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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.7572 of 2021
and W.M.P.Nos.8089 & 19889 of 2021

R.Krishnaraj

.. Petitioner

Vs.

1.The Registrar of Co-operative Societies (Housing),
Tamil Nadu Co-operative
Housing Federation Building,
1st Floor, No.48, Ritherdon Road, Vepery,
Chennai 600 007.

2.The Deputy Registrar of
Co-operative Societies (Housing),
No.26, Therku Kavarai Theru,
Manjakuppam Cuddalore,
Cuddalore District.

3.The Inquiry Officer,
E- 2729, Public Servants Co-op.,
Housing Building Society,
No.2, Abdul Kadar Lane,
Manjakuppam, Cuddalore,
Cuddalore District.

4.The President,
E-2729, Public Servants Co-op.,
Housing Building Society,
No.2, Abdul Kadar Lane,
Manjakuppam, Cuddalore,
Cuddalore District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the 3rd respondent's impugned inquiry report under section 81 dated 04.03.2019 of the 3rd Respondent and quash the same.



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For Petitioner : Mr.K.Raja
for M/s.M.Kaviveerappan

For Respondents : Mr.T.K.Saravanan
Government Advocate

O R D E R

The petitioner has come out with the present Writ Petition challenging the impugned inquiry report of the 3rd respondent dated 04.03.2019 passed under Section 81 of the Tamil Nadu Cooperative Societies Act.

2. According to the petitioner, he was working as Co-operative Sub-Registrar in Cuddalore District. The 4th respondent Society is established for Government servants. In the said Society, the petitioner was elected as Vice-President for the period from 01.11.1996 - 25.05.2001. During the said period, he was acting as in-charge Secretary of 4th respondent Society from 03.10.1998 - 25.05.2001. Subsequently, he was working as Special Officer of the 4th respondent Society from 25.05.2001 - 30.09.2004. The petitioner attained age of superannuation on 30.06.2012, but was not allowed to retire, as he was placed under suspension on 08.06.2012. One Tmt.M.Ramani and M.Ganesan availed housing loan to the tune of Rupees Five Lakhs from the 4th respondent Society for the purpose of raising construction and mortgaged the property measuring an extent of 2280 sq.ft. comprised in T.S.Nos.555 and 556 situated in Ward No.2, Block No.7, Kovalan Street, Cuddalore and a mortgage deed was registered as Document No.2921/1999 on the file of Joint Sub Registrar Office, Cuddalore-2. The said Ramani and Ganesan failed to repay the amounts. The 4th respondent Society initiated proceedings under Section 90 of the Tamil Nadu Co-operative Societies Act (hereinafter referred to as, 'the Act') and obtained decree dated 28.05.2004. Subsequently, the 4th respondent did not proceed further against the said Ramani and Ganesan to execute the decree. While so, by proceedings of 2nd respondent dated 09.08.2018, the 3rd respondent was appointed as Enquiry Officer under Section 81 of the Act to conduct enquiry. Even prior to that, an enquiry under Section 81 of the Act was already ordered, enquiry conducted and report was filed. The enquiry now ordered is second enquiry. The enquiry under Section 81 of the Act cannot be ordered again and again as it amounts to double jeopardy. The present Enquiry Officer filed report stating that the petitioner has sold mortgaged property along with borrower and recommended to initiate criminal proceedings against the petitioner, the said M.Ramani and M.Ganesan, the borrowers.

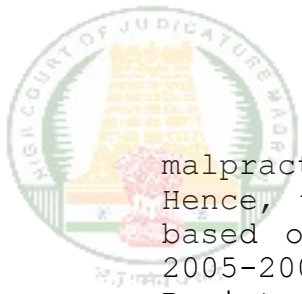


3.The learned counsel appearing for the petitioner contended that Enquiry Officer has no power to recommend to initiate criminal proceedings. The 4th respondent, though obtained decree in the year 2004, did not take any steps to execute the decree. To cover up their mistake, the present enquiry has been ordered. The said M.Ramani and M.Ganesan paid the amount by way of one time settlement on 05.02.2020 and no amount is due in 4th respondent Society. In the disciplinary proceedings initiated against the Secretary of 4th respondent, the Enquiry Officer held that mortgaged property was not sold and prayed for allowing the Writ Petition.

