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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.26953 of 2013

and

M.P.No.1 of 2013

R.C.Kumarasamy,
S/o. Chinnaiya Gounder,
Arun Engineering Workshop,
Opposite to Rajalakshmi Mill,
Singanallur, Coimbatore.

... Petitioner

Vs.

1.The Registrar of Co-operative Societies,
170, N.V.Natarajan Maligai,
Poonamallee High Road, Kilpauk,
Chennai - 600 010.

2.The Joint Registrar of Co-operative Societies,
Joint Registrar of Cooperative Office,
Arokiasamy Road, K.K. Pudur Post,
Coimbatore - 38.

3.The Deputy Registrar of Co-operative Societies,
11-A, Market Road, (Upstairs of THAI Co Bank),
Pollachi, Coimbatore District.

4.The Enquiry Officer,
2426, Ravathur Primary Cooperative Credit Society,
Ravathur, Coimbatore.

5.The President,
2426, Ravathur Primary Cooperative Credit Society,
Ravathur, Coimbatore.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the third respondent relating to his notice to the petitioner dated 04.09.2013 under



Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 and quash the same.

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For Petitioner : Mrs.Hema Sampath
Senior Counsel
for Ms.R.Meenal

For RR 1 to 4 : Mr.U.Baranidharan
Additional Government Pleader

For R5 : Mr.P.M.Duraisamy

O R D E R

The petitioner, who is erstwhile President of 2426, Ravathur Primary Cooperative Credit Society, Ravathur, Coimbatore, is challenging the summons dated 04.09.2013, issued by the 4th respondent, calling upon the petitioner to appear for an enquiry on 13.09.2013 at 11.30 A.M.

2.According to the petitioner, he was working as President of 2426, Ravathur Primary Cooperative Credit Society, Ravathur, Coimbatore, from 01.11.1996 to 24.05.2001. While so, in the year 2009, the 3rd respondent issued notice under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983. The petitioner appeared for enquiry on 14.10.2009. The 3rd respondent issued proceedings under Section 36 of the Tamil Nadu Cooperative Societies Act, 1983 and called the petitioner to give an explanation as to why he should not be permanently disqualified from holding any office in future in any of the registered Societies. The petitioner sent detailed objections. Subsequently, the 3rd respondent did not proceed further. The petitioner was under the impression that the 3rd respondent accepted the explanation of the petitioner and dropped the proceedings.

3.Again, the petitioner received impugned notice dated 04.09.2013, from the 4th respondent issued under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 that he should appear for enquiry before him on 13.09.2013. In spite of ill health, the petitioner appeared for the enquiry and submitted his explanation. The 4th respondent refused to receive the explanation submitted by the petitioner. Hence, the petitioner sent explanation by registered post with acknowledgement due and has come out with the present Writ Petition challenging the impugned notice dated 04.09.2013 issued under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983.



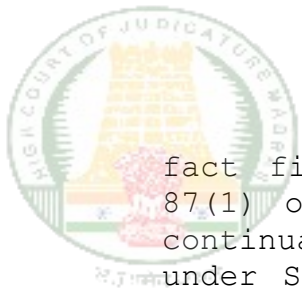
4.The learned Senior Counsel appearing for the petitioner submitted that enquiry conducted by the 4th respondent under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983, is abuse of power vested on him and it is in violation of principles of natural justice. The 4th respondent failed to consider that no action can be taken against the petitioner under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 and after expiry of seven years from the date of any act or omission, alleged to have been done by the petitioner. The impugned notice is in printed form, without any information as to what the enquiry is about. The 4th respondent ought not to have initiated proceedings after 12 years of the petitioner's term as President in the society. The 4th respondent failed to consider the fact that all the documents, accounts and files had been handed over by the petitioner to the society on his completion of his tenure as President. Section 81 enquiry was ordered in the year 2009 and the 2nd respondent dropped the proceedings. The present second enquiry is without jurisdiction, when the first enquiry was completed in the year 2009 itself. The petitioner after expiry of his period as President, on 24.05.2001 itself, handed over all the documents pertaining to the society. The present enquiry ordered after 12 years is only due to political pressure and prayed for setting aside the impugned notice dated 04.09.2013.

5.The respondents 1 to 3 filed counter affidavit and the 5th respondent also filed separate counter affidavit and denied all the averments made in the affidavit.

6.Mr.U.Baranidharan, learned Additional Government Pleader appearing for the respondents 1 to 4 submitted that it is not correct to state that proceedings initiated in the year 2009 was dropped by the 2nd respondent, on the other hand, it is pending. As per the impugned summon, the petitioner appeared before the 4th respondent and enquiry is completed. The petitioner will not be called again. In view of the pendency of the Writ Petition, report of the Enquiry Officer was not served on the petitioner and prayed for dismissal of the Writ Petition.

7.Mr.P.M.Duraisamy, learned counsel appearing for the 5th respondent submitted that in the year 2009 itself enquiry was conducted and the Deputy Registrar has wrongly initiated this impugned proceedings and it has to be set aside by this Court.

8.Heard the learned Senior Counsel appearing for the petitioner, learned Additional Government Pleader appearing for



fact finding enquiry. The proceedings initiated under Section 87(1) of the Act is a follow up action of Section 81 and not continuation of Section 81 of the Act. The surcharge proceedings under Section 87 can be initiated only within 7 years from the date of act or omission. In the present case, enquiry is being conducted only under Section 81 of the Act, which is fact finding enquiry. The stage of the initiating proceedings under Section 87 has not yet commenced. For the above reason, the contention of the learned Senior Counsel appearing for the petitioner that the present enquiry is barred by limitation is not acceptable.

11. In the result, the Writ Petition is dismissed. If any proceedings is initiated under the provisions of the Tamil Nadu Cooperative Societies Act, 1983, the petitioner is at liberty to raise all the objections including limitation. Consequently, the connected Miscellaneous Petition is closed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The Registrar of Co-operative Societies,
170, N.V. Natarajan Maligai,
Poonamallee High Road, Kilpauk,
Chennai - 600 010.
2. The Joint Registrar of Co-operative Societies,
Joint Registrar of Cooperative Office,
Arokiasamy Road, K.K. Pudur Post,
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Ravathur, Coimbatore.



5.The President,
2426, Ravathur Primary Cooperative Credit Society,
Ravathur, Coimbatore.

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+1cc to the Government Pleader Sr.23404
+1cc to M/s.P.M.Duraiswamy, Advocate Sr.23566
+1cc to M/s.R.Meenal, Advocate Sr.22975

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nm[co]
srg 27/04/2022