IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.NOS.4339, 4341, 4342 & 4344 OF 2022
AND
W.M.P.NOS.4453, 4455, 4457, 4458, 4459 & 4462 OF 2022

M.Premalatha
.. Petitioner in W.P.No.4339/2022

S.Indrani
.. Petitioner in W.P.No.4341/2022

P.Kannan
.. Petitioner in W.P.No.4342/2022

M.K.Raj
.. Petitioner in W.P.No.4344/2022

Vs.

The Deputy Registrar of Co-operative Societies,
Salem Region,
Salem 636 001.
.. Respondent in all W.Ps.

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the Surcharge proceeding initiated based on impugned Surcharge notice dated 19.11.2021 vide proceeding Na.Ka.No.2247/2020.Sa.Pa issued under Section 87 (1) of Tamil Nadu Co-operative Societies Act, 1983 by the respondent and quash the same as being illegal, arbitrary and unconstitutional.

(In all W.Ps.)

For Petitioner : Mr.R.Balaramesh

For Respondent : Mr.U.Baranidharan,
Additional Government Pleader
(Co-op.)

COMMON ORDER

These Writ Petitions are filed seeking to call for the records relating to the Surcharge proceeding initiated based on impugned Surcharge notice dated 19.11.2021 vide proceeding Na.Ka.No.2247/2020.Sa.Pa issued under Section 87 (1) of Tamil Nadu Co-operative Societies Act, 1983 by the respondent and quash the same as being illegal, arbitrary and unconstitutional.

2.The issues involved in all the Writ Petitions are one and the same and hence, they are disposed of by this common order.

3.The petitioner in W.P.No.4344 of 2022 is an elected President of Chinnathirupathi Urban Co-operative Credit Society and other petitioners are elected Board of Directors in the said Society. An inspection under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983, (hereinafter referred to as, 'the Act') was ordered on 20.08.2019 by the respondent for the period from 20.03.2013 to 24.05.2021. The Inspection Officer, after inspection, submitted his report on 27.11.2019. Based on the said report, the respondent issued impugned proceedings dated 19.11.2021, under Section 87 (1) of the Act. The petitioners are challenging the said notice in the present Writ Petitions.

4.The learned counsel appearing for the petitioner in all the Writ Petitions contended that as per first proviso to Section 87 (1) of the Act, no surcharge proceedings can be initiated after expiry of seven years from the date of act or omission. In the present case, the alleged omission is from 05.09.2013 to 03.12.2014, while the impugned notice of the respondent is dated 19.11.2021 and the same was received by the petitioners on 25.11.2021. The said notice is beyond seven years and therefore, the impugned surcharge proceedings initiated by the respondent is barred by limitation. The limitation starts from the date of act or omission and not from the date of detection. The learned counsel appearing for the petitioners further submitted that act or omission up to 18.05.2014 is barred by limitation. As far as alleged act or omission after 18.11.2014 is concerned, the amount is recovered from the members and no amount is due to the Society. The liability can be fixed on the staff of the Society and Board of Directors, only when there is deliberate negligence causing loss to the Society. The Inspection report dated 27.11.2019 does not state that due to deliberate negligence on the part of the petitioners, loss has been incurred to the Society. The learned counsel appearing for the petitioners, in support of his case, relied on the following orders:

(i) Order of this Court made in W.P.(MD).No.2285 of 2012 dated 21.07.2014;

(ii) Order of this Court made in W.P.No.27585 of 2021 dated 03.01.2022;

(iii) Order of this Court made in W.P.(MD).Nos.16723, 16729 & 16731 of 2019 dated 15.07.2020 and

(iv) Order reported in (2009) 6 MLJ 1066 [R.Ganapathy Vs. Deputy Registrar of Cooperative Societies, (Housing), Tirunelvveli and another] and submitted that this Court held that no action shall be taken under Section 87 (1) of the Act, after expiry of seven years from the date of any act or omission and prayed for allowing all the Writ Petitions.

