



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.17817 OF 2021

AND

W.M.P.NO.19019 OF 2021

G.K.Azhageashan

... Petitioner

.Vs.

1. The Registrar of Co-operative Societies (Housing),
No.48, Rithernton Salai,
Vepery,
Chennai - 600 007.
2. The Deputy Registrar of
Co-operative Societies (Housing),
Chengalpattu Circle,
No.18, Varadhanar Street,
Vedhachalam Nagar,
Chengalpattu,
Chengalpattu District.
3. The Co-operative Sub-Registrar (Housing),
Enquiry Officer,
Sembakkam Co-operative Housing Society,
Office of the Deputy Registrar of
Co-operative Societies (Housing),
No.18, Varadhanar Street,
Vedhachalam Nagar, Chengalpattu,
Chengalpattu District.
4. The Superintendent of Police,
CCIW,
Industrial Estate,
Guindy,
Chennai.
5. The Inspector of Police,
CCIW,
Kancheepuram,
Kancheepuram District.

... Respondents



Prayer:-

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the respondents from initiating criminal prosecution against the petitioner in view of the order passed by the 2nd respondent in No.1(9)/2019-2020/E dated 23.07.2020 under section 87(1) of the Tamil Nadu Co-operative Societies Act.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.A.Selvendiran
Government Counsel

O R D E R

This writ petition has been filed for issue of writ of mandamus forbearing the respondents from initiating criminal prosecution against the petitioner in view of the orders passed by the 2nd respondent through proceedings dated 23.07.2020 under Section 87(1) of the Tamil Nadu Co-operative Societies Act (herein after called as "Act").

2. The case of the petitioner is that he is a retired Deputy Registrar of Co-operative Societies. While the petitioner was in service and was deputed as the Special Officer in Sembakkam Co-operative Housing Society and was holding the additional charge for a particular period, there seems to have been some irregularity in sanctioning of loan. As a result of the same, the Society is said to have sustained loss which ultimately led to an enquiry conducted under Section 81 of the Act.

3. Pursuant to the submission of the enquiry report, the Deputy Registrar initiated surcharge proceedings under Section 87(1) of the Act. After conducting a detailed enquiry, the Deputy Registrar viz., the 2nd respondent through proceedings dated 23.07.2020 closed the proceedings and thereby the petitioner was exonerated from the surcharge proceedings.

4. The grievance of the petitioner is that there is an attempt made to initiate criminal prosecution against the petitioner in view of the enquiry report under Section 81 of the Act. According to the petitioner, launching such criminal prosecution is totally illegal since, the report has culminated in surcharge proceedings which came to be closed by the 2nd respondent through proceedings dated 23.07.2020 and thereafter, there cannot be any criminal prosecution and the



same runs against the settled principles of law. Based on this apprehension, the present writ petition has been filed before this Court seeking for appropriate directions.

5. Heard Mr.S.Doraisamy, learned counsel appearing on behalf of the petitioner and Mr.A.Selvendiran, learned Government Counsel appearing on behalf of the respondents.

6. There is force in the submissions made by Mr.S.Doraisamy, learned counsel appearing on behalf of the petitioner to the effect that launching of criminal prosecution after the surcharge proceedings itself came to be closed, may not be legally sustainable. For this purpose, the learned counsel for the petitioner also relied upon the earlier order passed by this Court under similar circumstances in W.P.No.30657 of 2006, dated 16.02.2012.

7. In the considered view of this Court, the present writ petition has been filed merely based on apprehensions. In other words, this writ petition is more in the nature of an anticipatory writ petition, expecting for an adverse criminal prosecution that may be launched by the respondents. It will be too difficult for this Court to entertain such a writ petition since, there are no materials except the apprehension raised by the petitioner.

8. In view of the above, this Court is not inclined to grant the relief as sought for by the petitioner more on the ground that this Court cannot act on mere apprehensions. However, if and when any criminal prosecution is launched, it will always be open to the petitioner to question the same at that point of time by raising all the relevant grounds. Except giving this liberty, no further orders can be passed in this writ petition.

9. This writ petition is disposed of accordingly. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssr



To

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Kancheepuram District.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No.42963

+1cc to the Government Pleader, S.R.No.43384

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AK-II(CO)
PBS/21/09/2021