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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.27477 of 2021
and
W.M.P.Nos.28996 & 28997 of 2021

G.Arulmozhi .. Petitioner

Vs.

1. The Deputy Registrar of Co-operative Society,
   Erode Circle,
   Erode 638 009.

2. C.E, 11 Erode District Judicial Employees Co-operative
   Thrift and Credit Society Ltd.,
   Rep – by its Administrator,
   Sampath Nagar,
   Erode.

3. The Co-operative Sub-Registrar/Enquiry officer,
   Erode District Judicial Employees Co-operative
   Thrift and Credit Society Ltd.,
   Erode. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the enquiry report under Section 81 of the Tamilnadu Co-operative Societies Act dated 24.08.2021 on the file of the 3rd respondent and consequential surcharge notice issued by the 1st respondent Na.Ka.5325/2021/Sa.pa. dated 19.11.2021, quash the same in so far as the petitioner is concerned and direct the 1st respondent not to precipitate any penal action under the criminal law against the petitioner pursuant to the enquiry report dated 24.08.2021.

For Petitioner : Mr.M.S.Palaniswamy

For R1 : Mr.U.Baranidharan
Additional Government Pleader(Co-op.)

For RR2 & 3 : Mr.P.Ganesan

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O R D E R

This Writ Petition is filed calling for the records of the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act dated 24.08.2021 on the file of the 3rd respondent and consequential surcharge notice issued by the 1st respondent in Na.Ka.5325/2021/Sa.pa. dated 19.11.2021, quash the same in so far as the petitioner is concerned and direct the 1st respondent not to precipitate any penal action under the criminal law against the petitioner pursuant to the enquiry report dated 24.08.2021.

2.The petitioner was working in Co-operative department and retired from service on 31.01.2016 as Co-operative Sub Registrar, after 34 years of unblemished service. She came to know that the 1st respondent ordered enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter referred to as, 'the Act') into the affairs of the 2nd respondent Society on 19.02.2021 for the period from 01.04.2010 to 17.02.2021. The Enquiry Officer, after conducting enquiry, submitted his report on 24.08.2021. Based on the enquiry report, the 1st respondent issued impugned show cause notice dated 19.11.2021 under Section 87 of the Act, asking the petitioner to show cause as to why an amount of Rs.1,00,28,285/- should not be recovered from the petitioner and the legal heirs of deceased G.Charles Sukumar, who was the Secretary of the 2nd respondent Society, for the loss caused to the Society. According to the petitioner, the charge with regard to petitioner is, during her tenure as Special Officer Additional Charge of the 2nd the respondent Society from 03.11.2011 to 17.11.2011, loans were obtained from Central Co-operative Bank, Erode for Rs.39,92,500/- by forged loan applications and said amounts were not disbursed to the members of the Society, but were used for other purposes and hence, the Society has incurred a loss of Rs.1,00,28,285/-.

3.The learned counsel appearing for the petitioner contended that present surcharge proceedings initiated as per show cause notice dated 19.11.2021 is barred by limitation. The impugned surcharge proceedings is initiated after 10 years of tenure of the petitioner as Special Officer Additional Charge of the 2nd respondent Society. As per first proviso to Section 87 (1) of the Act, no action can be initiated after expiry of seven years from the date of any action or omission. The learned counsel appearing for the petitioner also submitted that during the period from 01.04.2010 to 17.02.2021, many Audits have been conducted in respect of affairs of the Society and no Audit objection was raised against the petitioner and prayed for setting aside the notice issued under Section 87 (1) of the Act.

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4.The 1[st] respondent filed counter affidavit and denied all the averments in the affidavit. The learned Additional Government Pleader (Co-op.) appearing for the 1[st] respondent contended that Section 81 inquiry has been ordered and conducted for the period from 01.04.2010 to 17.02.2021. The Enquiry Officer, verifying the records of the 2[nd] respondent Society, found that irregularities and misappropriation to the tune of Rs.1,00,28,285/- was committed by the Secretary and other Officers. As far as the petitioner is concerned, during her tenure as Special Officer Additional Charge for the period from 03.11.2011 to 17.11.2011, she along with the Secretary committed irregularities and illegalities to the tune of Rs.1,00,28,285/-. Enquiry was conducted up to the period of 17.02.2021. The Enquiry Officer submitted his report on 24.08.2021. The commission of fraud can be deducted only at the time of detection of Proceedings. Therefore, the period of seven years have to be calculated from the date of knowledge of misappropriation committed by the petitioner and others and not from the date of commission of the Act. Hence, the surcharge proceedings initiated by issuing impugned notice dated 19.11.2021 within three months from the date of receipt of enquiry notice under Section 81 of the Act is not barred by limitation and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader (Co-op.) appearing for the 1[st] respondent as well as the learned counsel appearing for the respondents 2 and 3 and perused the entire materials available on record.

6.From the impugned notice, it is seen that the petitioner was working as the Special Officer Additional Incharge from 03.11.2011 to 17.11.2011. According to the report of the Enquiry Officer under Section 81 enquiry, during that time, the petitioner and then Secretary committed irregularities and caused loss to the Society to the tune of Rs.1,00,28,285/-. The surcharge notice also mentions only this period against the petitioner. For others, various dates subsequent to 2011 has been mentioned. The contention of the learned counsel for the petitioner is that the surcharge proceedings initiated by the 1[st] respondent is barred by limitation as per First proviso to Section 87 (1) of the Act. The said Section is extracted hereunder for easy reference.

> "87.Surcharge – (1)......
> 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."

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The first proviso to Section 87 (1) of the Act makes it very clear that surcharge proceedings must be initiated within seven years from the date of action or omission. The present surcharge proceedings initiated on 19.02.2021 is clearly barred by limitation on the face of it as per First proviso to Section 87 (1) of the Act. The contention of the learned Additional Government Pleader (Co-op.) appearing for the 1st respondent is that fraud committed was detected only at the time of ordering enquiry under Section 81 of the Act on 17.02.2021, enquiry was concluded and report of the Enquiry Officer was submitted on 24.08.2021 and hence, surcharge proceedings initiated within three months from the date of report of the 3rd respondent. Hence, the impugned surcharge notice is not barred by limitation is not acceptable in view of the fact that the same has been initiated against the petitioner during 03.11.2011 to 17.11.2011. The contention of the learned counsel appearing for the petitioner is that enquiry under Section 81 of the Act must be ordered within reasonable time and enquiry ordered after 10 years is not valid. The officials who worked earlier, including the petitioner, retired from service and no official from Audit department was enquired and made as parties. The said contention is acceptable. It is not in dispute that the petitioner retired on 31.01.2016 and enquiry conducted for the period from 03.11.2011 to 17.11.2011 is not correct. In view of the same, the enquiry report dated 24.08.2021 and the present surcharge notice dated 19.02.2021 are set aside in so far as the petitioner is concerned.

In the result, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Deputy Registrar of Co-operative Society,
   Erode Circle,
   Erode 638 009.

2. The Administrator,
   C.E, 11 Erode District Judicial Employees Co-operative
   Thrift and Credit Society Ltd.,
   Sampath Nagar, Erode.

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3. The Co-operative Sub-Registrar/Enquiry officer,
   Erode District Judicial Employees Co-operative
   Thrift and Credit Society Ltd.,
   Erode.

+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.15006
+1cc to the Government Pleader, S.R.No.15484

W.P.No.27477 of 2021

SKM[co]
NSK 29/03/2022