



C.R.P.No.1729 of 2019

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 01.04.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**C.R.P.No.1729 of 2019**

**and**

**C.M.P.No.11071 of 2019**

P.Damodaran,  
Former Secretary,  
Nanganallur Co-operative Buildings Society Ltd.,  
No.G.1351, Ganga Nagar, Madipakkam,  
Chennai - 600 091,  
Now Residing at Door No.1/51,  
2<sup>nd</sup> Cross Street, Veeramani Nagar,  
Chennai - 600 117.

.. Petitioner

Vs.

1. The Deputy Registrar of Co-operative Societies (Housing),  
Chengalpattu Region,  
No.18, Varadharajanar Street,  
Vedachala Nagar,  
Chengalpattu.
2. The Management of No.G.1351,  
Nanganallur Co-operative Housing Society Ltd.,  
Door No.12, First Main Street,  
Nanganallur, Chennai - 600 091.  
Represented by its Special Officer.

.. Respondents



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**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree dated 15.02.2018 passed by the learned Principal District Judge, Chengalpattu in Co-operative Miscellaneous Appeal No.3 of 2010 confirming the order in Tha.Thee.No.1/2009-2010 'E' dated 06.04.2010 by the Deputy Registrar of Co-operative Societies (Housing) Chengalpattu Region, Chengalpattu.

For Petitioner : Mr.C.T.Mohan  
for Mrs.S.S.Jothivani

For Respondents : Ms.Akila Rajendran  
Government Advocate for R1  
Mr.V.Jeevagiridharan  
Addl. Govt. Pleader for R2

### **ORDER**

The present civil revision petition, arising under the Co-operative Societies Act, challenges the order passed in the Co-operative Civil Miscellaneous Appeal No.3 of 2010 dated 15.02.2018, in and by way of which, the learned Principal District Judge, Chengalpattu dismissed the appeal filed by the civil revision petitioner and confirmed the order passed under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. He



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confirmed the order in Tha.Thee.No.1/2009-2010 'E' dated 06.04.2010 passed by the Deputy Registrar of Co-operative Societies (Housing) Chengelpattu Region, Chengelpattu.

2. The proceedings arose against the petitioner pursuant to Section 81 inquiry that was conducted by the Deputy Registrar (Housing) with respect to Nanganallur Co-operative Housing Society Limited. An anonymous letter was received by the Registrar and on that basis, he gave directions to proceed with an inquiry under Section 81. After the inquiry, a report was submitted to the Registrar recommending departmental proceedings, surcharge proceedings as well as criminal proceedings against the petitioner. I am today concerned only with the surcharge proceedings.

3. On the basis of the report of the inquiry officer dated 09.04.2009, the Deputy Registrar (Housing) initiated the proceedings in Tha.Thee.No1/2009-2010 'E' dated 13.07.2009. The civil revision



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petitioner was called upon to appear before the concerned officer who was inquiring the matter under Section 87. Though notices were sent to him, he did not appear on first two occasions, and on the third occasion, he sent his son with an adjournment petition stating he was not feeling well. The adjournment petition was not considered by the authority. He proceeded and passed an order on 06.04.2010 fixing responsibility under Section 87 on the petitioner and four other persons.

4. Challenging the same, he preferred Co-operative Civil Miscellaneous Appeal No.3 of 2010 that came to be dismissed. Hence, this revision is before this Court.

5. Heard Mr.C.T.Mohan for Mrs.S.S.Jothivani for the petitioner, Ms.Akila Rajendran for the first respondent, and Mr.V.Jeevagiridharan for the second respondent.



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6. Mr.C.T.Mohan would submit that the entire proceedings have been initiated on the basis of an anonymous letter, which ought to have been thrown into trash bin, but unfortunately resulted in Section 81 inquiry. He would state that the petitioner was only a Secretary to the Society. Insofar as the Society is concerned, the *ex officio* Treasurer is the President and hence, the liability should have been fixed on the President and not on the civil revision petitioner. He would state that the inquiry report under Section 81 was not furnished to him and therefore, no reliance should have been placed upon the same.

