



C.R.P. No.5059 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P. No.5059 of 2023

N.S.Ramasamy

...Petitioner

Vs

1.The Deputy Registrar of Co-operative
Societies (Housing),Salem Region
Salem District – 636 016.

2.The Special Officer

A.A.182, Erode Co-operative Building Society Ltd.,
No.965, K.N.K.Salai,Thiru Nagar Colony
Erode Taluk, Erode District – 638 003.

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 25.01.2023 made in C.M.A.C.S. No.2/2001 on the file of the Co-operative Tribunal & Principal District Judge, Salem and the award passed by the first respondent in Na.Ka.No.1005/2000/E dated 29.12.2000.

For Petitioner : Mr.K.Raja
for Mr.N.Kolandaivelu



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For Respondents : Mr.B.Tamil Nidhi
Additional Government Pleader for R1
Mr.K.Prem Kumar for R2

ORDER

The appellant- employee before the Co-operative Tribunal is the revision petitioner herein.

2. The short facts of the above civil revision petition is herein below set out :

- a) The appellant, while he was discharging his duty as Co-operative Sub Registrar in Co-operation Department, he was deputed to work in the Erode Co-operative Building Society Ltd., Erode, the second respondent herein, where he held the post of Administrator, from 01.11.1997 to 23.12.1997. Prior to this, he also served as Special Officer in the said Society from 12.07.1995 to 27.10.1995 and from 12.07.1996 to 31.10.1997.
- b) The second respondent is a Co-operative Society registered under



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the Tamil Nadu Co-operative Societies Act, 1983 and its functions by following the rules and regulations of Tamil Nadu Co-operative Societies Act, 1988 (hereinafter called as 'T.N.C.S. Act'), Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter called as 'T.N.C.S. Rules') and its own bye-laws. Apart from that, the Society is also bound to function as per the circulars, and instructions issued by the Registrars (Housing), Chennai in respect of the Government orders.

- c) The Registrar (Housing) Chennai is the head for all types of Urban and Rural Housing Societies in the State of Tamil Nadu. The second respondent-Society was being administered by the Board of Directors under the leadership of President of the Society. The Board was later superseded and the Special Officer, namely the petitioner herein, has been appointed by the Department.
- d) The Co-operative Sub Registrar, Erode filed a special report to the first respondent on 23.06.1997. On the basis of this report, the



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first respondent herein had ordered for the inspection under Section 82 of the T.N.C.S. Act, and by order dated 26.09.1997, the Co-operative Sub Registrar, Erode was originally appointed as inspection officer. This proceedings was subsequently withdrawn and a new inspection officer was appointed vide the proceedings of the first respondent dated 06.10.1997, who had conducted inspection and submitted his report on 05.04.1999. The said report alleges that the petitioner herein had caused deficiency to the assets of the second respondent-society to the tune of Rs.39,57,189.49/- and fixed the liability on the revision petitioner, without providing him any details or documents.

e) Pursuant to the report of the inspection officer dated 05.04.1999, the first respondent issued a show cause notice bearing Na.Ka.No.1537/97 dated 11.01.2000 to the revision petitioner under Section 87(1) of the T.N.C.S. Act. The five charges alleged in the show cause notice are that :

(1) The first charges was that, to complete the construction of the



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unfinished building, the appellant/revision petitioner without floating a tender through publication/advertisement and without obtaining the lowest quotation and without entering into an agreement, had expended a sum of 19,96,723.55/- over and above the sanctioned amount of Rs.33,55,000/- and that the said construction work has been kept incomplete for more than 1^{1/2} years.

- (2) The second charge is with regard to the maintenance expenses of the Pallipalayam Colony Scheme. The maintenance work includes removal of shrubs, ploughing the lands using tractor, levelling the lands, and putting up a small shed etc., For the expansion / maintenance of the said project, an agreement was entered into by the Society with one Krishnakumar and that necessary charges were paid to him for the said purpose. Despite the work was already assigned to the said agent upon payment, the petitioner herein instead of obtaining necessary approval for the said project, had expended the money for the



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maintenance work. That apart, while cleaning the lands measuring an extent of 21 acres, the by-products of the plants were brought to sale, however, the income derived from it, was not brought to the accounts of the Society. Despite objection being raised, the petitioner without obtaining prior permission for the said purpose, had expended a sum of Rs.92,467.75p and caused loss to the society. Therefore, the amount spent for the above project is without authorization and accordingly show cause notice was issued stating the said amount have to be recovered from the petitioner along with interest.

