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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.27585 of 2021 & W.M.P.No.29113 of 2021

T.Radhakrishnan

...Petitioner

-Vs-

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

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the surcharge proceedings initiated based on impugned surcharge notice dated 19.11.2021 issued under Section 87(1) of Tamil Nadu Cooperative Societies Act, 1983 by the respondent and quash the same as being illegal, arbitrary and unconstitutional.

For Petitioner : Mr.R.Balaramesh

For Respondents : Mr.P.Ganesh,
Additional Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Certiorari to call for the records relating to the surcharge proceedings initiated based on impugned surcharge notice dated 19.11.2021 issued under Section 87(1) of Tamil Nadu Cooperative Societies Act, 1983 by the respondent and quash the same as being illegal, arbitrary and unconstitutional.

2. The petitioner was working as the Secretary of a Co-operative Society between the period 01.05.2009 and 30.09.2014. Subsequently, as per Section 82 of the Tamil Nadu Cooperative Societies Act, 1983 (In short 'the Act') inspection was conducted and a report to that effect was filed in respect of the Society viz., S.681, Chinnathirupathi Urban Co-operative Credit Society.



3. Based on the said Section 82 report, Surcharge proceedings was initiated under Section 87 of the Act by the impugned proceedings dated 19.11.2021. The said proceedings is under challenge in this writ petition on the ground that, as per the first proviso to Section 87(1) of the Act, there is 7 years limitation period within which, the surcharge proceedings under Section 87 should have been initiated and in this case, according to the learned counsel for the petitioner, since the petitioner himself was working in the Society only upto 30.09.2014, if at all any Section 87 proceedings has to be initiated, it should have been initiated on or before 30.09.2021, whereas admittedly the impugned proceedings has been initiated only on 19.11.2021. Therefore, it violates the mandatory limitation period of 7 years and therefore, on that ground itself, the impugned proceedings is vitiated.

4. However, Mr.P.Ganesh, learned Additional Government Pleader appearing for the respondents, on instructions would submit that, because of the inspection to be conducted under Section 82 of the Act and a report to be submitted in this regard, it has taken some reasonable time and based on the inspection report, where there are number of persons against whom such Surcharge proceedings has to be initiated, this reasonable time of a little ahead of 7 years ie., only 1 ½ or 2 months period beyond the 7 years limitation period has been taken by the respondent to issue the impugned proceedings under Section 87 of the Act. Therefore, this can be taken as a proceedings initiated within the 7 years limitation period because the 2 months period beyond the 7 years limitation period is only a marginal period that can be accepted, he contended.

5. I have considered the point canvassed by the learned counsel for the petitioner as well as the submissions made by the learned Additional Government Pleader.

6. In fact, the very same issue has already been raised in W.P.No.10386 of 2021, where, I had an occasion to consider this point and pass the following order dated 21.12.2021.

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



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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



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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



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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.

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



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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.

6.The issue, therefore, which has to be directly answered by us is as to whether the first proviso to Section 87 (1) 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.

7.The learned Additional Advocate General prays that the matter may be



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taken up after four weeks to enable him to assist the Court."

12. On a reading of the aforesaid expression made by the Hon'ble Full Bench, since a view has been expressed prima facie, that view can be taken into account for the present, because of the orders already concluded by the Writ Court in more than one case and that view also has been affirmed by the Division Bench of this Court.

13. In this context, in Para 2 of the Full Bench order referred to above, the Full Bench has taken note of the view expressed by the Writ Court in H.Rajasekar's case reported in (2009) 4 LW 427. The Full Bench also has taken note of the fact that when similar view was expressed by another learned Judge of the Writ Court in W.P.No.34043 of 2006 and when the same was appealed in W.A.No.316 of 2008 in the matter of "The Registrar of Co-operative Societies -Vs- K.Murugan", the said view was affirmed by the Division Bench also.

14. The Full Bench also took note of the view expressed by another learned Judge of this Court in Murugan's case reported in (2011) 3 CTC 689, where a different view has been taken. Ultimately, in para 2 and 5 of the Full Bench order referred to above, it has been stated as a prima facie view that the first proviso to Section 87(1) of the Act is mandatory and the 7 years period mentioned shall be taken only from the date of the act or omission. This can be culled out from the view expressed by the Full Bench in Para 2 to 5 of the said Full Bench order dated 02.03.2020 and for easy reference, the order of the Full Bench has already been quoted herein above.

15. Therefore, after having gone through the judgments, right from the Single Judge orders referred to above as well as the Division Bench judgment and also the view expressed prima facie by the Full Bench in the order dated 02.03.2020, this Court is of the view that, as of now the prevailing law is that, the first proviso to Section 87(1) of the Act is mandatory and the 7 years limitation shall be taken into account only from the date of the act or omission, but not from



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the date of detection of the act or omission.

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."

6. Since the issue has already been decided in the above case, and when two set of decisions were made and ultimately when the matter was placed before the Full Bench as referred to above, and the aforesaid view was taken by the Full Bench, though as an interim measure, as on date, that is the legal position that is prevailing. Following the same, I am of the view that this writ petition can be allowed on the same terms of the earlier order passed by this Court extracted herein above.



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7. In that view of the matter, this Court is inclined to dispose this writ petition with the following order.

- That the impugned Surcharge notice dated 19.11.2021, 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 respondent to restore the Section 87 proceedings, which has been now quashed by this order, without prejudice to the rights of the parties.

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

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

KST

To

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

+2ccs to Mr.R.Balaramesh, Advocate SR. No.172
+1cc to Government Pleader SR. No.323

W.P.No. 27585 of 2021

MT (CO)
PR (01/03/2022)