7. Expanding further, he would submit that the inquiry report recommended criminal proceedings which goes beyond the jurisdiction under Section 81. He would add that though the notices were sent under Section 87, he did not appear on account of the fact that he was not feeling well and hence, an opportunity should have been given to him before closing the inquiry. He would state that no charge sheet was given to the petitioner and therefore, the entire inquiry has to fail. He would add



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that an opportunity of hearing was not given to the petitioner and therefore, he should not to have been found fault with.

8. Drawing my attention to Section 87(1) proviso, he would submit that the second respondent has violated the time limit fixed under the statute which is mandatory and therefore, the entire proceedings deserve to be set aside.

9. Finally, he would submit that the respondents did not consider the written explanation given by the petitioner on 01.08.2009 and therefore, the impugned order passed by the second respondent deserve to be set aside. He would state that these points were urged before the Lower Appellate Court, but unfortunately, the Lower Appellate Court did not refer to the same which reflects patent non-application of mind.

10. Ms.Akila Rajendran and Mr.V.Jeevagiridharan speaking in unison would submit that none of these points arise for consideration in



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this present case. The petitioner had been given an opportunity to appear, yet he did not appear before the inquiry officer under Section 81 nor before the officer who had initiated surcharge proceedings under Section 87. Having failed to avail an opportunity when afforded to him, they would submit that the question of the petitioner pleading violation of principles of natural justice for not having been given an opportunity of hearing should not even arise for a moment of consideration in this case.

11. Mr.V.Jeevagiridharan would point out that a learned Single Judge of this Court (S.M.SUBRAMANIAM,J) had taken a view in W.P.No.10958 of 2019 dated 12.04.2019 that the time limit fixed under Section 87 of the statute is not mandatory, but is only directory. Baring his argument on the said judgment, he would state that since the sheet anchor of the petitioner's case fails, the revision deserves dismissal.

12. I have carefully gone through the records and heard the counsel on either sides.



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13. Insofar as the first submission of Mr.C.T.Mohan is concerned that the proceedings had been initiated on the basis of an anonymous letter, the same has to fail for it is contrary to Section 81 of the Co-operative Societies Act. Under Section 81, the Registrar not only has the power to initiate an inquiry on the basis of an application filed by the majority of the members of the Board, or on the request of the Financing Bank or 1/3<sup>rd</sup> members of the Co-operative Society or of the District Collector, but he also has the power to initiate such proceedings *suo motu*. The anonymous letter brings to the notice of the Registrar that certain wrong doings have been going on in the Society. The Registrar, in his wisdom, had decided to initiate the enquiry *suo motu* and therefore, no exception can be taken to the same.

14. Turning to his second point that the *ex officio* treasurer is the President and therefore, the action should have been initiated only against the President and not the Secretary also does not appeal to me. Section 84 of the Co-operative Societies Act states that it is the duty of the principal



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paid officer of the registered society to keep and maintain the accounts and books relating to the Society in such manner as may be prescribed.

15. It is here that I refer to the By-laws of Nanganallur Co-operative Building Society which has been produced by Mr.C.T.Mohan. Under By-Law No.27(1)(c), it is specifically stated that the Secretary shall be responsible for the executive administration of the society subject to the control of the President. Therefore, by reading By-law No.27(1)(c) with Section 84 of the Act, I am able to come to the conclusion that the petitioner was the principal paid officer of the Nanganallur Society and hence, he was duty bound to maintain the accounts. It is admitted by the petitioner that the accounts have not been maintained by the Society and therefore, it is an infraction of the statutory duty imposed on him under Section 84 of the Tamil Nadu Co-operative Societies Act.



