

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.4709 of 2020

R.Bakthavachalu
Petitioner

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Vs

1.The liquidation Officer Avl/Additional Registrar
Thirukovilur Taluk,
Co-op Hosing Society ltd, (Liquidated)
Office of the Deputy Registrar
of Co-op. Housing Society,
South Kavari Naidu Street,
Manjakuppam and Post, Cuddalore.

2.The Deputy Registrar of Co-operative Housing Societies,
South Kavari Naidu Street,
Manjakuppam and Post, Cuddalore.

3.The Managing Director,
The Tamil Nadu Co-operative Housing
Federation Limited,
No.40, Ritherdon Road,
Vepery, Chennai-600 007.

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of

India,praying to issue a writ of certiorarified mandamus calling for the record relating to the proceedings of the 1st respondent in Na.Ka.No.1156/2019 Sa Pa dated 08.01.2020 and quash the same and consequently directing the 1st respondent to settle the terminal benefits with 18 % interest.

For Petitioner : Mr.Mr.V.Sivalingam
for MC.S.Associates

For Respondents 1 &2 : Mr.P.Sanjev Gandhi
Government Advocate

For Respondent 3 : Ms.Kanmani Annamalai

ORDER

The writ petition has been filed to quash the impugned proceedings in Na.Ka.No.1156/2019 Sa Pa dated 08.01.2020 passed by the 1st respondent and consequently direct the 1st respondent to settle the terminal benefits with 18 % interest.

2. The petitioner was working as a Secretary of the 1st respondent society and he relieved from the society since it was liquidated on 07.12.2018. He sent a representation to the 1st respondent to settle his

claim, but it resulted in only a part payment and he is yet to receive the rest of his terminal benefits. Earlier, a writ petition has been filed by the petitioner seeking direction to consider his representation and the same was disposed of by giving direction to consider the representation of the petitioner within a period of 12 weeks from the date of receipt of copy of that order. Subsequently, an order has been passed by the 1st respondent vide proceedings in R.C.1156/2019 Sa.Pa dated 08.01.2020 stating that it was due to the lapse on the part of the petitioner. The financial position of the society is not sound since the society is liquidated. Due to the lapse on the part of the petitioner, they are not in a position to settle the claims made by the petitioner. It is further stated that liquidation officer will have to take into account of the assets belonging to the society and after analyzing the financial position, due action will be taken to settle the dues of the petitioner if any.

3. The learned counsel for the petitioner submitted that the 3rd respondent federation is having sufficient funds and the 1st respondent can recover the funds from the 3rd respondent and utilize the same to settle the petitioner's claim. The 3rd respondent has filed a counter affidavit stating

that he is no way responsible for the payments to the petitioner and he has been added as an unnecessary party.

4. The learned Government Advocate appearing for the 1st and 2nd respondents submitted that any decision for making payment to the petitioner can be taken only based on the financial capability of the society.

5. The fact remains that the society has been liquidated.

6. The impugned proceedings stated that liquidation was prompted in view of the irresponsible action of the petitioner. There is no specific allegation made against the petitioner. The allegation are not specific that the petitioner had misappropriated any funds and on that score no surcharge proceedings have also been initiated against the petitioner. In such case, the petitioner's claim ought to have been considered by the respondents. The 1st respondent has stated that he did not have any funds. However, it is seen from the records that the 3rd respondent has funds. So, it is open to the 1st and 2nd respondents to make recovery from the 3rd

respondent and utilize the funds for settling the terminal benefits of the petitioner, for which he is entitled to.

7. With the above observations, this writ petition is disposed of. No costs.

09.10.2023

Index: Yes/No
Internet: Yes/No
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To

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