



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2022

C O R A M

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

W.P.NO.26053 OF 2021

P.Vasantharajan

...Petitioner

Vs

1. The Registrar of Co-operative Society (Housing)
No.48, Rithdren Road,
Vepery, Chennai - 600 007.
2. The Deputy Registrar of Cooperative Societies (Housing)
Chinthamani Complex,
North Coimbatore,
Coimbatore - 641 002.

... Respondents

Prayer Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent dated 13.09.2019 made in Na.Ka.No.1839-2014 sa.pa(1) and quash the same and consequently direct the respondents to refund the amount of Rs.4,00,000/- together with interest at the rate of 24% per annum from 08.10.2014 which was deposited in pursuance to the interim order passed in M.P.No.2 of 2014 in W.P.No.24149 of 2014 dated 08.09.2014.

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents : Mr.U.Baranidharan
Additional Government Pleader
(Co-op)

ORDER

This Writ Petition is filed seeking to call for the records of the 2nd respondent dated 13.09.2019 made in Na.Ka.No.1839-2014 sa.pa(1) and quash the same and consequently direct the respondents to refund the amount of Rs.4,00,000/- together with



interest at the rate of 24% per annum from 08.10.2014 which was deposited in pursuance to the interim order passed in M.P.No.2 of 2014 in W.P.No.24149 of 2014 dated 08.09.2014.

2. Heard the learned counsel appearing for the petitioner as well as Mr.U.Baranidharan, learned Additional Government Pleader (Co-op) appearing for the respondents.

3. According to petitioner, he was working as Special Officer/Additional Charge of the Peelamedu Industrial Workers Building Society from 25.05.2001 to 26.04.2002 and from 01.08.2009 to 22.08.2009. While so, an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter referred as 'the Act') was ordered by the 2nd respondent pertaining to the irregularities in the sale of plots during the years 2005 to 2007. The Enquiry Officer filed a report stating that the loss caused to the Society was to the tune of Rs.1,07,64,391/-. However, there is no finding against the petitioner in the enquiry report. Subsequently, the 1st respondent ordered second enquiry for the period from 2001 to 2008. In the second enquiry, the petitioner's name was included in the prosecution report. Challenging the second enquiry report dated 21.08.2011, the petitioner filed W.P.No.24149 of 2014 and this Court vide order dated 08.09.2014 in M.P.No.2 of 2014 in W.P.No.24149 of 2014, directed the respondents not to launch criminal prosecution against the petitioner herein alone on condition that the petitioner deposits a sum of Rs.4,00,000/- before the 2nd respondent. The petitioner complied with the said order. The Society lodged a criminal complaint before CCIW, CID, Coimbatore and the same was received by the Inspector of Police, CCIW, CID, Coimbatore. After the completion of investigation, CCIW, CID, Coimbatore filed a report stating that misappropriation was only to the extent of Rs.51,98,530/- and charge sheet was also filed in C.C.No.22/2016, 23/2016 before Coimbatore District Court and the said case is under trial. The petitioner's name was not included in the chargesheet. Subsequently, the 2nd respondent initiated proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, 1987 to the tune of Rs.50,91,575/- and the surcharge order was passed on 28.08.2015. The petitioner's name was not included either in the surcharge notice or in the surcharge order. Meanwhile, the petitioner gave representation dated 07.12.2017, requesting the 2nd respondent to refund a sum of Rs.4,00,000/- deposited by him. Since the 2nd respondent has not passed any order, the petitioner filed Writ Petition in W.P.No.3352 of 2019 for refund of the deposit. This Court, vide order dated 25.02.2019, directed the 2nd respondent to consider the representation of the petitioner and pass orders on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of that



order. The 2nd respondent by the impugned order dated 13.09.2019 refused to refund the amount to the petitioner on the ground that the proceedings under Section 90 of the Act, is being contemplated for recovery of balance amount of Rs.56,72,816/-. Challenging the said rejection order, the petitioner has come out with the present Writ Petition.

4.The learned counsel appearing for the petitioner submitted that the alleged loss has occurred during the years 2002 - 2008. The respondents have failed to initiate proceedings under Section 90 of the Act within a period of six years and the reason given in the impugned order is invalid and prayed to allow the Writ Petition.

5.Mr.U.Baranidharan, learned Additional Government Pleader appearing for the respondents filed counter affidavit and submitted that the period of limitation for initiating proceedings under Section 90 of the Act is six years, but if sufficient cause is shown before the Registrar, the Registrar may admit the dispute even after the expiry of the period of limitation, if the applicant satisfies the Registrar that he had sufficient reason for the delay. The learned Additional Government Pleader further submitted that the proceedings under Section 90 of the Act was already initiated and the 2nd respondent after satisfying with sufficient reason has taken the dispute on the file of ARC.No.53/2021-2022. Till the disposal of the ARC.No.53/2021-2022, the petitioner is not entitled for the refund of Rs.4,00,000/-. In view of the pendency of ARC, the reason given in the impugned order by the 2nd respondent is valid and prayed for the dismissal of the Writ Petition.

6.From the above materials, it is seen that the petitioner is seeking for refund of Rs.4,00,000/- deposited by him, on the ground that after the completion of investigation, the CCIW, CID, Coimbatore held that misappropriation was only to the extent of Rs.51,98,530/-. The learned counsel appearing for the petitioner has stated that the 2nd respondent has also initiated surcharge proceedings against the person responsible for the loss and no surcharge proceedings under Section 89 or 90 of the Act was initiated against the petitioner. On the other hand, the learned Additional Government Pleader furnished the details of dispute raised by the Society under Section 90 of the Act in ARC against the petitioner, which is pending. In view of the pendency of ARC.No.53/2021-2022, the petitioner is not entitled to refund of the deposit amount of Rs.4,00,000/-. For the above reason, the impugned order dated 13.09.2019 passed by the 2nd respondent does not require any interference. The alleged loss caused to the Society is during 2002-2008. Therefore, the 2nd respondent is directed to dispose of the ARC.No.53/2021-2022 as



expeditiously as possible, preferably within a period of three (3) months from the date of receipt of a copy of this order.

7. With the above observations, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To:

1. The Registrar of Co-operative Society (Housing)
No.48, Rithdren Road,
Vepery, Chennai - 600 007.
2. The Deputy Registrar of Cooperative Societies (Housing)
Chinthamani Complex,
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+1cc to the Special Government Pleader, S.R.No.12776

W.P.No.26053 of 2021

SKM(CO)

RLP (22/03/2022)