

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020
CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.25747 of 2005

K. Raghu

... Petitioner

Vs.

1. The Deputy Registrar,
of Cooperative Societies (Housing),
Salem Region, Salem - 4.
 2. The Special Officer,
Seelavari Cooperative Housing Society Ltd.
SLM-HSG NO.91,
305-B, Veeranam Main Road, P.M. Kovil,
Salem. -3
- ... Respondents

Prayer: Writ Petition filed praying to issue Writ or order or direction, specifically writ in the nature of writ of Certiorari calling for the records pertaining to the proceedings of the 2nd respondent dated 21.06.2005 made in Na.Ka.No.1/2003 - O.Na, and quash the same.

For Petitioner : Mr. N. Manokaran

For Respondents 1&2 : Mr.L.P. Shanmugasundaram
(Spl. Government Pleader)

O R D E R

The petitioner has filed the present writ petition in the nature of writ of Certiorari calling for the records pertaining to the proceedings of the second respondent dated 21.06.2005 made in Na.Ka.No.1/2003 - O.Na, and quash the same.

2. The facts of the case are as follows:

The petitioner was working as Secretary in the 2nd respondent Society from 01.04.2000. He was issued a charge memo on 16.09.2003 on certain allegations after passing suspension order dated 21.07.2003. Subsequently, an enquiry report was filed on 11.02.2004 after conducting domestic enquiry. In

pursuance to the enquiry report filed by the enquiry officer, the 2nd respondent has issued the second show cause notice dated 21.06.2005 in Na.Ka.No.1 of 2003/O.Na asking for explanation from the petitioner within a period of five days. Challenging the aforesaid impugned order, the petitioner has filed the present writ petition seeking for his relief.

3. The learned counsel for the petitioner would submit that the 2nd respondent has sought for explanation from the petitioner by passing impugned order dated 21.06.2005, without furnishing the copy of the statement of the witnesses and the related documents referred in the charge memo. Further, the enquiry was conducted without serving the same to the petitioner and the enquiry report was submitted on 11.02.2004 after conducting an ex-parte enquiry. Based on the enquiry report, the second respondent has issued the aforesaid second show cause notice to the petitioner without giving adequate and proper opportunities to him. Even though the petitioner made several representations to furnish the related documents referred in the charge memo, there is no response from the 2nd respondent. However, the enquiry officer proceeded with the ex-parte enquiry and filed his report on 11.02.2004 without giving adequate and proper opportunities to defend on his side effectively. Hence, the impugned order passed by the 2nd respondent is liable to be quashed.

4. Per contra, the learned Special Government pleader appearing for the Societies/1&2 respondents herein, would submit that after preliminary enquiry, the petitioner was issued charge memo on the allegations framed against him. Further, an enquiry officer was duly appointed to conduct the enquiry on the allegations levelled against the petitioner. The enquiry officer had sent summons dated 03.12.2003, 12.12.2003 and 22.12.2003 to the petitioner to appear in the enquiry on 11.12.2003, 20.12.2003 & 03.01.2004 respectively. Despite the summons have been served to the petitioner and they have been received by him, he did not appear wilfully in the enquiry in the aforesaid occasions. Therefore, paper publication was effected in Daily Thanthi on 14.04.2004 finally, after duly being instructed the petitioner to appear in the enquiry on 07.01.2004. Even after the paper publication, there was no response from the petitioner. Therefore, the enquiry officer conducted the ex-parte enquiry by marking 29 documentary evidence and examining 7 witnesses on the side of the prosecution. After the enquiry, an enquiry report was submitted wherein it was found that the charges levelled against the petitioner were proved. Based on the enquiry report, the disciplinary authority sent a copy of the enquiry report to the petitioner calling for his explanation. Though the petitioner sent reply on 29.06.2005,

requesting for oral and documentary evidence for his explanation, in the mean while, the petitioner has filed the writ petition to quash the impugned order dated 21.06.2005 before this Court before passing the final order. Hence, there is no merit in the writ petition and the same deserves to be dismissed.

