

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.24149 of 2014 and
MP.No.2 of 2014

P.Vasantharajan

..Petitioner

Vs.

1. The Registrar of Cooperative
Societies (Housing),
IIIrd Floor, TNHB Complex,
Nandanam,
Chennai - 600 035

2. The Joint Registrar of
Cooperative Societies,
Arokkiya Samy Road,
KK Pudhur Post, Post Box.No.6410,
Coimbatore - 641 038.

3. The Deputy Registrar of
Cooperative Societies (Housing),
Ramasamy Road,
Chinthamani Compound,
R.S.Puram,
Coimbatore 641 002.

..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the entire records on the file of the third respondent in Enquiry Report dated 21.08.2011, quash the same so far as the petitioner is concerned.

For petitioner : Mr.L.Chandrakumar
for Mr.S.Saravanan

For Respondents : Mr.V.Selvaraj, Additional
Government Pleader

ORDER:

According to the petitioner, he was working as a Special Officer (Additional Charge) of Peelamedu Industrial Workers Building Society from 25.05.2001 to 26.04.2002 and from 01.08.2009 to 22.08.2009. While being so, an enquiry under Section 81 of Tamil Nadu Cooperative Societies Act, 1983 was ordered by the second respondent on 22.02.2008 pertaining to irregularities in sale of plots during the period 2005 to 2007 by the society. Earlier an enquiry was conducted for the particular allegation of sale of housing plots. After the enquiry, there is no findings against the petitioner, and subsequently, the first respondent has ordered second enquiry for the period from the year 2001 to 2008. After receiving the report of the second enquiry, the petitioner has challenged the second enquiry report dated 21.08.2011 before this Court.

2. The learned counsel for the petitioner would submit that the earlier enquiry was conducted and there is no misconduct or misappropriation found against the petitioner in the aforesaid enquiry. Therefore, the charges against the petitioner has been dropped. Now, for the very same period, the second enquiry was conducted by the third respondent. Therefore, the said enquiry report is liable to be quashed.

3. The learned Additional Government Pleader would submit that the said contention of the petitioner are not correct. For the aforesaid period, the first enquiry was conducted against the employees, with a limited scope of irregularities in the sale of house sites for the year 2005 to 2007. Subsequently, the third respondent conducted the second enquiry for the period of 2001 to 2008. Therefore, the said contentions of the petitioner are totally incorrect and denied. The petitioner cannot have legal right to challenge the enquiry report, which is merely a fact finding report. If any further proceedings initiated by the Department, the petitioner has to submit his explanation before the authority concerned. Therefore, the writ petition is liable to be set aside.

4. Considering the submissions made by the parties concerned, it is seen that the petitioner has challenged the enquiry report dated 21.08.2011. Firstly, the enquiry report is only a fact finding report. Therefore, it cannot be challenged before this Court. Secondly, the respondent has filed the counter affidavit by stating that the earlier enquiry report is only for the particular irregularities committed by the employees of the Society. The second enquiry was conducted on the basis of the recommendation made by the Deputy Registrar (Housing) by its letter dated 15.06.2010 addressed to the

Registrar of Housing, for the irregularities like misappropriation, mismanagement and loss occurred to the society. In the similar circumstances, this Court has dismissed the writ petition filed by one, T.Sivanandam against the Registrar of Cooperative Societies(Housing), Chennai in WP.No.6434 of 2011, by order dated 28.06.2012, wherein in paragraph 10 this Court has held as follows.

"The first contention of the writ petitioner is to be rejected outright, in view of the fact that no restriction is placed by the Act for the initiation of any number of enquiries under Section 81 of the Act. Section 81 (1) of the Act, empowers the Registrar, of his own, to hold an enquiry or direct some person to hold an inquiry into the constitution, working or financial condition of the Registered Society. Such inquiry can also be into any allegation of misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement. The purpose of this enquiry is only to unearth the fact situation. It is a mere fact finding inquiry. It can be treated as some what similar to an investigation in pursuance of a First Information Report. This can be seen from the fact that sub-section (6) of Section 81 enables the Registrar merely to direct the society or any officer or the financing bank to take such action as may be specified, in order to remedy the defects disclosed in the enquiry. Therefore, there can be no impediment for a second enquiry. Moreover, the respondents have already pointed out that the first enquiry led to a surcharge proceeding which has not become the subject matter of an appeal in CMA.No.45 of 2010. In such circumstances, the first contention is liable to be rejected."

5. Therefore, I am of the view, that at this stage, challenging the enquiry report dated 21.08.2011 is unacceptable and the same is liable to be dismissed. It is open to the third respondent to proceed with in accordance with law by issuing a notice under Section 87 of the said Act. If any notice is received by the petitioner, the petitioner has to submit his explanation, by raising all the grounds before the authority and the respondent shall consider and pass orders on merits and in accordance with law.

6. In the result, the writ petition is dismissed with above observations. Consequently, the connected miscellaneous petition is closed. No costs.

Assistant Registrar
Dt.8.11.17

//True Copy//

Sub Assistant Registrar

To

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+1 cc to Govt.Pleader,sr.69445

+1 cc to Mr.S.Saravanan,advocate,sr.68548.

Krd 15/11

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