

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.28027 of 2018
and
W.M.P.No.32616 of 2018

A.Prabakaran

...Petitioner

Vs

1.The Deputy Registrar of,
Co-operative Societies, (Housing)
Chengelpet Circle, Varadhanar Street,
Chengelpet, Kancheepuram District.

2.The Cooperative Sub Registrar (Housing) /
Enquiry Officer, Tiruvallur Circle,
O/o.Deputy Registrar of Cooperative Societies, (Housing)
Chengelpet Circle, Varadhanar Street,
Chengelpet, kancheepuram District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the entire records relating to the impugned notice issued by the 2nd respondent in his proceedings No.Nil, dated 26.09.2018 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.L.P.Shanmuga Sundaram
Special Government Pleader.

O R D E R

The Enquiry Notice issued by the Enquiry Officer appointed under Section 81 of the Tamil Nadu Co-operative Societies Act, in proceedings dated 26.09.2018, is under challenge in the present writ petition.

2.The learned counsel for the petitioner states that he was holding the post of Deputy Registrar of Co-operative Societies and not allowed to retire from service, on the date of his superannuation on 13.09.2007. The departmental disciplinary

proceedings initiated against the writ petitioner is pending and yet to be concluded. An enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, was registered by the Competent Authority as contemplated under the Act. The Enquiry Officer appointed pursuant to the order of the Competent Authority under Section 81 and issued notice to the writ petitioner to appear and provide information and speak about the administrative affairs of the Co-operative Society. The said notice is under challenge.

3. This Court is of the considered opinion that the enquiry under Section 81 is a statutory enquiry and the Registrar is empowered to order for an enquiry into the affairs of the Co-operative Societies. In other words, to identify the irregularities, illegalities, misappropriations or financial loss, the Registrar is empowered to order for an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. The Enquiry Officer appointed under Section 81 of the Act is competent to summon the employees of the Co-operative Societies officials, served in the Co-operative societies and other persons who all are connected with the affairs of the Co-operative societies by recording the statements and by collecting the evidences from various sources. The Enquiry Officer appointed under Section 81 of the Tamil Nadu Co-operative Societies Act, should submit a report. Based on the report, the Competent Authorities are entitled to initiate threefold actions against all the persons concerned. If any irregularities, illegalities, misappropriations or financial loss is identified then a surcharge proceedings under Section 81 of the Act, can be initiated against the persons who all are responsible for the financial loss.

4. The departmental disciplinary proceedings shall be initiated against the employee, if they are found negligent or dereliction on duty and a criminal case can also be registered by the Competent Authorities before the Commercial Crime Investigation Bureau, Police Department for Prosecution, in respect of the offences committed under the Indian Penal Code or otherwise.

5. This being the scope of the provision of the Act, this Court is of an opinion that mere call letter issued by the Enquiry Officer, summoning the writ petitioner to furnish the statement and provide information would not provide a cause of action for the purpose of moving the writ petition or as a valid ground to quash the call letter itself.

6. The learned Special Government Pleader appearing on behalf of the respondent cited a judgment of this Court, dated

10.06.2014 in W.P.No.13614 of 2014 and paragraph Nos. 7 & 8 are extracted hereunder:

"7.At the outset, i should say that this contention is untenable and the same is contrary to the express provision contained in Section 82 of the Act. To appreciate this contention of the learned counsel, it is worthwhile to have a quick look into Sections 80, 81, 82, 83 and 87 of the Act. Section 80 of the Act speaks of audit to be conducted by the Registrar of the Societies. Section 81 of the Act deals with an inquiry into the constitution, working and financial condition of a registered society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice, or mismanagement in relation to that society or into any particular aspect of the working of that society. Section 82 speaks of inspection and investigation. The language used Section 82 will clearly indicate that it materially differs from Section 81 in as much as what is conducted under section 81 is an inquiry whereas what is conducted under Section 82 is not an enquiry. It is either a simple inspection into the affairs of the registered society in general for investigation into any alleged misappropriation, fraudulent retention of money or property, breach of trust, corrupt practice or mismanagement in relation to that society or into any particular aspect of the working of that society. While doing so, the officer who conducts inspection or investigation shall have all the powers of the Registrar when holding an inquiry under Section 81 of the Act. Section 83 of the Act speaks of inspection of books by financing bank. According to which, a financing bank may at any time, but shall at least once in every year, inspect through an officer or a member of its paid staff the books of every registered society which is indebted to it.

8.Now comes the crucial provision contained in Section 87 of the Act. A plain reading of Section 87 would make it abundantly clear that a surcharge proceeding under Section 87 shall be initiated on the basis of audit under Section 80 or inquiry under Section 81, or inspection or investigation under section 82, or inspection of books under Section 83 or winding up of the society. Therefore, it is crystal clear that for initiation of a surcharge proceeding under Section 87 of the Act, a report submitted under Section 80 or under Section 81 or under Section 82 or under Section 83 is the foundation. The actual

adjudication happens only in the surcharge proceeding under Section 87 of the Act. That is the reason why, Section 87 makes it mandatory that before making an order in the surcharge proceeding a reasonable opportunity should be given to the persons concerned. It is only at the stage, witnesses are examined and documentary evidences are tendered and the persons against whom surcharge proceeding has been initiated is allowed to cross examine the witnesses if he so wishes and also to lead evidence on his side, both oral and documentary. Section 87(4) of the Act also makes it clear that the officer who conducts surcharge proceeding shall have all the powers of the Civil Court, in respect of matters enumerated therein such as, summoning and enforcing attendance of any person and examine him on oath; requiring the discovery and production of any document, reception of evidence on affidavits, requisitioning any public record from any Court or office, and issuing commission for examining of witnesses. Any award passed under Section 87 of the Act is appealable to the Co-operative Tribunal under Section 152 of the Act. The award could be executed like a Civil Court decree under Chapter XVI of the Act."

7. This Court is of the considered opinion that such a notice issued, summoning the persons concerned, to provide statement cannot be construed as a cause of action for the purpose of entertaining a writ petition. If at all, any action is taken against the writ petitioner, it is left open to him to adjudicate the same in the manner known to law.

8. with these observations, the present writ petition stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

tta/pns

To

- 1.The Deputy Registrar of,
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Chengelpet, Kancheepuram District.
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srg 3/5/2019



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