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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2022

C O R A M

THE HON'BLE MS.JUSTICE V.M.VELUMANI

W.P.NO.26434 OF 2021

AND

W.M.P.NOS.27902 & 27904 OF 2021

V.Joseph Manoharan,
President,
Videsh Sanchar Nigam Employees
Co-operative Housing Society,
No.4, Swamy Sivananda Salai,
Chennai - 600 002.

...Petitioner

Vs

1.The Registrar of Cooperative Societies (Housing)
Chennai Region,
Chennai - 600 017.

2.The Deputy Registrar Cooperative Societies (Housing)
Chennai Region,
Chennai - 600 017.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records of the impugned order passed by the 2nd respondent in Na.Ka.No.770/2020/C dated 27.02.2021 and quash the same as far as the petitioner is concerned.

For Petitioner : Mr.V.Ayyadurai
Senior Counsel
for Karan and Uday

For Respondents : Mr.U.Baranidharan
Additional Government Pleader

ORDER

The petitioner has come out with the present Writ Petition challenging the impugned order passed by the 2nd respondent in Na.Ka.No.770/2020/C dated 27.02.2021 and to quash the same as far as the petitioner is concerned.



2. According to the petitioner, he is the President of Videsh Sanchar Nigam Employees Co-operative Housing Society. The Central Government after acquiring lands from the Telecommunication Limited, ordered that part of the lands should be allotted to the Society at market price. After order was passed in the Writ Petition and Writ Appeal before the High Court of Delhi, layout was formed and the same was approved. The plots were allotted to its member by draw of lot. One Komalavalli and her husband Karthikeyan made false allegations against the petitioner and others and lodged private complaint and filed Writ Petition No.26179 of 2015 seeking to initiate criminal action against the petitioner and others. The said Writ Petition filed was dismissed. After investigation, criminal complaints were closed as mistake of facts, as there was no malpractice in the allotment of house sites by the Society and earlier enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act (hereinafter referred as 'the Act'), ended stating that there were no misdeeds or malpractices happened in the allotment of the house sites to the members of the Society. While so, the 2nd respondent initiated enquiry under Section 81 of the Act on 03.06.2015 against the petitioner and others alleging that there were misdeeds in the allotment of sale of house sites by the Society. The Enquiry Officer after conducting enquiry gave a report dated 09.11.2015, stating that there was no malpractices and misdeeds happened in the allotment of house sites to the members of the Society. The 1st respondent by his proceedings dated 11.10.2017 dismissed the surcharge proceedings initiated against the petitioner and others for the same house sites allotment issue. After conclusion of all these proceedings, the 2nd respondent by impugned communication dated 27.02.2021, ordered enquiry under Section 81 of the Act, based on the audit objection of the year 2010-2011. In view of the earlier enquiry under Section 81 of the Act, inspection under Section 82 of the Act, closure of criminal complaints, dismissal of Writ Petition and dismissal of surcharge proceedings initiated against the petitioner and others by the 1st respondent, the petitioner is seeking to quash the impugned communication of the 2nd respondent and the enquiry under Section 81 of the Act.

3. The learned Senior Counsel appearing for the petitioner submitted that the 2nd respondent cannot repeatedly order enquiry under Section 81 of the Act for the very same alleged irregularities. Once the petitioner and others are exonerated, it is not open for the respondents to initiate another enquiry. The interest of the respondents is somehow or the other to implicate the petitioner and others in the alleged irregularities and hence prayed for setting aside the impugned order of the 2nd respondent.



4.Mr.U.Baranidharan, learned Additional Government Pleader appearing for the respondents submitted that as per the impugned order enquiry was conducted by the Enquiry Officer and the petitioner appeared before the Enquiry Officer on two occasion i.e on 29.07.2021 and 23.08.2021 and the Enquiry Officer conducted enquiry and concluded enquiry proceedings and filed report on 03.09.2021, recommending disqualification under Section 36 of the Act and to initiate criminal proceedings against the petitioner and others and also to re-open the surcharge proceedings, which was closed earlier and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents and perused the materials on record.

6.In the present Writ Petition, the petitioner is challenging the impugned order of the 2nd respondent ordering an enquiry under Section 81 of the Act based on the audit objection and appointment of Enquiry Officer. From the materials referred to above, it is seen that already one enquiry under Section 81 of the Act and one inspection under Section 82 of the Act were ordered and conducted by the respondents. In all the above proceedings, the Enquiry Officer and Investigation Officer filed report stating that there is no malpractice in the allotment of house site by the petitioner and others. It is also seen that the complaint given by one Komalavalli, member of the society as well as complaint given by her husband Karthikeyan were investigated and closed as mistake of facts. Further, W.P.No.26179 of 2015 filed by one Karthikeyan, husband of Komalavalli, to initiate criminal action against the petitioner and others, by the order dated 21.08.2015 was dismissed by the Hon'ble First Bench of this Court. In spite of the above proceedings, wherein it has been held that there is no malpractice in allotting plots by the petitioner and others, the present impugned order issued by the 2nd respondent ordering enquiry under Section 81 of the Act, is baseless and frivolous. The authority cannot go on initiating proceedings under Section 81 of the Act for the very same alleged irregularities. The contention of the learned Senior Counsel appearing for the petitioner that the present enquiry was ordered with ulterior motive to somehow or the other to implicate the petitioner and others in the alleged irregularities has considerable force and the same is acceptable.

7.For the above reason, the impugned order dated 27.02.2021 passed by the 2nd respondent is liable to be quashed and is hereby quashed. In view of the impugned order is being quashed, the enquiry report dated 03.09.2021 also automatically becomes invalid and illegal and consequently enquiry report dated 03.09.2021 is also quashed.



8. With the above observations, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To:

1. The Registrar of Cooperative Societies (Housing)
Chennai Region,
Chennai - 600 017.

2. The Deputy Registrar Cooperative Societies (Housing)
Chennai Region,
Chennai - 600 017.

+2ccs to M/s. Karan & Uday, Advocate Sr.No.25040

+1cc to the Government Pleader Sr.No.25491

W.P.No.26434 of 2021

VG-II (CO)
RVM(23/05/2022)