therku Kavarai Theru,  
Manjakuppam, Cuddalore,  
Cuddalore District.
2. The President,  
E-2729, Public Servants Co-op Housing  
Building Society,  
No.2, Abdul Kadar Lane  
Manjakuppam, Cuddalore,  
Cuddalore District.

... Respondents

PRAYER:-

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the impugned surcharge order passed by the 1<sup>st</sup> respondent in his proceeding Na.Ka.No.360/2019/Sa.Pa., dated 17.02.2021 and quash the same.

For Petitioner : Mr.K.Raja  
For Mr.Kavi Veerappan

For Respondents : Mr.M.R.Gokul Krishnan  
Government Advocate  
For R1

Ms.S.Anitha  
Special Government Pleader  
For R2



## O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the impugned surcharge order passed by the 1<sup>st</sup> respondent in his proceeding Na.Ka.No.360/2019/Sa.Pa., dated 17.02.2021 and quash the same.

2. The petitioner was working as a Sub-Registrar in the second respondent Cooperative Society in Cuddalore District. The second respondent Society was instituted for the benefit of the Government Servants only, in which the petitioner was elected as Vice President for the period from 01.11.1996 to 25.05.2001. During the said period, the petitioner was acting as in-charge Secretary of the second respondent Society from 03.10.1998 to 25.05.2001. Thereafter, the petitioner was working as Sub-Registrar of the Society from 25.05.2001 to 30.09.2004. Thereafter he reached superannuation on 30.06.2012. However, he was not allowed to retire as he was placed under suspension at the verge of his retirement with effect from 08.06.2012.

3. In this regard, there has been a surcharge proceedings initiated against the petitioner dated 17.02.2021. The said surcharge proceedings was initiated pursuant to the inquiry report submitted in this regard under Section 81 of the Tamil Nadu Cooperative Societies Act (In short 'the Act').

4. Pursuant to the said inquiry report under Section 81 of the Act, the first respondent has concluded the surcharge proceedings against the petitioner, whereby the surcharge amount to the extent of Rs.38,01,297/- which was considered to be a loss sustained by the Society, was directed to be recovered from the petitioner and three other persons with 14% interest. Challenging the said surcharge proceedings dated 17.02.2021, the petitioner has filed the present writ petition.

5. Heard Mr.K.Raja, learned counsel appearing for the petitioner, who, among other grounds, has raised a preliminary ground that, under the first proviso to Section 87(1) of the Act, there was a limitation prescribed under which, within 7 years from the date of commission of the act, the surcharge proceedings under Section 87 should have been initiated. Here in the case in hand, though the alleged commission or act was prior to 2012, the surcharge proceedings was initiated and concluded only in the year 2021, therefore it is beyond the 7 years limitation period and hence in view of the mandatory time limit prescribed under Section 87(1) first proviso, the impugned proceedings ought not to have been issued, as the same is vitiated for the said reason alone.



6. Since such a preliminary ground as prime ground is raised by the petitioner's counsel, this Court wanted to examine the same, for which Mr.M.R.Gokul Krishnan, learned Government Advocate appearing for the first respondent has given his assistance, stating that, whether the proviso referred to in Section 87(1) of the Act was to be considered as mandatory one or it is only directory, there has been divergent views taken by the Writ Courts, wherein one set of judgments take it as a mandatory requirement and another set of judgments makes it clear that it is only directory, as against which when intra-Court appeals were filed, and those judgments since have been affirmed by different Division Benches, the issue has been referred to a Full Bench of this Court for an authoritative pronouncement.

7. In this context, it is the contention of the learned Government Advocate appearing for the first respondent that, in "H.Rajasekar and Others -Vs- The Deputy Registrar of Co-operative Societies and Others" reported in (2009) 4 LW 427, the view taken by the Writ Court was that, this proviso is a mandatory one, whereas a contra view has been taken in the matter of "K.Murugan -Vs- The Deputy Registrar of Cooperative Societies and Others" reported in (2011) 3 CTC 689 by another learned Judge of the Writ Court that it is only directory.

8. Moreover, the order passed by the learned Single Judge taking a similar view as that of the view in H.Rajasekar's case, which was taken in W.P.No.34043 of 2006 was taken up on appeal, where a Division Bench of this Court, on 23.12.2008 in W.A.No.316 of 2008, in the matter of "Registrar of Cooperative Societies and another -Vs- C.Mariappan" had affirmed the said view. Thereby, the view taken in "H.Rajasekar and Others -Vs- The Deputy Registrar of Co-operative Societies and Others" reported in (2009) 4 LW 427, followed by another case ie., in ie., "K.Murugan -Vs- The Deputy Registrar of Cooperative Societies and Others" reported in (2011) 3 CTC 689 since has been affirmed by a Division Bench, it seems that the matter has been referred to the Full Bench of this Court, where, though a prima facie view has been expressed by an order dated 02.03.2020, the Full bench has posted the matter for further hearing to decide and to give an answer directly as to whether the first proviso to Section 87(1) of the Act prevents the commencement of proceedings upon a lapse of 7 years or it still can allow the commencement of such proceedings by holding it to be directory.