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16. The argument that the inquiry report had not been furnished to the petitioner also does not carry the case far. The Registrar, in order to satisfy himself about the conditions of the Society, ordered an inquiry under Section 81. This is a fact finding report that is submitted by the authorised officer, after going through the relevant records of the Society, to the Registrar so as to enable him to either drop or continue any action that he proposed under the Tamil Nadu Co-operative Societies Act. It is a report submitted by the administrative inferior to the administrative superior in terms of Section 81. Such a report being a fact finding report without fixing any liability on any person need not be furnished to the persons, who are found to be responsible for the state of affairs. This is because even after the fact finding report is submitted, there is always an opportunity under Section 87, when surcharge proceedings are initiated, for the concerned persons to appear before the authority and argue that they are not responsible for any loss that has occasioned to the Society. Therefore, the failure to furnish the inquiry report under Section 81 does not affect the case of the petitioner since he was given sufficient



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opportunity during the course of inquiry under Section 87.

17. The argument of Mr.C.T.Mohan that during the course of inquiry under Section 87, there has been a violation of natural justice because he has not been heard is absolutely without any basis. It is on record that notice had been sent calling upon the civil revision petitioner to appear before the authority on three occasions. On two occasions, he received the same and did not appear. For the enquiry dated 06.04.2010, when he was called upon to appear, he did not do so, but sent his son with an adjournment petition on 03.04.2010. A person against whom delinquency is accused cannot take things granted and presume that since he filed an adjournment petition on 03.04.2010, the enquiry posted on 06.04.2010 will stand adjourned. He ought to have appeared on 06.04.2010, and failure to do so renders his situation unenviable. He brought himself to this position, and having failed to appear before the authority on three occasions, he has no one to blame but himself.

18. Natural justice is not a strait jacket formula to be applied, or a



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broken steam bed to knock out the legs in case they don't fit the size of the bed. It depends on the facts and circumstances of each case. In this particular case, an opportunity of hearing was given, and yet the petitioner failed to avail that opportunity, therefore, he cannot accuse the respondents for not affording him an opportunity of hearing.

19. Insofar as the argument that charge sheet was not given to the petitioner is concerned, the charge sheet could be given only if the petitioner appeared before the authority and had denied the charges. The petitioner never appeared before the authority at all, and therefore to expect the authority to chase him and serve him with the charge sheet is a bit too much for a person against whom the charges of dereliction have been pending from the year 1999. Therefore, the conclusion that can be arrived at from the above discussion is that an opportunity was afforded to the petitioner, but he did not avail the same and therefore, he cannot plead any violation of natural justice or of the statute.

20. Now, turning to the point relating to the violation of the two



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provisos under Section 87, I only have to agree with Mr.V.Jeevagiridharan that the said position has been settled by **Mr.S.M.SUBRAMANIAM, J** in the case of ***C.Kanagajothi v. The Registrar of Co-operative Societies and another*** in ***W.P.No.10958 of 2019***. The learned Judge has specifically held that the time limit fixed under Section 87 is only directory and not mandatory. He has further added that the Court in each case must look into whether the time that has been taken to dispose of the proceedings is reasonable or not. In this particular case, proceedings were initiated on 13.07.2009 and notices were sent in a gap of one month each to the civil revision petitioner and other delinquents to appear. Apart from the Special Officer, no other officer appeared before the said authority. The time limit expired with January and in April, the final orders were passed under Section 87. The time period taken from mid January 2010 to early April 2010 in my view, is not so unreasonable delay which requires interference at the hands of this Court.

21. The last point that Mr.C.T.Mohan would argue is that the authority did not consider the written explanation given by the petitioner



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on 01.08.2009. It is pertinent to point out that this point was not raised before the Lower Appellate Court and I cannot permit the petitioner to raise a new point for the first time in the revision. This is because, I am not acting as the original authority, but only testing whether the orders passed by the authority below suffer from any illegality or irregularity.

22. In the light of the above discussion, since I do not find any illegality or irregularity which requires interference in the hands of this Court, the Civil Revision Petition stands dismissed. The respondents will be entitled to recover the cost in the proceedings. Consequently, connected miscellaneous petition is closed.

**01.04.2024**

Index:Yes / No

Speaking Order :Yes / No

Neutral Citation:Yes / No

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To

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Chengalpattu.
2. The Deputy Registrar of Co-operative  
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**V.LAKSHMINARAYANAN, J.**

vji

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