4(i).The 2nd respondent filed counter affidavit and denied all the averments made in the affidavit. Mr.T.K.Saravanan, learned Government Advocate appearing for the respondents submitted that while the petitioner was functioning as Vice President, Secretary In-charge and Special Officer of the 4th respondent Society, he has sanctioned and disbursed various irregular housing loan to its members. The petitioner sanctioned housing loan to M.Ramani and M.Ganesan and they executed a mortgage deed for the property measuring 2280 sq. ft. in Document No.2921/1999, on the file of the Joint Sub Registrar, Cuddalore-2. After being retired from the 4th respondent Society, in the capacity of Vice President, Secretary and Special Officer of the 4th respondent Society, petitioner got the general power of Attorney from the said M.Ramani and M.Ganesan and sold the properties measuring 5408.91 sq. ft., including mortgaged property measuring 2280 sq. ft. to one Anjammal, by registered sale deed dated 02.09.2008 bearing Document No.3595/2008.

4(ii).The 2nd respondent received Audit Special reports from the Assistant Director of Audit, Cuddalore, regarding the malpractices that were committed in the 4th respondent Society for the years 2000-2001, 2001-2002, 2002-2003 and 2003-2004. On receipt of the said reports, the 2nd respondent ordered three enquiries under Section 81 of the Act for the periods 2000-2001 on 02.02.2005, 2001-2002 on 18.02.2005 and 2002-2003 & 2003-2004 together on 14.03.2005, to enquire with regard to allegations reported in the Audit Special Reports. Based on the reports submitted, action has been taken against the erring officials, including the petitioner and criminal complaint is given against the petitioner and others to the Superintendent of Police, Commercial Crime Investigation Wing, Chennai. A criminal case is registered and the same is still pending.

4(iii).Subsequently, the 2nd respondent received Audit Special reports from the Assistant Director of Audit, Cuddalore, regarding malpractices that were committed in the 4th respondent Society for the years 2004-2005 and 2005-2006. The Supervising Cooperative Sub Registrar of the 4th respondent Society inspected the Society and reported to the 2nd respondent regarding certain



malpractices that were committed in the 4th respondent Society. Hence, the 2nd respondent, on 09.08.2018, ordered another enquiry based on the Audit Special report for the years 2004-2005 and 2005-2006 and the Special Report of Supervising Cooperative Sub Registrar of the 4th respondent Society, to enquire about the present stage of the mortgaged deeds of pending loans which are not covered in the previous surcharge and criminal proceedings. As per the order of the 2nd respondent dated 09.08.2018, the Enquiry Officer conducted enquiry and filed impugned report dated 04.03.2019. Section 81 enquiry earlier ordered was for the different periods. The present enquiry ordered on 09.08.2018 is for the periods viz., 2004-2005 and 2005-2006 and prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the entire materials available on record.

6. The petitioner has come out with the present Writ Petition challenging the enquiry report submitted based on the enquiry under Section 81 of the Act ordered by the 2nd respondent on 09.08.2018. According to the petitioner, the said enquiry and enquiry report are invalid and illegal, on the ground that already an enquiry under Section 81 of the Act was ordered and conducted and Enquiry Officer had filed his report. The 2nd respondent has no power to order second enquiry for the very same period for the very same irregularities alleged to have been committed by the petitioner and others. On the other hand, the learned Government Advocate appearing for the respondents referring to the counter affidavit filed by the 2nd respondent, contended that earlier, enquiries were conducted under Section 81 of the Act for different periods viz., (2000-2001), (2001-2002) and (2002-2003 & 2003-2004). Based on the reports submitted by the Enquiry Officer, action has been taken against the petitioner and others, including criminal complaint given to the Superintendent of Police, Commercial Crime Investigation Wing, Chennai, to take prosecution against the petitioner and others. Based on the complaint, the Inspector of Police, Commercial Crime Investigation Wing, Cuddalore, registered a complaint against the petitioner and others. The said case is still pending.