9. Since the said issue as framed by the Full Bench of this Court by order dated 02.03.2020 is still pending or yet to be resolved, the petitioner cannot seek any benefit by taking a clue from the orders passed by the Writ Court, of course as



confirmed by the Division Bench, unless and until an authoritative pronouncement is made by the Full Bench in the case referred to supra. The learned Government Advocate submits that, the plea now raised by the petitioner that the first proviso to Section 87(1) is mandatory cannot be, for the present, pressed into service now for the benefit of the present petitioner.

10. I have considered the rival submissions made by the learned counsel appearing for both sides. In respect of the said issue ie., whether the first proviso to Section 87(1) of the Act is mandatory or directory, and in that case if it is mandatory, whether it should be taken into account from the date of commission of the act or detection of the commission of the act, the prima facie view expressed by the Full Bench, of course by analyzing the view expressed by the Writ Courts in the aforesaid judgments as well as Division Bench, would be helpful.

11. In this context, in order to have a better understanding of the issue as of now, the view expressed by the Full Bench, of course during the interregnum, by order dated 02.03.2020, in entirety, is extracted hereunder.

"We have heard learned counsel for the parties.

2. Much of our time has been consumed in trying to understand the issue of reference having arisen, but with the able assistance of all the learned counsel, we have been able to locate the issue of difference that has been made the subject matter of this Full Bench, namely, as to whether the period of seven years as prescribed in the first proviso to Section 87 (1) of the Tamil Nadu Co-operative Societies Act, 1983, would operate from the date of the act or omission of the delinquent as mentioned in Section 87 (1) of the 1983 Act, or from the date of detection and commencement of the proceedings of surcharge upon the contingencies as referred to in Section 87 (1). The issue as to whether it is directory or mandatory is not a point of reference, but, prima facie, keeping in view the nature of surcharge proceedings under Section 87, the provision of limitation and prescribing of 7 years period which begins with the phrase "no action shall be commenced", to us, appears to be negatively worded, thereby prohibiting any action in respect of surcharge proceedings and therefore, is mandatory.



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2.The characteristics of a mandatory provision, prima facie, in our opinion, have been correctly explained by a learned Single Judge in the case of H.Rajasekar and Others vs. Deputy Registrar of Co-operative Societies, reported in (2009) 7 MLJ 942, which is also one of the decisions under appeal in which the reference has been made.

3.What we further find is that another learned Single Judge, in W.P.No.34043 of 2006, had taken a similar view and the said view was affirmed by a Division Bench on 23.12.2008 in W.A.No.316 of 2008 (Registrar of Co-operative Societies and Another vs. C.Mariappan).

4.However, a somewhat contrary prima facie view has been taken by another learned Single Judge in the case of K.Murugan vs. Deputy Registrar of Cooperative Societies, reported in 2011 (3) CTC 689, where, in paragraph 8, the learned Single Judge has framed the question and has then proceeded to answer it with the aid of dictionary meaning of the words 'commence' and 'institution', which stands enunciated in paragraphs 15 to 24 of the said judgment. Prima facie, we do not find the words 'act' or 'omission' having been considered for fixing the date of commencement by the learned Judge in the said decision and therefore, in order to proceed further, this Court will have to define as to the date of commencement in the light of the questions posed by us right at the beginning.

5.The Section, as it stands, containing the aforesaid proviso, is an exception to the main Section and therefore, with the mandatory nature of the words used therein as indicated above, the proviso does not indicate that commencement has to be counted for the purpose of limitation from the date of detection of the act or omission. It categorically mentions 7 years from the date of the act or omission. The learned Additional Advocate General contends that the same should be interpreted so as to govern all such acts on being detected, or else, the very purpose of surcharge and realisation and recovery of the amount or property misappropriated could be avoided on the strength of such a strict interpretation of 7 years limitation.





16. If that principle is pressed into service in the present facts of the case, admittedly there has been more than 7 years between the act or commission of the alleged misconduct or mismanagement by which the alleged loss was sustained by the Society and the initiation of the surcharge proceedings under Section 87 of the Act.

17. Therefore, this Court has no hesitation to hold that, the preliminary plea or ground raised by the petitioner by quoting the aforesaid proviso ie., 7 years limitation is to be sustained. Accordingly, this Court is inclined to dispose of this writ petition with the following order.

- That the impugned order, for the aforesaid reason of limitation, is hereby quashed and accordingly, the writ petition is allowed.
- However, if ultimately the Full Bench comes to the conclusion that the 7 years limitation is not mandatory but only directory, and the 7 years limitation shall be calculated only from the date of detection of the act or omission and not from the date of commission of the act, based on such declaration of law, if any, to be made by the Full Bench in future, it is open to the respondents to restore the Section 87 proceedings, which has been now quashed by this order, without prejudice to the rights of the parties.

18. In the result, this writ petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Deputy Registrar of Co-operative Societies (Housing),  
No.26, Therku Kavarai Theru,  
Manjakuppam, Cuddalore,  
Cuddalore District.



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2. The President,  
E-2729, Public Servants Co-op Housing  
Building Society,  
No.2, Abdul Kadar Lane  
Manjakuppam, Cuddalore,  
Cuddalore District.

+1cc to Mr.Kavi Veerappan, Advocate, S.R.No.68882  
+1cc to the Government Pleader, S.R.No.69053

W.P.NO.10386 OF 2021

SS (CO)  
PBS/11/01/2022