5. Heard both sides and perused the records.

6. On a perusal of the record, it shows that the enquiry officer has sent summons to the petitioner on various dates to attend hearings on various occasions and in addition to, a paper publication has also been effected in Daily Thanthi on 07.01.2004 making intimation to attend hearing on 14.01.2004. It is to be noted that the petitioner was served notices on 03.12.2003, 12.12.2003 & 22.12.2003 to attend the hearings on 11.12.2003, 20.12.2003 & 03.01.2004 respectively by the enquiry officer and the aforesaid notices have been acknowledged by the petitioner. However, the petitioner did not take part in the enquiry as on scheduled dates. At the same time, the petitioner did not deny the receipt of acknowledgement of the notices for hearing on various occasions and paper publication on 07.01.2004 in Daily Thanthi to attend the hearing scheduled on 14.01.2004 at 10.00 a.m. After making such efforts only, without any option, the enquiry officer has conducted the ex-parte enquiry. On the basis of enquiry, an enquiry report has been submitted by the enquiry officer. Thereafter only, the petitioner was served impugned order dated 21.06.2005 seeking for his explanation. Therefore, it is very clear evident that even though the petitioner was given adequate and sufficient opportunity, he did not avail the same to put forth evidence on behalf of his side. However, even if it is stated that a copy of the oral and documentary evidence has not been furnished to the petitioner to defend on his side, there is no single evidence to show on the side of the petitioner as to whether the petitioner has made representation seeking for to furnish the required documents enabling him to defend on his side and only in the last representation dated 29.06.2005 made by the petitioner, he has sought for oral and documentary evidence to put forth his explanation wherein also, there is no reference with regard to the previous representation to have made by him. In the absence of evidence on the side of the petitioner as sought for oral and documentary evidence, he cannot claim that he was not given adequate and sufficient opportunities to put forth evidence on his side. At the same time, during the enquiry, on the side of the prosecution, 29 documents have been marked and 7 witnesses have been examined to prove the allegation levelled against the petitioner. After recording the oral and documentary evidence against the petitioner, the enquiry report has been submitted by the Enquiry officer. Based upon the enquiry report, the

petitioner was served the second show cause notice dated 21.06.2005.

7. In view of the above, this shows that though the petitioner was given adequate opportunities not only serving notices for 4 occasions and also effecting a paper publication to attend hearings, he failed to avail these opportunities to defend on his side. Further, after receiving the second show cause notice dated 21.06.2005, the petitioner has made a representation only on 29.06.2005 seeking for all oral and documentary evidence recorded in the enquiry. Further, it is brought to notice of this Court that due to interim stay of this Court in another W.P.No.30608 of 2004 filed by the petitioner, the respondent would not pass further order against the petitioner. Under this circumstance, the respondent has to pass final orders based on the enquiry report and representation given by the petitioner dated 29.06.2005. Hence, it makes clear that the petitioner who has invited enquiry report himself in spite of several opportunities has been given to the petitioner. Hence, there is no merit in the writ petition and the same is liable to be dismissed. However, the respondent is directed to pass final orders based on the enquiry report filed by the Enquiry Officer and representation dated 29.06.2005 given by the petitioner in accordance with law within a period of four weeks from the date of receipt of copy of this order.

8. With the above observations and directions, the writ petition is dismissed. Consequently, connected miscellaneous petition is closed if any. No costs.

Sd/-

Assistant Registrar (CCC)

/true copy/

Sub Asst. Registrar

To:

1. The Deputy Registrar,
of Cooperative Societies (Housing),
Salem Region, Salem - 4.
2. The Special Officer,
Seelavari Cooperative Housing Society Ltd.
SLM-HSG NO.91, 305-B, Veeranam Main Road, P.M. Kovil,
Salem. -3

+1 cc to Mr.N.Manokaran Advocate sr39762
+1 cc to the Special Government Pleader (co-op)
sr 39779

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