



WEB COPY



WA No. 2457 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-08-2026

CORAM

THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

**WA No. 2457 of 2023 AND
CMP NO. 20493 OF 2023**

The General Manger (i/c)
Vellore/Thiruvannamali District Co-operative Milk
Producers Union Ltd, Arcot Road, Sathuvachary,
Vellore-600 009

..Appellant

Vs

1. P.S.Santhanam
S/o. P.V.Srinivasan, Retired SG. Manager,
Vellore/Tiruvannamalai Dt., Cooperative Milk
Producers Union Ltd., 1147,7th Street,
Thendral Nagar, Vengikal,
Thiruvannamalai -606 604
2. The Secretary to Government
Animal Husbandry, Dairying and Fisheries
Department, Fort St.George, Chennai-600 009
3. The Commissioner of Milk Production and
Dairying Development Department
Mahdravaram Milk Colony, Chennai-600 051
4. The Deputy Registrar (Dairying)
Dairy Development Department, No.15, 4th
street, Gopalapuram, Gandhi Nagar,
Vellore-630006

..Respondents



WA No. 2457 of 2023

Prayer : Writ Appeal under Clause XV of the Letters Patent to set aside the order dt. 21.02.2023 made in WP.NO.32850/2016.

For Appellant : Mr.S.Arun Kumar

For Respondents : Ms.Selvirajesh Caveator for R1,
Mr.A.R.Suresh, Special Government Pleader for R2 to R4

Judgment

(Judgment of the Court was delivered by S.M.Subramaniam J.)

The present intra court appeal has been instituted by Vellore-Tiruvannamalai District Milk Producers Union, a Cooperative Society registered under the provisions of the Tamil Nadu Cooperative Societies Act.

2. The first respondent was serving as Selection Grade Manager in the appellant Cooperative Milk Producers Union and retired from service on 31.10.2014. The services of the first respondent in the Cooperative Society is a non-pensionable service. However, his terminal benefits have not been settled on account of initiation of surcharge proceedings against him under Section 87 of the Tamil Nadu Cooperative Societies Act. Pertinently, two surcharge final orders are passed on 20.09.2005 for a sum of Rs.36,368/- and on 03.04.2006 for a sum of Rs.21,67,940/-. Surcharge proceedings are initiated on the basis of the allegation of causing financial loss to the appellant

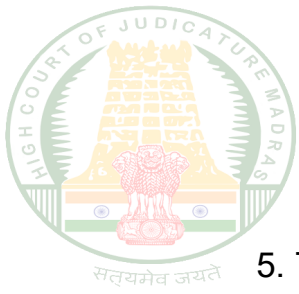


WA No. 2457 of 2023

Milk Producers Union. In order to recover the financial loss caused to the Society, actions were initiated and surcharge order was passed.

3. The first respondent preferred Civil Miscellaneous Appeals before the Special Tribunal for Cooperative cases under Section 152 of the Tamil Nadu Cooperative Societies Act. He succeeded in the miscellaneous appeals. Thus, the appellant Society preferred writ petitions in W.P.Nos.5697, 5698 and 5699 of 2012. The writ petitions filed challenging the final order passed in the CMAs are pending as of now. During the pendency of the writ petition, without reference to the surcharge proceedings, a writ of mandamus has been filed directing the appellant to settle the amount of annual increment from 2009 and also the terminal benefits.

4. This Court is of the considered view that, when the surcharge proceedings are pending before the High Court and when the appellant Society is in the process of recovering the financial loss caused to the Society by the first respondent, they are empowered to attach the property including the terminal benefits. Once surcharge proceedings are initiated and final order is passed, recovery proceedings can be initiated by the competent authority and pending recovery, the properties belonging to the person concerned may be attached.



5. The scope of Section 87 of the Tamil Nadu Cooperative Societies Act

is exhaustive and reads as under:

"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, [either on his own or in connivance with any other person], has misappropriated or fraudulently retained [or transferred 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 [***]negligence or has made any payment which is not in accordance with this Act, rules or by-laws, the Registrar himself or any person specially authorised by him in 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 [or such other person] and after giving a reasonable opportunity to the person concerned and in the case of his demise, to his representative who inherits his estate [or a person who holds 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*



WEB COPY

in respect of the misappropriation, misapplication of funds, fraudulent retention or [transfer of money or other property,] breach of trust or negligence or payments which are not in accordance with this Act, rules or by-laws as the Registrar or the person authorised 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 detection 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 of 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.]