(3) The third charge is towards the repair charges incurred in construction of the entrance portion of the building, toilet and water tank, which was in excess of the resolution / sanctioned amount. The sanctioned amount for the said repair works is Rs.10,000/- each. However, the petitioner had spent a sum of Rs.75,971.19/-

(4) The fourth charge relates to leave salary and surrender leave



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salary paid to the tune of Rs.3,232/- in excess to an employee of the society by the petitioner. Hence, the amount paid in excess has to be recovered from the petitioner herein.

(5) The fifth charge against the petitioner is that the petitioner had paid the stamp duty to the Sub Registrar, Tiruchengode, without knowing the facts and contents. The allegation is that the then Special Officer of the second respondent, for purchase of 21.0 acres of land, had entered into an agreement with one Raja alias Krishnakumar, the power agent. As per the said agreement, the charges for registration etc., have to be borne by the said agent. However, the petitioner herein had paid a sum of Rs.17,88,152 /- towards deficit stamp duty, from the funds of the Society, and thereby incurred a loss to the Society.

f) Accordingly, the first respondent held that the petitioner had caused a loss to the tune of Rs.39,57,189.49p.

g) Several representations were made by the petitioner to the first



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respondent as well as to the President of the second respondent-Society, for perusal of documents. However, his requests were not considered. Left with no other alternative, the petitioner had submitted his explanation with the available records on 29.06.2000, which are as follows :

1. Answer to 1st charge :

The appellant would submit that the Registrar (Housing) Chennai, had granted permission for construction of the second floor building of the second respondent Society, measuring an extent of 7,326 sq.ft., vide proceedings in Na.Ka.No.4563/1994-C dated 26.03.1994 at a estimated cost of Rs.33,55,000/-. The predecessor of the revision petitioner had handed over the construction work to a building contractor one M/s.J.R.Constructions at Erode on 28.05.1994. A sum of Rs.33,00,000/- was disbursed to the said contractor from 28.05.1994 to 01.09.1994, but the work had not been completed for over 1 ^{1/2} years. After



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taking charge as a Special Officer in the second respondent-Society, the petitioner with a good intention to complete the remaining unfinished construction, had sent a proposal to the then Registrar (Housing) Chennai on 11.11.1996. Pursuant to this, a meeting was held with the Superintending Engineer (Construction) in the office of Registrar (Housing) at Chennai and subsequently, instructions were given to the petitioner to complete the incomplete work in anticipation of permission. The Engineer visited the second respondent Society and inspected the building on 26.11.1996 and 27.11.1996. Thereafter, the works were undertaken and construction of the said building was completed. The petitioner had also forwarded the proposals for ratifying the expenses incurred to the tune of Rs.19,76,716/-. While the proposal for ratification was pending, the petitioner was transferred to his parent department. The follow-up action of the said



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proposal was not taken care of by his successor. Since the second respondent Society is unable to complete the construction work for the past 1 ^{1/2} years, it sustained a loss of Rs.50,000/- per month. The petitioner would submit that subsequent to the completion of construction work, the Society had rented out the second floor of the building to a commercial bank and the society is earning a monthly income of Rs.50,000/-. Therefore, the loss if any as alleged, has already been recovered through this income.

2. Answer to 2nd charge :

In so far as maintenance expenses for Palllipalayam Colony scheme is concerned, the petitioner would allege that alleged amount were spent to maintain the lands acquired for the house sites. He employed coolies to protect and keep the lands in good condition and also necessary measures were taken to avoid encroachment, which involved a substantial amount. The petitioner would



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therefore contend that the expenses incurred would not come within the purview of Section 87(1) of the Act. He has neither misappropriated nor fraudulently retained any sums with him and that the said sum has been used to protect the property of the society. The surcharge order passed by the first respondent is mechanical and without application of mind. The liability fixed against him is without any basis and documentary evidence.

