

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

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THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.27103 of 2006 and
MP.No.1 of 2006

K.N.Uthaman

..Petitioner

Vs.

The Deputy Registrar of
Cooperative Societies (Housing),
Chennai Region,
Chennai-600 017.

..Respondent

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari, calling for the records relating to the impugned proceedings passed by the respondent in Na.Ka.No.3123/2001/K dated 31.03.2006 under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, communicated on 19.05.2006 and quash the same.

For Petitioner : Mr.R.Thamaraiselvan
For Respondent : Mr.V.Selvaraj,
Additional Government Pleader

ORDER:

According to the petitioner, the petitioner was the Vice President of Pallavan Transport Corporation Cooperative House Building Society at Chennai from 31.10.1996 to 24.05.2001 when the Board of Management was managing the said Society. After the supersession of the board, a Special Officer took charge of the society on 24.05.2001. While being so, the respondent ordered an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 and appointed an enquiry officer to enquire in to the allegation of commitment of irregularities in executing a Housing Scheme during the above period. The enquiry officer completed the enquiry without giving opportunity to the ex-board of directors and submitted the report stating that the above board of management to which the petitioner was the President, had caused financial loss to the society by way of purchasing lands for the housing scheme. Based on the

enquiry report, the respondent has initiated a proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983 and issued a notice in Na.Ka.No.3123/2001/K dated 31.03.2006 directing the petitioner and others to remit a sum of Rs.3,60,47,936/- and calling upon explanation as to why such recovery should not be made. Assuming that the respondent would initiate recovery proceedings, the petitioner made a representation dated 25.05.2006 to the respondent requesting to furnish the relevant documents based on which the financial loss of the society was found, for submitting explanation. But, the respondent has not furnished the same so far. Hence, challenging the notice dated 31.03.2006 issued by the respondent, the petitioner has filed this writ petition before this Court.

2. The learned counsel for the petitioner would submit that the entire proceedings initiated under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983 is barred by limitation. Hence, the impugned notice is liable to be quashed.

3. The learned counsel for the Additional Government Pleader would submit that the statements made in the impugned notice would not amount to pre-determining the issue and the entire statements in the show cause notice are only with regard to asking explanation from the petitioner. After receiving the explanation from the petitioner, it shall be considered by the authority independently for passing appropriate orders under the provision of the Act.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and perused the materials available on record.

5. In the following decisions, the Hon'ble Supreme Court has laid down the law as under:

(i) In State of U.P. v. Brahm Datt Sharma reported in 1987 (2) SCC 179, at Paragraph 9, held as follows:

"When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. 'The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by

the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature, the High Court in our opinion ought not have interfered with the show cause notice.

(ii) In *Whirlpool Corporation v. Registrar of Trade Marks* reported in 1998 (8) SCC 1, the Supreme Court, held that,

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal".

(iii) The Supreme Court in *Special Director v. Mohd. Ghulam Ghouse* reported in 2004 (3) SCC 440, at paragraph 5, held as follows:

"This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted."

(iv) In *Union of India v. Kunisetty Satyanarayana*, reported in 2006 (12) SCC 28, the Supreme Court, held that,

"15. Writ jurisdiction is discretionary jurisdiction and hence, such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

6. In the light of the legal principles laid down by the Hon'ble Supreme Court as well as by the High Court in various decisions, the writ petition challenging the show cause notice is not maintainable.

7. Further, it is clear that the contention of the petitioner that 'the further proceedings in continuation of the show cause would be pre-determined' cannot be acceptable. Further, the show cause notice has been issued to the petitioner for submitting explanation and the petitioner has a fair chance to make objections while submitting his explanation. Hence, the writ petition filed for the above said prayer is liable to be dismissed as not maintainable.

8. Accordingly, the writ petition is dismissed as not maintainable. However, liberty is granted to the petitioner to submit his explanation before the authority concerned within a period of six weeks from the date of receipt of a copy of this Order. Thereafter, the respondent shall consider the explanation independently and pass orders on merits and in accordance with law as expeditiously as possible within a further period of six weeks. Consequently connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

The Deputy Registrar of
Cooperative Societies (Housing),
Chennai Region,
Chennai-600 017.

+1 CC to Mr.R. Thamaraiselvan, Advocate sr 50513.

+1 CC to Govt. Pleader sr 52089.

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MP.No.1 of 2006

SP(02/01/2018)