

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2016

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THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.10955 of 2016 and W.M.P.No.9545 of 2016

P.Srinivasan

... Petitioner

Vs.

1. The Deputy Registrar of
Co-operative Societies (Housing)
- Chengalpattu Region,
No.10, Varadanar Street,
Vedachalam Nagar,
Chengalpattu,
Kancheepuram District,
2. The Registrar of Co-operative Societies
(Housing), Nandanam,
Chennai - 600 035,
3. The Enquiry Officer cum
Co-operative Sub-Registrar (Housing),
Tambaram Range - 2,
No.10, Varadanar Street,
Vedachalam Nagar,
Chengalpattu.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for all the records relating to the impugned proceedings Na.Ka.1062/2015/Vu dated 15.12.2015 issued by the Deputy Registrar of Co-operative Societies (Housing), Chengalpattu Region, the first respondent herein, and the consequential summons dated 16.03.2016 issued by the Enquiry Officer cum Co-operative Sub-Registrar, Tambaram Range-2, the third respondent herein and to quash the same.

For Petitioner : Ms.J.Thilagaraj

For Respondents: Mr.D.Venkatachalam,

Additional Govt.Pleader

O R D E R

The petitioner is aggrieved by the impugned notice dated 16.3.2016 issued by the 3rd respondent calling upon the petitioner to participate in an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983, (in short, 'the Act'). This notice was issued pursuant to a communication issued by the 1st respondent dated 15.12.2015, which is impugned in this writ petition.

2. Learned counsel appearing for the petitioner, referring to Section 81 of the Act submitted that the Registrar can order enquiry on his own motion or on an application of majority of the Board etc, and in the instant case both of these contingencies have not arisen since the impugned proceedings dated 15.12.2015 refers to a letter dated 23.10.2015 sent by the Employees of the Housing Societies in Thiruvallur District. Therefore it is stated that the proceedings is not a suo motu proceedings.

3. Heard the learned Additional Government pleader appearing for the respondents on the above submission.

4. Section 81 of the Tamil Nadu Cooperative Societies Act empowers the Registrar to act on his own motion or on an application of majority of the Board or of not less than 1/3rd of the members on the request of a Financing Bank or the District Collector. To exercise suo motu power, the 1st respondent can rely upon materials which come into his possession. In the instant case, the impugned notice clearly shows that it is an exercise of his suo motu power and probably the source of information is the letter received from the Employees Association dated 23.10.2015 which has been referred in the impugned notice. Therefore, it cannot be said that the initiation of proceedings is beyond the scope of Section 81 of the Act. Therefore, the challenge to the proceedings has to necessarily fail. However, to ensure that principles of natural justice are complied with, this Court is inclined to make certain observations. Learned Additional Government pleader appearing for the respondents referred to the decision of this Court in D.Sathyamoorthy Vs. The Deputy Registrar of Cooperative Societies and others, (CDJ 2014 MHC 2475) and submitted that the enquiry under Section 81 of the Act is an enquiry in public interest in order to find out whether the affairs of a Cooperative Society are conducted legally and whether there are financial improprieties in the matter of conduct of its affairs and such an enquiry cannot be prima facie compared to an enquiry against any individual employee. Further, the Court observed that principles of natural justice have no role to play inasmuch as there is no decision taken under the provisions by means of

an adjudication so as to result in any civil consequence against any person. There can be no quarrel to the above legal position. In the said case, the petitioner was a former Secretary of a Cooperative Thrift and Credit Society and the Deputy Registrar ordered inspection into the affairs of the Society under Section 82 of the Act. An Officer of the cadre of Sub-Registrar was ordered to inspect the affairs of the Society in general and submit a report. The petitioner therein came to Court alleging that no opportunity was given to him to participate in the proceedings and hence he wanted an opportunity to appear before the Enquiry Officer and produce necessary material and he made a request seeking certain documents and the matter was getting prolonged before the Enquiry Officer as the petitioner therein has refused to cross examine the witnesses. Therefore, the Sub-Registrar concluded the inspection and submitted his report based on which action was initiated under Section 87 of the Act. Testing the correctness of those proceedings writ petitions were filed in which the above mentioned observations were made.

5. In the instant case, issue is slightly different. The petitioner is a President of the Housing Society and the enquiry has been ordered based upon a complaint. If the complaint has not been referred to, the respondents may be justified in stating that the enquiry is only an enquiry simplicitor to inquire into the affairs of the Society. But the impugned notice dated 15.12.2015 states that there is an allegation that the affairs of the society are being conducted in the manner contrary to the legal provisions and when the complaint letter dated 23.10.2015 has been referred to in the said impugned proceedings dated 15.12.2015 one can safely presume that the 1st respondent was of the opinion that enquiry has to be ordered based on a complaint given by the Employees Association. Therefore, during the course of enquiry, obviously, the petitioner, when being questioned by the Enquiry Officer, he should be made known of all the allegations against him. This Court should not be misunderstood for advocating a principle that the procedure involves a trial as if in a criminal case, where the examination of witnesses, etc., is to be done. This Court is aware of the fact that the enquiry under Section 81 is a fact finding enquiry. Therefore, when the petitioner appears before the 3rd respondent he should be permitted to peruse the copy of the complaint dated 23.10.2015 and this is to ensure that he has the advantage of answering the specific queries, if any, sought for by the 3rd respondent. To this limited extent direction is issued to the 3rd respondent to permit the petitioner for perusal of the complaint dated 23.10.2015 and no further opportunity is required to be granted to the petitioner in the light of the decision of the Honourable Division Bench of this Court in the case of S.V.K.Sahasramam v. The Deputy Registrar of Co-operative Societies and others, (2008(8) MLJ 231), which has been followed in the case of

D.S.M.... D.Sathyamoorthy Vs. The Deputy Registrar of Cooperative Societies and others, (CDJ 2014 MHC 2475).

6. With this observation, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar (AS)

True Copy

Sub-Assistant Registrar

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To

1. The Deputy Registrar of Co-operative Societies (Housing) - Chengalpattu Region, No.10, Varadanar Street, Vedachalam Nagar, Chengalpattu, Kancheepuram District,
2. The Registrar of Co-operative Societies (Housing), Nandanam, Chennai - 600 035,
3. The Enquiry Officer cum Co-operative Sub-Registrar (Housing), Tambaram Range - 2, No.10, Varadanar Street, Vedachalam Nagar, Chengalpattu.

+2 ccs to Mr.J.Thilagaraj Advocate vide sr.19274
+1 cc to Mr.D.Venkatachalam Advocate sr.19286
+1 cc to Government Pleader sr.19366

W.P.No.10955 of 2016

aa12/04/2016