3. Answer to 3rd charge :

The petitioner would contend that insofar as the allegation that the repair charges had been disbursed in excess of the resolution passed in this regard, a permission has been accorded by the Registrar (Housing) Chennai by his proceedings in Na.Ka.No.12287/96C dated 31.10.1996. Though the amount spent for construction of toilets, water tanks etc., has exceeded the sanctioned amount, the same has only been for the benefit of the Society and post the



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repairs, the building fetches a higher rent to the second respondent society and it is an additional gain to the assets value of the society. Here again the petitioner would contend that he has not misappropriated nor fraudulently retained any money. Therefore, this charge does not attract Section 87(1) of the T.N.C.S. Act.

4. Answer to 4th charge :

The petitioner would contend that he is only the signing authority and therefore, the bill for leave salary and surrender leave salary of one of his employee had been paid in the official routine process of the hierarchy. Therefore, the excess amount paid to an employee, ought to be recovered from the said employee and the petitioner cannot be held responsible. Therefore, the first respondent fixing the liability on the petitioner is illegal and discriminatory.

5. Answer to 5th charge:

The petitioner herein would contend that the second



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respondent Society did not possess the particulars and documents relating to the agreement and purchase of said lands. The petitioner only with an intention to safeguard the property that belonged to the Society, had paid the deficit stamp duty. Therefore, there is no misappropriation or fraudulent retention of Society's money by the petitioner.

- h) The first respondent without considering his explanations, had passed the surcharge order dated 29.12.2000 in Na.Ka.No.1005/2000 D, mechanically without non-application of mind.
- i) Aggrieved by the same, the revision petitioner/appellant had filed CMA.CS.No.2 of 2001 before the Principal District Judge and Special Tribunal for Co-operative Cases, Salem. The Tribunal had dismissed the said appeal by order dated 25.01.2023 and thereby confirmed the proceedings of the first respondent dated 29.12.2000.

Challenging the order dismissing the appeal preferred by him in CMA.CS.No.2 of 2001, the revision petitioner/appellant is before this Court.



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3.1 Mr.K.Raja, learned counsel assisted by Mr.N.Kolandaivelu, appearing for the petitioner would submit that the first respondent had not followed the essential ingredients of Section 87(1) of the Act, while issuing the show cause notice. The petitioner was not afforded a personal hearing during the proceedings initiated under Section 87 of the Act. He would submit that sub-clause(4) of Section 87 of the T.N.C.S. Act had been given a total go by. Despite several representations being made by the petitioner, the first respondent had fixed the wrong liability against the petitioner without any basis and documentary evidence and passed the surcharge order on 29.12.2000. Such an order is therefore unsustainable.

3.2 The learned counsel appearing for the petitioner would submit that the Tribunal had totally overlooked the contention of the petitioner that the petitioner was not provided with Section 82 Inspection Report, which is a total violation of the principles of natural justice. That apart, he would submit that the provisions of Section 87(4) was not adhered to and the

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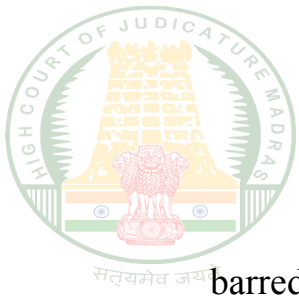


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petitioner was not given a chance to either examine or cross-examine the witnesses. The allegations made against the petitioner would clearly show that there is no misappropriation, breach of trust or wilful negligence by the petitioner. The charges relating to the construction of the building would clearly show the malafides. The Society's building had been left unfinished for over 1 ^{1/2} years and apart from the building losing its value on account of it being kept without using it, the Society was also not earning any income. After the petitioner had taken charge as Special officer, he, out of his own initiative, completed the construction after sending necessary information to the authorities concerned, who had not responded in writing but had orally instructed him to proceed. That apart, the said building is now earning revenue for the Society. The amount that has been spent by the petitioner is only for the up-keep and protection of the properties belonging to the second respondent-Society. Therefore, the surcharge order directing the petitioner to pay Rs.39,57,189.49 is absolutely misconceived.

