



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.09.2019	Pronounced on: 24.09.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.17569 of 2019
& W.M.P.Nos.17046 & 17048 of 2019

P.Natarajan,
S/o.Palanisamy,
Middle Street, Somandarkudi & Post,
Sankarapuram Taluk,
Villupuram District. Petitioner

/versus/

1. The Deputy Registrar of Co-operative Societies (Housing),
Pondy Main Road, Cuddalore,
Cuddalore District.
2. The President,
S.A.H.S.G. 46, Thanthai Periyar Transport Corporation
Employees Co-operative Housing Society,
Trichy Main Road, Villupuram,
Villupuram District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.334/2018 Sa.Pa, dated 10.05.2019, quash the same and pass orders.

For Petitioner : Mr.C.Prakasam

For R1 & R2 : Mrs.Girija
Government Advocate

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O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The petitioner herein is the former President of Thanthai Periyar Transport Corporation Employees Co-operative Housing Society. The 1st respondent/Deputy Registrar, ordered enquiry under section 81 of the Co-operative Societies Act, to

enquire into the alleged irregularities committed in the said Society. Based on the enquiry report, Surcharge proceedings was initiated against the petitioner under section 87 of the Co-operative Societies Act. In the surcharge proceedings, the 1st respondent/Deputy Registrar, has passed order fixing liability of Rs.71 lakhs against the petitioner.

3. The petitioner challenges this proceedings on the ground that, during the enquiry proceedings, the Enquiry Officer acted prejudicially and refused to furnish relevant documents. Without furnishing relevant documents, he proceeded with the enquiry and gave a bias report. Based on the said report, the 1st respondent/Deputy Registrar, initiated the surcharge proceedings and caused notice. For the notice seeking explanation, the petitioner gave a detailed explanation, but without considering the said explanation, order under section 87 was passed.

4. The petitioner has submitted that, though there is statutory appeal remedy under section 152 of the Act, against the surcharge proceedings available, he is constrained to invoke the extraordinary jurisdiction since his explanation not considered before passing the order. Thereby grave suppression of fact leading to apparent injustice has caused to him.

5. Denying the averments made in the affidavit by the petitioner, the 1st respondent/Deputy Registrar, has filed counter affidavit, wherein, the first respondent has stated that, the petitioner during section 81 enquiry never sought for any documents. Nothing prevented him perusing documents when he participated in the enquiry. Therefore, the allegations against the Enquiry Officer is false. After the receipt of the enquiry report, the 1st respondent/Deputy Registrar, initiated surcharge proceedings vide notice dated 09.08.2018, the petitioner was provided opportunity to put forth his defence regarding the allegations levelled against him. The petitioner took time to give his explanation but thereafter, failed to turn up. He dragged the proceedings for nearly 8 months. After the order passed in the surcharge proceedings, he has filed the writ petition suppressing the facts.

6. Since the petitioner averred that he gave explanation to the 1st respondent in the Section 87 proceedings and it was not considered while passing the order impugned, this Court, to ascertain whether any explanation given and if so, on what date it was given, called for the records from the 1st respondent and perused. The file reveals that the first summon to the petitioner regarding the surcharge proceedings was issued on 09.08.2018. The petitioner has received it and he also admits the receipt of it. The petitioner has not attended the enquiry. The next summon dated 04.10.2018 to appear for enquiry

on 09.10.2018 issued to him. For that also the petitioner has not responded. After repeated summons, he has attended only one hearing on 12.11.2018. On that day, he has sought two weeks time to file his explanation. Again, he did not turn up for the enquiry or gave his explanation. The other communication from the petitioner available in the file, is his letter dated 25.04.2019 seeking copies of certain documents.

7. The file discloses adequate and reasonable opportunity has been given to the petitioner. However, he has failed to give his explanation. Without giving explanation, the petitioner in this writ petition alleges that the 1st respondent/Deputy Registrar, has not given him fair opportunity.

8. The petitioner has failed to understand the true spirit of affording fair opportunity. He try to abuse the Principle of 'Audi Alteram Partem'. Even after affording him seven chances to give his reply, he has refused to cooperate with the proceedings. Facing grave charge of misappropriation of nearly Rs.71 lakhs on various heads while serving as the President of the Society, the petitioner only blame the Secretary and not ready to give any explanation. On 11 different heads, the petitioner has found misappropriated the Society Fund. The Surcharge order, which is impugned in the Writ Petition speaks volume about the petitioner's responsibility. If at all, he has any reason to disagree with the finding, he has to resort the statutory remedy available under the Act. Writ Court cannot entertain this petition, which lacks merit both on law and facts.

9. Hence, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

bsm

To,

1.The Deputy Registrar of Co-operative Societies (Housing),
Pondy Main Road, Cuddalore,
Cuddalore District.

2. The President,
S.A.H.S.G. 46, Thanthai Periyar Transport Corporation
Employees Co-operative Housing Society,
Trichy Main Road, Villupuram,
Villupuram District.

+2cc to Mr.Prakasam, Advocate, S.R.No. 82384 & 80871
+1cc to the Government Pleader, S.R.No. 82261

Writ Petition No.17569 of 2019

MG (CO)
GN (01/11/2019)



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