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W.P. Nos. 7382, 8515 and 9916 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 7382, 8515 and 9916 of 2023

and

W.M.P. Nos. 7465 to 7467, 8702, 8703, 9963 and 9965 of 2023

W.P. No. 7382 of 2023:-

1. R.Veeramani
2. G.N.Kamalanaban
3. V.R.Prakash
4. R.Tamilselvi
5. A.Abdul Wahaf
6. M.P.Paramaguru
7. B.Asaimani
8. M.Krishnan
9. M.Devi
- 10.S.Arivalazhagan
- 11.A.Ilayakrishnan
- 12.R.Neelakandan

... Petitioner in W.P. No.7382/2023

R.Jayakumar

... Petitioner in W.P. No. 8515/2023

V.Nithyanandam

... Petitioner in W.P. No. 9916/2023

-VS-

1. The Deputy Registrar of
Co-operative Societies (Housing)
Chennai Region
No.55, Medavakkam Tank Road
Kilpauk, Chennai – 600 010.



W.P. Nos. 7382, 8515 and 9916 of 2023

2. The Chennai Metropolitan
Co-operative Housing Society Ltd.
Rep. By its Deputy Registrar /Managing Director
No.50 Ritherton Road
Chennai – 600 007.

... Respondents in all Wps

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue Writs of Certiorarified Mandamus, calling for the records of the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act, dated 06.10.2022 on the file of the First Respondent and consequential surcharge notice issued by the First Respondent Na.Ka.382/2017/k dated 23.01.2023 quash the same insofar as the Petitioners are concerned and direct the First Respondent not to precipitating any penal action under the criminal law against the Petitioners pursuant to the enquiry report under Section 81 of the Act dated 06.10.2022.

For Petitioners	: Mr. M.S.Palaniswamy (In all Wps)
For Respondents (In all Wps)	: Mr. J.Ravindran, AAG (R1) Assisted by Mr. U.Baranidaran, AGP Mr. M.Murali (R2)

COMMON ORDER

Heard Mr. M.S.Palaniswamy, Learned Counsel for the Petitioners and Mr. J.Ravindran, Learned Additional Advocate General assisted by Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the First Respondent and Mr. M.Murali, Learned Counsel for the Second



W.P. Nos. 7382, 8515 and 9916 of 2023

Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. These Writ Petitions challenge the report of enquiry dated 06.10.2023 conducted relating to the affairs of the Second Respondent, viz., Chennai Metropolitan Co-operative Housing Society Ltd., under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, (hereinafter referred to as 'the TNCS Act' for short) and the notice for enquiry issued in the consequential surcharge proceedings in Na.Ka. No.382/2017/K dated 23.01.2023 issued by the First Respondent under Section 87 of the TNCS Act.

3. The pivotal attack of the Learned Counsel for the Petitioners on the impugned proceedings is that the Managing Director of the Second Respondent, viz., Thiru. Ku.Venkatesan, is also functioning as the First Respondent, which element of bias, would vitiate the entire proceedings relying on the ruling of the Division Bench of this Court in ***P.Venkatachalam -vs- Special Tribunal for Co-operative Cases*** [1996 - 2 - MLJ 69]. In response, Learned Additional Advocate General appearing for the Respondents, on instructions, informs that instead of the said Thiru. Ku.Venkatesan, the proposed enquiry would be conducted by Thiru. R.Sivaraj, now functioning as



W.P. Nos. 7382, 8515 and 9916 of 2023

Regional Deputy Registrar (Housing), Cuddalore. In such circumstances, the said grievance ventilated by the Petitioners has ceased to exist and Learned Counsel for the Petitioners accepts that all other contentions could be raised before the concerned authority.

4. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in ***Union of India -vs- Kunisetty Satyanarayana*** [(2006) 12 SCC 28] that a charge memo or show cause notice cannot be challenged before the completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion. It would be useful here to extract the relevant passages from the said decision which read as follows:-

*“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide **Executive Engineer, Bihar State Housing Board -vs- Ramdesh Kumar Singh** [JT 1995 (8) SC 331], **Special Director -vs- Mohd. Ghulam Ghouse** (AIR 2004 SC 1467), **Ulagappa -vs- Divisional Commissioner, Mysore** [2001(10) SCC 639], **State of U.P. -vs- Brahm Datt Sharma** (AIR 1987 SC 943) etc.*

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is



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that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if



W.P. Nos. 7382, 8515 and 9916 of 2023

it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioners from raising the contentions in these Writ Petitions in their respective explanations to be submitted to the First Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for the Court to interfere at this pre-mature stage of the matter.

5. In such circumstances, this Court without expressing any view on the merits of the controversy involved in the matter, passes the following order:-

- (i) it shall be incumbent upon the Petitioners to submit their respective explanations to the notices, which are impugned in the Writ Petitions, if not done already, to the concerned authority by 06.11.2023;
- (ii) in the event of not being satisfied with the explanations submitted by the Petitioners, an enquiry shall be conducted following the prescribed procedure after affording full opportunity of personal hearing to the Petitioners and all other persons concerned to explain their position in that regard and a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment; and



W.P. Nos. 7382, 8515 and 9916 of 2023

(iii) if any adverse decision is taken, the Petitioners may pursue legal

remedies before the proper forum in the manner recognized by law.

In the result, these Writ Petitions are disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

18.10.2023

NCS : Yes/No

Index: Yes/No

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Note: Issue order copy by 30.10.2023.

To

1. The Deputy Registrar of
Co-operative Societies (Housing)
Chennai Region
No.55, Medavakkam Tank Road
Kilpauk, Chennai – 600 010.
2. The Chennai Metropolitan
Co-operative Housing Society Ltd.
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P.D. AUDIKESAVALU, J.

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W.P. Nos. 7382, 8515 and 9916 of 2023

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