3.3 The petitioner would further argue that the very proceedings is



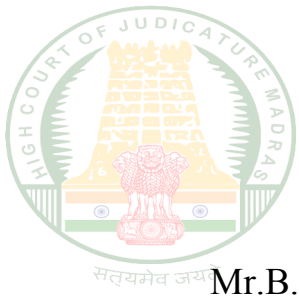
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barred by limitation. The petitioner had also submitted that his predecessor who had entered into an agreement with a contractor and had not ensured the completion of construction work, had not been found fault with. Further, it is not the allegation that the petitioner had made profits out of any of these expenditures. The petitioner would submit that the surcharge proceedings had started with the issue of show cause notice on 11.01.2000 and the same had been concluded on 29.12.2000, which is clearly beyond the period prescribed under second proviso to sub-section (1) of Section 87.

4. Per contra, Mr.B.Tamil Nidhi, learned Additional Government Pleader appearing for the first respondent would submit that as per the rules, the petitioner is bound to obtain permission from his higher authorities before commencing the work. In the instant case, the petitioner had not obtained the said permission. Therefore, the action initiated against the petitioner by the first respondent, cannot be found fault with.

5. Heard Mr.K.Raja, learned counsel appearing for the petitioner,



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Mr.B.Tamil Nidhi, learned Additional Government Pleader appearing for the first respondent and Mr.K.Prem Kumar, learned counsel appearing for the second respondent.

6. The first argument that has been raised by the learned counsel for the petitioner is that the surcharge proceedings is barred by limitation, in the light of second proviso to Section 87(1) of the T.N.C.S. Act. Proviso (2) of Section 87(1) would read as follows :

“87. Surcharge :- (1) Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding-up of a society, it appears that any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment which is not in accordance with this Act, the rules or the by-laws, the Registrar himself or any person specially authorised by him in



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this behalf, of his own motion or on the application of the board, Liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to the representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or wilful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the person authorized as aforesaid thinks just:

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;

[Provided further that the action commenced under this sub-section shall be completed within a period three months from the date of such commencement or such further period or periods not exceeding one month at a time as the next higher authority may permit but such extended periods shall not exceed three months in the aggregate.]



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7. A perusal of the original records would indicate that the show cause notice had been issued on 11.01.2000, and the proceedings had concluded only on 29.12.2000, nearly 11 months after the initiation of the enquiry. The second proviso to Section 87(1) of the T.N.C.S. Act as it stood at that relevant point of time and the records would clearly indicate that no extension has been sought for or granted. No doubt, it has been held that this proviso is only directory . But however if the case on hand is examined alongside Section 81(4) of the Act, it is seen that the petitioner was not given the copies of the documents nor the inspection report to put forward his defence. This is evident from a reading of the letter dated 22.05.2000 sent in reply by the second respondent Society to the first respondent, wherein the second respondent has drawn reference to the petitioner's letter dated 06.05.2000, and would state that the petitioner had sought permission to peruse the documents of the Society relating to his case, and the second respondent had originally fixed 12.05.2000, as the date for perusing the documents, however, the petitioner did not turn up on the

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said date, following which, the petitioner had once again contacted the officials of the society, and subsequently the date was fixed on 22.05.2000. The petitioner has refuted this statement stating that he was never informed to report to the office of the second respondent on 11.05.2000 to peruse the documents. Therefore, it is false to state that the petitioner did not turn up on 11.05.2000. Once again, he sought to peruse the relevant documents. It is only thereafter, the petitioner was permitted to peruse the records, however, he was not given a copy of the same, despite his request. The original records would also indicate that there has been no examination / cross-examination of the witnesses.

8. In the judgment in *M.Sambandam Vs Deputy Registrar (Credit Co-operative Societies, Madras and Ors.* reported in [1993 (3) MLJ 310 : 1999(4) L.L.N.483], this Court had held that whether a person concerned had not been given an opportunity of hearing and that a copy of the enquiry report is not furnished, the entire action is violative of the statutory provisions and principles of natural justice. Therefore, from a combined reading of second proviso to Section 87(1) and 87(4) of the T.N.C.S. Act. it

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is clear that the proceedings against the petitioner has not been done as per the provisions of the Act and the time schedule had not been adhered to.

