

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.09.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.24331 of 2017

and

W.M.P.Nos.25741 and 25742 of 2015

S.Lakshmanan

... Petitioner

- Vs -

1. The Registrar (Housing)
The Tamil Nadu Co-operative Society,
Government of Tamil Nadu,
Office of the Registrar of
Co-operative Societies,
Kilpauk, Chennai-10.

2. The Deputy Registrar (Housing),
The Tamil Nadu Co-operative Society,
Chennai Zone,
No.18, Ramanathan Street,
T.Nagar, Chennai-17.

3. The Enquiry Officer,
Adyar Co-operative Building Society,
Adyar, Chennai-600 020.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records of the Respondent contained in its impugned order bearing proceedings No.Na.Ka.No.425/2013/K, dated 17.07.2014 passed by the 2nd respondent based on the enquiry report dated 25.03.2013 by the 3rd respondent and to quash the same as illegal, arbitrary.

For Petitioner : Mr.K.S.Navin Balaji
for M/s.S.Santhosh

For R1 to R3 : Mr.L.P.Shanmugasundaram,
Special Govt.Pleader

O R D E R

This Writ Petition has been filed, challenging the order passed by the second respondent in Na.Ka. No.425/2013/K dated 17.07.2014.

2. The petitioner has challenged the surcharge proceedings initiated under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, dated 17.07.2014, which was issued based on the enquiry report dated 25.02.2013 of the third respondent. The learned counsel for the petitioner submitted that after a lapse of four years from the date of retirement of the petitioner, the enquiry under Section 81 of the Act, has been initiated for misappropriation of funds committed during 2007 - 2008. According to the petitioner, originally the enquiry report was submitted by the enquiry officer on 25.02.2013 and thereafter by letter dated 19.11.2014, the second respondent directed the enquiry officer, to peruse all the materials and submit a revised enquiry report within a period of 15 days. Hence, enquiry officer proceeded with the surcharge proceedings, initiated by the second respondent under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 is unsustainable and the same is vitiated.

3. The learned Special Government Pleader would submit that criminal offences is made out against the petitioner, therefore the second respondent requested the enquiry officer to submit a fresh report for launching the criminal prosecution against the petitioner. On the basis of the report, the relevant documents have been forwarded to Commercial Crime Investigation Wing, Chennai Unit, Guindy. The learned counsel for the respondents further submitted that the enquiry has been conducted after affording reasonable opportunity of hearing to the petitioner and based on the report of the enquiry officer, the surcharge award has been passed by the second respondent. Hence, the writ petition is liable to be dismissed.

4. Heard, the rival submissions made by the learned counsel for both the parties and perused the materials available on record.

5. The grievance of the petitioner is that the petitioner has not been provided with an opportunity to put forth his case before the second respondent, by furnishing all the materials. It was further submitted that the petitioner has not been served with the subsequent enquiry report dated 19.01.2015. Hence, it is made clear from the above fact, no opportunity was granted to the petitioner to substantiate his case, fixing a higher

liability on the petitioner, based on the subsequent enquiry report.

6. As rightly pointed out by the learned counsel for the petitioner, the second respondent has not provided sufficient opportunity to the petitioner to put forth his case, by furnishing the necessary documents as requested by him and on the basis of the second enquiry report, the petitioner's liability has been fixed for a higher amount of Rs.2,97,00,455/-. Therefore, it is necessary to provide sufficient opportunity to the petitioner, before the second respondent, to examine the other necessary parties, as per the provisions under Section 84 of the Tamil Nadu Co-operative Societies Act.

7. In view of the above, the impugned order passed by the second respondent in Na.Ka.No.425/2013/K dated 17.07.2014 is quashed and the same is remanded to the authority concerned, to consider and pass orders afresh, in accordance with law, after providing an opportunity to the parties concerned. This order will apply only to the present Writ Petitioner alone.

8. In the above said facts and circumstances, taking into consideration the huge loss sustained by the society, this is a fit case, where Registrar of Co-operative Societies shall nominate and appoint an Officer, not below the rank of Joint Registrar, to conduct the proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act.

9. In the result, the writ petition stands allowed on the above terms. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Registrar (Housing)
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3. The Enquiry Officer,
Adyar Co-operative Building Society,
Adyar, Chennai-600 020.

+ 1 cc to Government Pleader Sr.70104

+ 2 ccs to Mr.S. Santosh, Advocate Sr.69220

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NRJK(CO)
EU(23/11/2017)



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