7. The present enquiry under Section 81 of the Act is for subsequent periods viz., 2004-2005 and 2005-2006. Whether Registrar or his delegated Officer, the 2nd respondent is prohibited from ordering and conducting more than one enquiry under Section 81 of the Act is the issue to be decided in the present Writ Petition.



8. The Registrar of Cooperative Societies has over all control over all the Cooperative Societies situated within the State of Tamil Nadu. He has both supervisory as well as administrative control over all the Cooperative Societies in the State of Tamil Nadu. He has power to verify whether Cooperative Societies are properly managed or whether there is any mismanagement, misappropriation of funds and whether there is any corrupt practice in the affairs of the Cooperative Societies. For such verification, the Registrar derives power under Section 81 of the Act. Section 81 of the Act reads as follows:

"81. Inquiry.-

(1) The Registrar may, of his own motion and shall, on the application of a majority of the board or of not less than one-third of the members or on the request of the financing bank or of the District Collector, hold an inquiry, or direct some person authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financing 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.

(2) The Registrar or the person authorized by him under sub-section (1) shall have the following powers, namely:-

(a) He shall at all reasonable times have free access to the books, accounts, documents, security, cash and other properties belonging to, or in the custody of the society and may summon any person in possession of, or responsible for the custody of, any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the head quarters of the society or any branch thereof.

(b) Where any person summoned under clause (a) fails or refuses to produce any record or property of the registered society as specified in the summons, any Metropolitan Magistrate or any Judicial Magistrate of the first class in whose jurisdiction the office of such society or the records and properties of such society is or are situated, shall, on application by the Registrar, or the



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person authorized by him under sub-section (1), direct the delivery to the Registrar of such person of the possession of the records and properties of such society. Provided that no such application shall be made by the person authorized under sub-section (1) without the previous sanction of the Registrar.

(c) He may seize the books, accounts or documents of the society, if he considers that such seizure is necessary to ensure the safety of such books, accounts or documents or to facilitate his inquiry, and shall give the person from whose custody the books, accounts or documents have been seized a receipt for the same: Provided that the books, accounts or documents seized shall be retained by him only for so long as may be necessary for their examination and for the purpose of inquiry: Provided further that the books, accounts or documents seized shall not be retained for more than three months at a time except with the permission of the next higher authority.

(d) He may summon any person who, he has reason to believe, has knowledge of any the affairs of the society and may examine such person on oath and may summon any person to produce any books, accounts or documents belonging to him or in his custody if the Registrar, or the person authorized as aforesaid has reason to believe that such books, accounts or documents contain any entry relating to transactions of the society.

(e) (i) He may, notwithstanding any rule or by-laws specifying the period of notice for a general meeting of the society or for a meeting of the board, require any officer or officers of the society to call a general meeting or a meeting of the board at such time and place at headquarters of the society or any branch thereof to consider such matters as may be specified by him and the provisions of sub-clauses (i) and (ii) of clause (b) of sub-section (4) of section 32 shall apply to any meeting



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called under this sub-clause as if it were a meeting called in pursuance of a requisition under clause (a) of sub-section (3) of that section. (ii) If the officer or officers of the society refuses or refuse or fails or fail to call such meeting or if in the opinion of the Registrar there is no board or officer of officers competent under this Act, the rules or the by-laws to call such meeting, or if there be an order of the Registrar or of the Civil Court restraining the board to function, the Registrar or the person authorized by him under sub-section (1) shall have power to call the meeting himself and provisions of clause (b) of sub-section (4) of section 32 and sub-section (5) of that section shall apply to such meeting as if it were a meeting called under clause (a) of the said sub-section (4).

(3) When an inquiry is held under this section, the Registrar shall within such time as may be prescribed communicate the result of the inquiry- (i) In case the Government have subscribed directly to the share capital of the registered society or in case any moneys are due from the registered society either to the Principal State Partnership Fund or to the Subsidiary State Partnership Fund referred to in Chapter VI, to the Government or to any officer appointed by the Government in this behalf; (ii) to the financing bank, if any, to which the society is affiliated, and. (iii) to the society concerned.

(4) The inquiry shall be completed within a period of three months from the date of ordering the inquiry or such further period or periods not exceeding three months as a time as the next higher authority may permit provided that such extended periods shall not exceed six months in the aggregate. (5) It shall be competent for the Registrar to withdraw any inquiry from the person authorized by him under sub-section (1) and to hold the inquiry himself or entrust it to any other person as he deems fit.

