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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2022

C O R A M

THE HON'BLE MS.JUSTICE V.M.VELUMANI

W.P.No.21267 of 2021
and W.M.P.Nos.22506 & 22508 of 2021

V.Selvakumar

... 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 filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the impugned surcharge order passed by the 1st respondent in his proceedings Na.Ka.No.360/2019/Sa.Pa dated 17.02.2021 and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.K.Kannan
for Mr.T.Dharani

For R1 : Mr.U.Baranidharan
Additional Government Pleader

For R2 : Mrs.Akila Rajendran

ORDER

The petitioner has come out with the present Writ Petition challenging the order of the 1st respondent dated 17.02.2021 in surcharge proceedings conducted under Section 87 of the Tamil Nadu Co-operative Societies Act (hereinafter referred as 'the Act').



2. According to the petitioner, at the time of alleged irregularities he was not working as Secretary but he was working as a Clerk in the 2nd respondent Society. Initially, an enquiry under Section 81 of the Act was conducted and the Enquiry Officer did not give any adverse report against the petitioner. Subsequently, another enquiry was conducted. The respondent cannot conduct one enquiry after another and it amounts to double jeopardy. The property mortgaged to the Society was not sold as alleged by the respondents. A proceedings under Section 90 of the Act has been initiated. Subsequently, the borrowers/mortgagors have settled the amount under OTS and no amount is due to the 2nd respondent and there is no loss caused to the Society.

3. The learned counsel appearing for the petitioner apart from raising the above grounds, mainly contended that the surcharge proceedings initiated is barred by limitation as the same is initiated after 18 years of the alleged occurrence. As per the first proviso to Section 87 of the Act, the surcharge proceedings must be initiated within 7 years from the date of action or omission. In the present case, the alleged act is during the year 2004 - 2005 and 2005 - 2006, but the surcharge proceedings has been initiated only in the year 2021 and prayed for allowing the Writ Petition.

4. The respondent filed counter affidavit. Mr. U. Baranidharan, learned Additional Government Pleader appearing for the 1st respondent submitted that enquiry under Section 81 of the Act was not ordered for the same period. The first enquiry was ordered for the year 2000 - 2001, the second enquiry was ordered for the year 2001-2002 and the third enquiry was ordered for the year 2002- 2003 and 2003 - 2004. Therefore, the present enquiry was not ordered for the very same period. The petitioner, with collusion with one R. Krishnaraj, who was working as Secretary in-charge of the Society, illegally sold the property mortgaged after obtaining the Power of Attorney from the borrowers/mortgagors. A complaint has been lodged against the petitioner and others with Superintendent of Police, Commercial Crime Investigation Wing, Chennai, based on which a criminal case was registered and the same is pending. The surcharge proceedings is initiated as per the Special Audit objection and hence, the present Writ Petition is not maintainable. The only remedy available to the petitioner is to approach the Co-operative Tribunal by filing appeal and prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader appearing for the 1st respondent as well as learned counsel appearing for the 2nd respondent and perused the materials on record.



6. Even though the petitioner has raised various grounds, the learned counsel appearing for the petitioner mainly contended that the impugned order is without jurisdiction and the same is barred by limitation as per the first proviso to Section 87 of the Act. Whether the surcharge proceedings is barred by limitation or not can be decided by considering the first proviso to Section 87 of the Act, which 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 organisation 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 willful 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 authorised 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 such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the



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person authorised 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."

7.As per the first proviso to Section 87 of the Act, the surcharge proceedings can be initiated within seven years from the date of Act or Omission. In the present case, it is not in dispute that the surcharge proceedings is initiated for the alleged act during the year 2004 - 2005 and 2005 - 2006. In view of the first proviso to Section 87 of the Act, the surcharge proceedings and order passed is invalid and illegal as the same is initiated after a period of seven years i.e after 18 years. In view of the fact that surcharge proceedings and order passed were after more than seven years of the action / irregularities committed by the petitioner, the petitioner is entitled for the relief sought for in the Writ Petition. Further, this Court took note of the contention of the learned counsel appearing for the petitioner that borrowers/mortgagors have settled the amount due to the Society by OTS and no amount is due which is not disputed by the respondents.

8.For the above reasons, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To:

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.

+1cc to Mr.T.Dharani, Advocate, S.R.No.29732
+1cc to the Government Pleader, S.R.No.30593

W.P.No.21267 of 2021

CA (CO)
CT 27/05/2022