



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM:

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

W.P.[MD]No.2845 of 2022

and

W.M.P.[MD]No.2488 of 2022

WEB COPY

S.Vinoba

... Petitioner

/Vs./

1.The Registrar of Co-operative Societies (Housing),
Chennai.

2.The Regional Deputy Registrar
of Co-operative Societies (Housing),
Tirunelveli Region, Tirunelveli District.

3.The Co-operative Sub Registrar (HMS) /
Enquiry Officer U/s.81
O/o.The Regional Deputy Registrar of Co-operative
Societies (Housing),
Tirunelveli Region, Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order made in Tha.Va.Ka.4/2021-22/Eel(2)-Na.Ka.1039/2021/E1, dated 27.01.2022 as well as its consequential surcharge notice made in Tha.Va.Ka.4/2021-22/Eel-Na.Ka.1039/2021/E1, dated 27.01.2022 issued by the second respondent and quash the same.

For Petitioner	: Mr.Isaac Mohanlal, Senior Counsel for Mr.P.R.Prithviraj
For Respondents	: Mr.P.Tilak Kumar, Government Pleader.

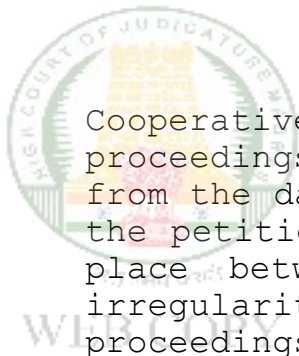
ORDER

This writ petition has been filed challenging the order dated 27.01.2022 passed by the second respondent impleading the petitioner as the third respondent in the surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983.

2.The petitioner has challenged the impugned order on the following grounds:

(a) Violation of principles of natural justice. According to the petitioner, despite an explanation having been given on 18.01.2022, wherein the petitioner had sought further time, the second respondent has not considered the explanation in the impugned order.

(b) Surcharge proceedings attempted to be initiated against the petitioner is barred by limitation as Section 87 of the Tamil Nadu



Cooperative Societies Act, 1983 makes it clear that any surcharge proceedings will have to be initiated within a period of seven years from the date of commission of the alleged illegality. According to the petitioner, the alleged irregularity is said to have been taken place between the years 2010 and 2019 and therefore, for an irregularity alleged to have taken place in the year 2010, surcharge proceedings under Section 87 cannot be initiated in the year 2021, which is well beyond the period of seven years, as stipulated under the provisions of Section 87 of the Tamil Nadu Cooperative Societies Act, 1983.

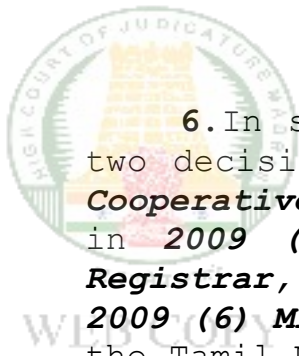
(c) the consequential notice issued by the second respondent, which is also challenged suffers, from want of jurisdiction, as per Section 87 of the Tamil Nadu Cooperative Societies Act, 1983. According to the petitioner, it is clear from Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, surcharge proceedings can be initiated against any person, who is entrusted with the organisation or Management of the Society or against any person, officer or servants of the Society. It is the case of the petitioner that he was working as Deputy Registrar of the Cooperative Societies and he was never entrusted with the organisation or Management of the Society either as per Act or Rules or Bye-laws of Society. Hence, according to him, the impugned order and the consequential notice suffers from want of jurisdiction.

(d) the second respondent has not furnished 81 enquiry report dated 31.05.2020, which is mandatory as laid down by various decisions of the Madras High Court.

3.Mr.Issac Mohanlal, learned Senior Counsel for the petitioner drew the attention of this Court to the explanation submitted by the petitioner on 18.01.2022 to the notice received from the second respondent on 21.12.2021, wherein the petitioner had sought further time to submit a detailed reply. He also drew the attention of this Court to the detailed reply sent by the petitioner on 28.01.2022, which was also received by the second respondent on 29.01.2022.

4.He would also submit after referring to the aforementioned letters that no personal hearing was also afforded to the petitioner. He would submit that without affording a fair hearing to the petitioner, by violating the principles of natural justice, the impugned order came to be passed. He would further submit that the petitioner retired from service in the year 2018 itself and despite the same, the respondents have not granted sufficient opportunity to raise all defences available to him under law.

5.Mr.Issac Mohanlal, learned Senior Counsel appearing for the petitioner would submit that 81 enquiry report dated 31.05.2020, which was relied upon by the respondents in the impugned proceedings was also not furnished to the petitioner. He would submit that furnishing of the said report is mandatory.



6. In support of his aforesaid submissions, he also relied upon two decisions of this Court in **R. Ganapathy vs. Deputy Registrar of Cooperative Societies, (Housing), Tirunelveli and another** reported in 2009 (6) MLJ 1066 and **A. Janakiraman and another vs. Deputy Registrar, Cooperative Societies, Kumbakonam and another** reported in 2009 (6) MLJ 1051. He also referred to proviso to Section 87 (1) of the Tamil Nadu Cooperative Societies Act, 1983 and would submit that no surcharge action shall be commenced under Sub-Section (1) of Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, after the expiry of seven years of any act or omission referred to under the said Sub-Section.

7. According to the petitioner in the instant case, the surcharge action has been contemplated only in the year 2021 for an illegality said to have been committed by the petitioner in the year 2010 and therefore, according to him, surcharge action contemplated under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983 is barred by limitation.

8. As seen from the impugned order and the consequential notice issued by the second respondent, not all the contentions raised by the petitioner in this writ petition have been considered, despite the fact that the petitioner has given an explanation to the notice received from the second respondent and in the very same explanation, he also sought further time to submit a detailed reply. Subsequent to the passing of the impugned proceedings, the petitioner has also sent a detailed reply stating his defences on 28.01.2022.

9. The defences raised by the petitioner ought to have been considered by the second respondent and that too when the petitioner is no more in service and has retired in the year 2018 and that too when the petitioner claims that he had an unblemished track record throughout his service. The grounds raised by the petitioner are not trivial in nature and it has to be necessarily considered, but the same has not been considered by the respondents under the impugned order.

10. Admittedly, no personal hearing was also afforded to the petitioner. In such a case of serious nature, alleging irregularities against the petitioner that too when he has already retired from service and there are no pending prosecutions either civil or criminal against the petitioner, the respondents ought to have granted him sufficient opportunity to raise all defences available to him under law, which they failed to do so as seen from the impugned order.

11. For the foregoing reasons, since the second respondent has violated the principles of natural justice, the impugned order passed by the second respondent has to be necessarily quashed and



remanded back to the second respondent for fresh consideration on merits and in accordance with law, after affording a fair hearing to the petitioner including permitting him to file a detailed explanation with regard to the charges against him in writing and also affording him personal hearing.

12. Accordingly, the impugned order dated 27.01.2022 passed by the second respondent and consequential notice dated 27.01.2022 are hereby quashed and the matter is remanded back to the second respondent for fresh consideration and the second respondent shall pass final orders on merits and in accordance with law after affording a fair hearing to the petitioner including granting him the right of personal hearing and also permitting him to submit a detailed explanation with regard to the charges levelled against him, within a period of four months from the date of receipt of a copy of this order. The petitioner is permitted to raise all grounds that have been raised in this writ petition before the second respondent as and when the matter is re-heard by the second respondent.

13. With the aforesaid direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar(CS)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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Chennai.
2. The Regional Deputy Registrar of Co-operative Societies
(Housing),
Tirunelveli Region, Tirunelveli District.
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