



W.A.(MD)No.129 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.08.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.129 of 2014

and

M.P.(MD)No.1 of 2014

1.The Deputy Registrar of
Co-operative Societies,
Usilampatti at Thirumangalam,
Madurai District.

2.The Special Officer,
MD (PVT).103, Kuppanampatti Primary
Agricultural Co-operative Bank,
Kuppanampatti Post,
Usilampatti Taluk,
Madurai District.

...Appellants

/Vs./

N.Mayee

...Respondent

PRAYER:- Writ Appeal - filed under Clause XV of Letters Patent Act, to set aside the order passed by this Court dated 15.04.2010 in W.P. (MD)No.5989 of 2009 on the file of this Court.



W.A.(MD)No.129 of 2014

For Appellants : Mr.C.G.Pethanaraj
For Respondent : Mr.S.Shaji Bino
Special Government Pleader

JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

W.P.(MD)No.5989 of 2009 has been filed by the writ petitioner, who was appointed as a Salesman in MD (PVT).103, Kuppanampatti Primary Agricultural Co-operative Bank, (in short 'Bank'), on 02.01.1997.

2. There were certain misappropriations that had been detected relating to the period 1998 – 1999 to 2000 – 2001 and based on the enquiry conducted, the writ petitioner was placed under orders of suspension on 22.06.2001. Enquiry under Section 81 of the TamilNadu Cooperatives Act, 1983 (in short 'Act') was initiated. Thereafter, a show cause notice was issued on 29.05.2009 as a precursor to the levy of surcharge under Section 87 of the Act.



W.A.(MD)No.129 of 2014

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3. The writ petitioner challenged the show cause notice on the ground that it was beyond the period of seven years provided for the commencement of proceedings for levy of surcharge under the proviso to Section 87 of the Act.

4. The learned Judge has allowed the writ petition by order dated 15.04.2010 applying the decision in *H.Rajasekar, G.Prabakaran and K.Mallesha vs. The Deputy Registrar and Others* (2004 (4) LW 427), ratio being to the effect that the period of seven years was mandatory and would commence from the date of commission of the acts of misappropriations.

5. One question that has arisen in regard to the interpretation of this question is as to the point of commencement of the seven year period. Some benches of this Court have adopted the view that the point of commencement would be the *date of commission* of the misdemeanor, whereas some others had taken the view that the point of commencement would be the *date of detection* of those misdemeanors by the Society



W.A.(MD)No.129 of 2014

WEB COPY

concerned. On this cleavage of opinion, the matter was referred to a larger Bench for decision.

6. Pending resolution of that issue, a Notification came to be issued by the Secretary to Government (Legislation) of Law Department on 12.06.2022 that culminated in Act 33 of 2022, amending the proviso to Section 87 of the Act to the effect that the period of seven years for commencement of proceedings for levy of surcharge shall be the *date of detection* of the offence. The Full Bench constituted was discharged on 09.09.2022 to be formulated afresh to decide the question of whether the amendment as aforesaid, shall apply retrospectively or prospectively.

7. Happily however in this case, we need not tarry on account of pendency of this question, as the admitted sequence of dates and events reveal that the commencement of surcharge proceedings is beyond seven years, whether taken from the date of misdemeanor or from the date of detection of that act.



W.A.(MD)No.129 of 2014

WEB COPY

8. The date of suspension of the writ petitioner was 22.06.2001 and we thus adopt that date conservatively seeing as the misdemeanors (misappropriation in this case) span a period of three years. If that were so, the period of seven years would expire on 22.06.2008, and show cause notice under Section 87(1) of the Act should have been issued prior to 22.06.2008. In this case, it has admittedly been issued only on 29.05.2009 beyond the seven year period.

9. Thus, we confirm the conclusion of the Writ Court to the effect that the proceedings for levy of surcharge have been initiated beyond the statutory period, though on a different premise. This Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

**[A.S.M.J.] & [R.V.J.,]
10.08.2023**

NCC :Yes/No
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W.A.(MD)No.129 of 2014

DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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