



W.P.No.15305 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 13.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.15305 of 2024
and W.M.P.No.16629 of 2024

S.Ramakrishnan

.. Petitioner

Versus

The Registrar of Cooperative Societies,
No.170, Periyar E.V.R High Road,
Kilpauk,
Chennai - 10.

.. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in Na.Ka.No.71321/2013 Ona2, dated 09.01.2024 and consequential letter Na.Ka.2937/2024 Ona1, dated 20.05.2024 quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondent : Mr.R.Neelakandan,
Additional Advocate General,
Assisted by Mr.R.P.Murugaraja,
Government Advocate



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ORDER

This Writ Petition is filed challenging the impugned order, dated 09.01.2024 i.e., a show-cause notice issued under Rule 17(a) of the *Tamil Nadu Civil Services (Discipline and Appeal) Rules* and the consequential letter, dated 20.05.2024.

2. The petitioner was working as an Additional Registrar of Co-operative Societies. The allegation against the petitioner is that during the year 2016, he sought permission for the purchase of a flat at a total cost of Rs.52,01,666/- admeasuring 1525 Sq.ft. The petitioner made an application on 05.08.2013. After verification, permission was duly granted to him. Thereafter, when the petitioner submitted all the documents, it was seen that the petitioner had obtained a sale deed for an undivided share as on 21.06.2013 which was prior to making his application. The said action of the petitioner amounts to misconduct as per Rules 7(1) and 7(1)(b) of the *Tamil Nadu Government Servants' Conduct Rules*. Therefore, proposing to impose a minor punishment, the show-cause notice was issued.



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3. *Mr.M.S.Palaniswamy*, learned Counsel for the petitioner contends that firstly, it can be seen that there was no suppression of acquisition of the property. Even before obtaining the keys of the flat, the petitioner applied for permission by the application, dated 05.08.2013 and initially, at the time of entering into the construction agreement itself, the UDS was registered. Everything has been duly reported by the petitioner. There is a huge unexplained delay of more than 11 years in initiating Disciplinary Proceedings and therefore, according to him, the proceedings have to be dropped.

4. Considering the nature of the case, this Court permitted *Mr.R.P.Muruganraja*, learned Government Advocate to take notice for the respondent. Today, *Mr.R.Neelakandan*, learned Additional Advocate General appeared for the respondent and argued the matter based on the written instructions. According to him, obtaining of the sale deed for the UDS share amounted to acquiring the property. As per the *Tamil Nadu Government Servants (Conduct & Appeal) Rules*, prior permission of the respondent Department is required before acquiring the property. The petitioner is a Group - I Officer who has knowledge of the Rules. When he



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chose to apply for permission on 05.08.2013, he ought not to have obtained the sale deed even prior to the permission being granted. When the said action of the respondent is a misconduct, the show-cause notice is rightly issued for imposition of a minor punishment. In any event, the punishment will be issued only after hearing the views of the petitioner and therefore, at this stage, this Court cannot interfere.

5. As far as delay is concerned, the learned Additional Advocate General submits that the petitioner himself has submitted all the documents only in the year 2019. Upon verification thereof, immediately, a letter, dated 08.01.2019 was issued to the petitioner requesting him to explain his conduct. There was no reply on behalf of the petitioner. Thereafter, three more communications, dated 28.08.2019, 11.02.2020 and 25.08.2020 were issued to the petitioner, but, there was no reply from the petitioner. When repeated communications were issued to the petitioner and the petitioner did not reply for the same, the delay was not on the part of the Department, but, that of the petitioner. When the delay is explained by the Department, this Court need not interfere.



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6. I have considered the rival submissions made on either side and perused the material records of the case.

7. This Court considers the nature of the allegations. It is not that the petitioner purchased the flat admeasuring 1525 Sq.ft without prior permission. In the process, he made an application and the permission was also granted. The allegation is that the sale deed, in respect of the UDS, precedes the date of application of the petitioner. The same is kept in the background. In this background, the question of delay has to be considered.

8. The contention of the learned Counsel for the petitioner is that there is a delay of 11 years in issuing a show-cause notice. However, the learned Additional Advocate General submitted that the Department has explained it by saying that only in the year 2019, all the documents were submitted and were taken up for scrutiny. From the year 2019 to 2021, consistently, notices have been issued to the petitioner. It can be seen that communication was issued on 05.08.2021 detailing all the above including quoting of concerned provisions in the *Conduct Rules*. Thus, it can be clear that there is an unexplained delay from the year 2021 to the year 2024. The



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question of delay has to be normally taken up and considered by this Court while considering the prejudice of the employee with reference to the gravity of the allegations. The respondent themselves have chosen to initiate the Disciplinary Proceedings as minor penalty proceedings and the facts have already been adverted to.

9. Considering the facts and lapse in time in giving the show-cause notice, the petitioner will not be able to muster all the evidence to prove circumstances, in which he got the sale deed, before the respondent, I hold that there will be a consequential prejudice to the petitioner to face the Disciplinary Proceedings at this point of time. When the delay results in prejudice and the charge is not a serious one, it is a case for interference of this Court. Accordingly, I am of the view that in view of the unexplained delay from the year 2021-2024, the impugned proceedings have to be interfered.

10. In view thereof, this Writ Petition is allowed and the impugned order in Na.Ka.No.71321/2013 Ona2, dated 09.01.2024 and the consequential letter in Na.Ka.No.2937/2024 Ona1, dated 20.05.2024 shall



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stand quashed. There shall be no order as to costs. Consequently,
connected miscellaneous petition is closed.

13.06.2024

Neutral Citation : yes
grs

To

The Registrar of Cooperative Societies,
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Kilpauk, Chennai - 10.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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