

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No.18960 of 2014

and

M.P. Nos.2 of 2014

and

W.M.P. Nos.19849 & 19850 of 2017

A.Sadasivam

.. Petitioner

Vs

- 1.The Registrar (Housing),
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),
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 : This Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the second respondent in Na.Ka.No.425/2013/K dated 17.07.2014 and quash the same as illegal, incompetent and without jurisdiction and pass such further or other order. Prayer Amended as per order dated 21.08.14 by BRJ in MP.NO.3/14 in WP.No.18960/17

For Petitioner :Mr.S.Parthasarathy for
Mr.P.DineshKumar and
Mr.K.S.Navin Balaji.

For Respondents :Mr.L.P.Shanmugasundaram,
Special Government Pleader
for R1 & R2
Mr.D.Venkatachalam for R3

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. Originally the petitioner challenged the surcharge proceedings dated 01.10.2013, which was issued based on the enquiry report dated 25.02.2013 of the third respondent. Subsequently, a revised impugned surcharge proceedings dated 22.07.2013 was initiated under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, based on which the impugned order has been passed. Hence, learned counsel for the petitioner filed W.M.P. Nos. 19849 of 2017 and 19850 of 2017 to permit the petitioner to raise additional grounds and to accept the additional affidavit filed by the petitioner. Therefore, the same are to be allowed.

3. At the admission stage, the petitioner obtained an order of interim stay, on 18.07.2014 and the said order copy has been received by the second respondent on 21.07.2014. But, the surcharge order passed by the second respondent on 17.07.2014 has been despatched on 22.07.2014, after the receipt of the order of interim stay granted by this Court.

4. According to the learned Senior counsel appearing for 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.

5. The learned Special Government Pleader would submit that the 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 in Cr.No.4 of 2015.

6. The learned counsel for the respondents further submitted that the stay order copy was received only on 21.07.2014. Prior to receipt of the Interim Order, the petitioner was directed to appear for enquiry and the surcharge award has been passed by the second respondent. Thereafter, the petitioner has challenged the subsequent order dated 17.07.2014 in the present writ petition.

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

8. The grievance of the petitioner is that the petitioner has not been provided with an opportunity to putforth 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, hence, the petitioner obtained a copy of the enquiry report on 08.08.2017, under Right to Information Act. Hence, it is made clear from the above fact, no opportunity was granted to the petitioner to substantiate his case, after receipt of the second enquiry report and thus the liability of the petitioner has been fixed to a tune of Rs.2,21,46,178/-. But, the same is higher than the amount arrived in the first enquiry report.

9. As rightly pointed out by the learned senior counsel for the petitioner, the second respondent has not provided sufficient opportunity to the petitioner to putforth his case, by furnishing the necessary documents as requested by him and on the basis of the second enquiry report, the petitioner's responsibility has been fixed for a higher amount of Rs.2,21,46,178/-. 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.

10. 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.

11. 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.

12. In the result, the writ petition stands allowed on the above terms. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

rkp

To

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 3. The Enquiry Officer,
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Adyar, Chennai - 600 020.
- + 1 cc to Mr.P.DineshKumar, Advocate, SR.67220
- + 1 cc to Mr.L.P.Shanmugasundaram, Advocate, SR.67462
- + 1 cc to The Govt.Pleader, SR.67747

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W.P. No.18960 of 2014
and

M.P. Nos.2 & 3 of 2014
and

W.M.P. Nos.19849 & 19850 of 2014

GK(CO)
NR 26/10/2017