9. Coming to the charges that have been framed, it is seen that with reference to the first charge, the petitioner had sought permission for proceeding with the construction vide his letter 11.11.1996 addressed to the Registrar of Co-operative Society (Housing), Chennai with a copy marked to the Deputy Registrar (Housing) Society, Salem and to the Engineer, Co-operative Housing Society, Chennai. In consideration of the same and pursuant to the oral instructions of the Registrar Co-operative (Housing) Chennai, it is seen that one Mr.K.Swaminatha Rao, Engineer, of the said office has been deputed to inspected the unfinished building on 26.11.1996 and the tour programme of the said engineer was forwarded to all concerned, a copy of which is also produced before this Court. The first respondent herein had also addressed a letter dated 18.11.1996 to the Registrar Co-operative (Housing) Society, Chennai, quoting the permission letter of the petitioner dated 11.11.1996, wherein he had made his



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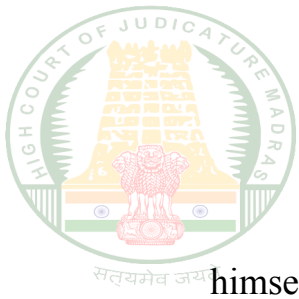
recommendations as follows :

"முடிக்கப்பட வேண்டிய வேலைகளுக்குரிய மதிப்பீட்டினை நமது துறைப்பொறியாளர் அவர்களிடம் பெற்றுத்தர விண்ணப்பிக்கின்றார். இந்நிலையில் மீதமுள்ள கட்டிட வேலையினை துறைப்பொறியாளர் மதிப்பீட்டின்படி சங்கமே செய்து விரைவில் முடித்துக்கொள்ளவும் ஏற்கனவே சங்கத்தின் நிதி ரூ.33 லட்சம் முடக்கப்பட்டுள்ள நிலையில் இந்த கட்டிடத்தை உடனடியாக பொது ஏலத்தில் வாடகைக்குவிட்டு வரும் முன்பணத்தில் இக்கட்டிட வேலையினை செய்து கொள்ளவும் பதிவாளர் அவர்களின் அனுமதியினை கோரி விண்ணப்பித்துள்ளார்.

சங்கத்தின் தற்போதைய தனி அலுவலர் கோரியுள்ளபடி இவ்வேலையினை விரைவில் முடிப்பதன் மூலம் அவர், குறிப்பிட்டுள்ள வருமானம் சங்கத்திற்கு ஏற்பட வாய்ப்பு உள்ளது என்று கருதுவதால் நான் இந்த கோரிக்கையினை பரிந்துரை செய்கிறேன்."

A copy of which is also marked to the petitioner herein. In the light of these recommendations, the petitioner had proceeded with the construction of the building, which has now been leased out and the second-respondent Society is earning more than what has been spent for completing the construction.

10. With reference to the charges 2 to 5, nowhere has it been stated that the petitioner has misappropriated the funds or fraudulently enriched



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himself. Therefore, the order of the second respondent holding that the petitioner is liable to pay a sum of Rs.39,57,189.49/- is on the face of it, erroneous and excessive. The Appellate Court has totally failed to address the defence taken by the petitioner. That apart, the petitioner has not been given an opportunity to prove his case during the surcharge proceedings. The surcharge proceedings is vitiated inasmuch as the principles of natural justice has been flouted with impunity.

11. In the result, the civil revision petition is allowed and the order dated 25.01.2023 passed in C.M.A.C.S.No.2/2001 on the file of the Co-operative Tribunal & Principal District Judge, Salem, confirming the first respondent in Na.Ka.No.1005/2000/E dated 29.12.2000, is set aside. No costs.

25.07.2025

Internet :Yes/No
Neutral Citation : Yes/ No
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- To:
- 1.The Deputy Registrar of Co-operative Societies (Housing),Salem Region
Salem District – 636 016.
 - 2.The Principal District Judge
Co-operative Tribunal, Salem.



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P.T.ASHA, J.,

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