(6) The Registrar may, by order in writing, direct the registered society or any officer of the society or its financing bank to take such action as may be specified in the order to remedy, within such time as may be specified therein, the



defects, if any, disclosed as a result of the inquiry."

As per this Section, the Registrar, on his own motion or any complaint received from the persons mentioned in the Section, can himself conduct enquiry or authorize any other person to conduct enquiry. The Enquiry Officer has power to seize the document of the Societies in which, he is conducting enquiry, summon persons to appear before him and produce documents in their custody, which are necessary for the enquiry under Section 81 of the Act. There is no prohibition in the said Section that only one enquiry can be conducted in respect of the particular Society under Section 81 of the Act. When an enquiry was ordered, conducted and report was filed for a particular period in respect of certain irregularities and other misconducts mentioned in Section 81 of the Act, subsequently, when it is brought to the knowledge of Registrar of Cooperative Societies with regard to misconduct, irregularities, etc., for a subsequent period, it is open to the Registrar to order another enquiry in respect of subsequent period and subsequent irregularities, etc. The Registrar has power to order more than one enquiry for the subsequent periods. The power of Registrar under Section 81 of the Act is both statutory as well as administrative. The only prohibition is that the Registrar cannot order more than one enquiry for the very same period and for the very same irregularities, when an enquiry was ordered and conducted and report was submitted to the Registrar. The Registrar cannot go on ordering enquiry after enquiry for the very same alleged irregularity till he gets a favourable report against the Board of Directors and employees of the Society.

9. In this background, it has to be considered whether the present enquiry was ordered for the very same period for which, an enquiry was conducted and report filed. The 2nd respondent, in his counter affidavit, has stated that earlier three enquiries were conducted for different periods viz., (2000-2001), (2001-2002) and (2002-2003 & 2003-2004). The 2nd respondent came to know about the irregularities committed by the petitioner and others from the Special Audit report submitted by the Assistant Director of Audit, Cuddalore. Further, the Supervising Cooperative Sub Registrar also gave a report after verifying the affairs of the 2nd respondent Society. The alleged irregularities are for subsequent periods viz., 2004-2005 and 2005-2006. When the Board of Directors, Officers and employees of Society repeatedly committed irregularities year after year, they cannot claim that once enquiry is conducted, the Registrar has no power to order another enquiry for subsequent period or for some other irregularity, misappropriation, etc.



10. The enquiry under Section 81 of the Act is a fact finding enquiry, so as to enable to take action against the erring persons by initiating surcharge proceedings, disciplinary proceedings and even criminal proceedings based on the report of the Enquiry Officer. The enquiry contemplated under Section 81 of the Act is to find out if there is any irregularities, misappropriation, etc., in conducting the affairs of the Society. The enquiry and follow up action is for the benefits of the members of the Society and the Board of Director or Officers of the Society have no right to challenge ordering enquiries for different periods and for subsequent misconducts and irregularities. When the 2nd respondent has subsequently mentioned the periods for which earlier enquiries were conducted and present enquiry for subsequent periods i.e., 2004-2005 and 2005-2006 the petitioner has not denied the same by filing reply. For the above reason, the Writ Petition is devoid of merits and liable to be dismissed.

11. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

gsa
To

1. The Registrar of Co-operative Societies (Housing),
Tamil Nadu Co-operative Housing Federation Building,
1st Floor, No.48, Ritherdon Road, Vepery,
Chennai 600 007.
2. The Deputy Registrar of Co-operative Societies (Housing),
No.26, Therku Kavarai Theru,
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3. The Inquiry Officer,
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4.The President,
E-2729, Public Servants Co-op.,
Housing Building Society,
No.2, Abdul Kadar Lane,
Manjakuppam, Cuddalore,
Cuddalore District.

+1 cc to Government Pleader Sr.NO. 20352

+1 cc to Mr.M.Kaviveerappan, Advocate Sr.NO. 19658

W.P.No.7572 of 2021

PA(CO)

A.SK(13/04/2022)