5.The respondent filed common counter affidavit and denied all the averments in the Writ Petitions. The respondent has given details of loans sanctioned and disbursed by the petitioners and others in irregular manner. The respondent has mentioned in counter affidavit the details of loans sanctioned to persons up to 24.05.2015. The learned Additional Government Pleader appearing for the respondent submitted that impugned notice dated 19.11.2021 is within the period of seven years. The seven years period expires only on 23.05.2022 and the impugned notice is not barred by limitation. The learned Additional Government Pleader also referred to the common counter affidavit, wherein the details of loans disbursed by the petitioners and others and irregularities committed by the petitioners and others have been mentioned. The learned Additional Government Pleader relying on the order reported in (2009) 6 MLJ 1066 (referred to above), relied on by the learned counsel for the petitioners, contended that this Court has taken the date of last loan sanctioned by the petitioners therein for computing the limitation period and hence, the order reported in (2009) 6 MLJ 1066 (referred to above) and orders relied on by the learned counsel appearing for the petitioners do not advance the case of the petitioners and prayed for dismissal of all the Writ Petitions.

6.Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondent and perused the entire materials available on record.

7.The issue to be decided in the present Writ Petitions is whether impugned notice is barred by limitation as per first proviso to Section 87 (1) of the Act.

8.The said Section reads as follows:

> "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 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.”

A reading of the first proviso to Section 87 (1) of the Act makes it clear that limitation starts from the date of action or omission. There is no dispute with regard to contention of the learned counsel appearing for the petitioners that no surcharge proceedings can be initiated after expiry of seven years from the date of act or omission. In the orders relied on by the learned counsel appearing for the petitioners also, this issue has been decided that limitation starts from the date of act or omission.

9.In the present case, it is not the case of the respondent that limitation starts only when the act or omission is detected. Therefore, it has to be seen whether impugned notice is issued within seven years from the date of act or omission. From the impugned notice, it is seen that the respondent has enclosed inspection report conducted under Section 82 of the Act and the same is filed in the typed set of papers filed by the petitioners. In the said report, the details of irregularities in disbursing SSI loan numbering 171 had been mentioned. From the details given in the report, it is seen that irregular loans were sanctioned and disbursed up to 24.05.2015. There are loans disbursed from 18.11.2014 to 24.05.2015 also. The learned counsel appearing for the petitioners is referring to loans disbursed only up to 18.11.2014 and contend that impugned notice dated 19.11.2021 is barred by limitation. The said contention is not acceptable as even after 18.11.2014, the petitioners and others continued to sanction and disburse loans up to 24.05.2015. The Inspection Officer filed report enclosing the details of loan disbursed up to 24.05.2015, totaling 171 loans. In view of the dates referred to in the inspection report and alleged irregularities up to 24.05.2015, the impugned notice issued is not barred by limitation. The learned counsel appearing for the petitioners contended that loan sanctioned subsequent to 18.11.2014 were recovered from the members of the Society and no amount is due to the Society and petitioners have not deliberately neglected the alleged loans and therefore, the impugned order is liable to be set aside. The issue whether petitioners have recovered the loan and whether petitioners were deliberately negligent can be decided only based on the evidence before the respondent. It is open to the petitioners to produce all the documents before the respondent to show that loans sanctioned and disbursed after 18.11.2014 were already recovered.

In view of the materials on record, to show that alleged irregularities continued up to 24.05.2015, the impugned notice dated 19.11.2021 vide proceeding Na.Ka.No.2247/2020.Sa.Pa is not barred by limitation and all the Writ Petitions are liable to be dismissed and are hereby dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

gsa

To

The Deputy Registrar of Co-operative Societies,
Salem Region,
Salem 636 001.

+4ccs to Mr.R.Balaramesh, Advocate, S.R.No.16627

+1cc to the Government Pleader, S.R.No.16671

W.P.Nos.4339, 4341, 4342 & 4344 of 2022

SV(CO)
RLP(01/04/2022)