(2) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered as if it were an arrear of land revenue and for the purpose of such recovery, the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act.

(4) The Registrar or the person authorised by him shall, when acting under this section, have all the powers of a Civil Court



WA No. 2457 of 2023

WEB COPY

while trying a suit under the Code of Civil Procedure, 1908

(Central Act V of 1908) in respect of the following matters, namely:___

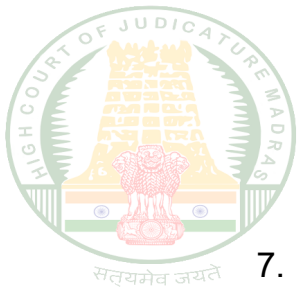
(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any documents;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any court or office, (e) issuing commission for examining of witnesses.

6. Section 87 of the Tamil Nadu Cooperative Societies Act contemplates the procedure for conduct of surcharge proceedings. On receipt of an enquiry under Section 81 or an inspection under Section 82, if any illegalities or irregularities are identified, surcharge proceedings may be initiated by issuing a notice under Section 87(1) of the Act. Thereafter, the competent authority has to conduct an enquiry by affording opportunity to the parties and final surcharge order is to be passed. Final order is appealable under Section 152 of the Act before the Special Tribunal for Cooperative cases. Therefore, during the pendency of the surcharge proceedings, writ of mandamus seeking settlement of terminal benefits, if entertained, would cause prejudice to the cooperative society for recovery of the financial loss caused to the society.



WA No. 2457 of 2023

WEB COPY

7. Section 87 (2) contemplates the mode of recovery of the decree amount. The Registrar or the authority authorised by him shall have all the powers of the Civil Court to recover the decree amount based on the final surcharge order. When the Act contemplates exhaustive procedure for recovery of financial loss caused to the Society by following the procedures, the writ of Mandamus filed by the first respondent for settlement of terminal benefits is not entertainable. The first respondent has made an attempt to file a writ of Mandamus to get the terminal benefits in an indirect manner, which cannot be permitted. Beyond the amounts due to the first respondent, the authorities are empowered to attach his property in order to recover the financial loss under the provisions under the Act. This being the scope of surcharge proceedings, the writ petition filed seeking settlement of terminal benefits at this juncture is not entertainable.

8. The Full Bench of this Court in the case of "**P.Muthu Mohanraj -vs- The Deputy Registrar of Co-operative Societies and another**" dated 27.04.2026 held that, "Surcharge proceedings against the retired employees are also permissible under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, provided that the same are initiated within the time limit stipulated under the said provision." Surcharge proceedings are independent. In the event of financial irregularity, misappropriation, fraud or



WA No. 2457 of 2023

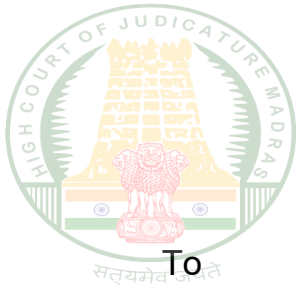
any other allegation, three fold actions are permissible against the employees.

Based on the statutory enquiry report under Section 81 of the Act, a criminal case can be registered by the Commercial Crime Investigation Wing of the Police Department and departmental disciplinary proceedings may be initiated and surcharge proceedings also can be initiated. Therefore, initiation of surcharge proceedings independent and not connected with any other proceedings. Under proviso to Section 87(1), the limitation contemplated for initiation of surcharge proceedings is seven years and in the present case, actions were initiated within the period of limitation and there is no infirmity as such.

9. In view of the facts and circumstances, the writ order dated 21.02.2023 passed in W.P.No.32350 of 2016 is set aside and the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.,J.) (N.S.,J.)
04-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
KST



WA No. 2457 of 2023

To

WEB COPY

1. The Secretary to Government
Animal Husbandry, Dairying and Fisheries Department,
Fort St.George, Chennai-600 009
2. The Commissioner of Milk Production and
Dairying Development Department
Mahdravaram Milk Colony, Chennai-600 051
3. The Deputy Registrar (Dairying)
Dairy Development Department, No.15, 4th street,
Gopalapuram, Gandhi Nagar, Vellore-630006



WEB COPY



WA No. 2457 of 2023

**S.M.SUBRAMANIAM J.
AND
N.SENTHILKUMAR J.**

KST

**WA No. 2457 of 2023
AND
CMP NO. 20493 OF 2023**

04-08-2026

Page 10 of 10