

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 5389 of 2015 (W)

PETITIONER:

M.C MATHEW,
S/O LATE CHACKO, MANKUZHAKARI SHINE NIVAS,
THANNEERMUKKOM PO, CHERTHALA,
ALAPPUZHA DISTRICT-688 527

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR
SRI.JAIBY PAUL

RESPONDENTS:

1. THE THANNEMUKKOM WEST, VYAVASAYA CO-OPERATIVE SOCIETY LTD
NO.A. 833, REPRESENTED BY ITS SECRETARY,
THANNEERMUKKOM P.O., ALAPPUZHA DISTRICT, PIN-688 527.
2. THE BOARD DIRECTORS OF THE THANNERMUKKOM
WEST COIR VYAVASAYA CO-OPERATIVE SOCIETY
NO.A-833, REPRESENTED BY ITS PRESIDENT,
THANNEERMUKKOM P.O., ALAPPUZHA DISTRICT -688 527
3. THE PROJECT OFFICER,
(COIR) PROJECT OFFICE, COIR CORPORATION BUILDING,
ALAPPUZHA 688 001
4. THE DIRECTOR OF COIR DEVELOPMENT, DIRECTORATE OF
COIR DEVELOPMENT,
COIR BHAVAN, NANDAVANAM, PALAYAM,
THIRUVANANTHAPURAM 695 033

R1-R2 BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
R1-R2 BY ADV. SMT.N.SANTHA
R1-R2 BY ADV. SRI.K.A.BALAN
R1-R2 BY ADV. SRI.PETER JOSE CHRISTO
R1-R2 BY ADV. SRI.S.A.ANAND
R BY SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBITP1: A TRUE COPY OF THE ORDER NO. C3/2602/2010 DATED 04.05.2011 OF THE 3RD RESPONDENT.

EXHIBITP2: A TRUE COPY OF THE INSPECTION REPORT DATED 15.5.2012, SUBMITTED BY THE LIAUIDATION INSPECTION (COIR), PROJECT OFFICE (COIR), ALAPPUZHA.

EXHIBIT P3: A TRUE COPY OF THE ORDER NO.C.S. 1/5434/11 DATED 17.6.2013 OF THE 4TH RESPONDENT.

EXHIBIT P4: A TRUE COPY OF THE G.O.(RT). NO.1438/2013/IND DATED 16.11.2013.

EXHIBIT P5: A TRUE COPY OF THE JUDGMENT IN WPC NO.28972 OF 2013 DATED 17.11.2014.

EXHIBIT P6:A TRUE COPY OF THE JUDGMENT IN WA NO.40 OF 2015 DATED 13.1.2015.

EXHIBIT P7: A TRUE COPY OF THE APPLICATION FILED BY SRI. V. BABU, UNDER THE RTI ACT DATED 25.11.2014.

EXHIBIT P8: A TRUE COPY OF THE REPLY ISSUED UNDER THE RTI ACT DATED 18.12.2014.

EXHIBIT P9: A TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER, UNDER THE RTI ACT DATED 7.2.2015.

EXHIBIT P10: A TRUE COPY OF THE REPRESENTATIN FILED BY SRI. V.BABU BEFORE THE 3RD RESPONDENT DATED 7.2.2015.

EXHIBITP11: TRUE COPY OF THE EXTRACT OF THE MINUTES OF THE SPECIAL GENERAL BODY MEETING OF THE 1ST RESPONDENT SOCIETY HELD ON 08.10.2011 OBTAINED UNDER THE RTI ACT.

EXHIBIT P11(a): COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P11.

EXHIBIT P12: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT IN I.A.NO. 1227 OF 2014 IN W.A. NO. 40 OF 2014 DATED 06.01.2015.

EXHIBIT P13: TRUE COPY OF THE RELEVANT PORTION OF THE PRELIMINARY VOTERS LIST OF THE 1ST RESPONDENT SOCIETY PUBLISHED IN CONNECTION WITH THE ELECTION HELD ON 30.11.2013 ALONG WITH ENGLISH TRANSLATION.

EXHIBIT P14: TRUE COPY OF THE COMMUNICATION SENT BY THE 3RD RESPONDENT TO THE PETITIONER DATED 07.08.2015.

EXHIBIT P14(a): COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P14.

RESPONDENTS' EXHIBITS: NIL

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 5389 of 2015 (W)

Dated this the 14th day of October, 2015.

JUDGMENT

Heard the learned counsel for the petitioner, the learned counsel for the respondent society and the learned Government Pleader, apart from perusing the record.

2. Initially, the incumbent managing committee was superseded through Ext.P3 order dated 17.06.2013 as a result of Ext.P2 inspection report under Section 66(1) of the Kerala Co-Operative Societies Act ('the Act' for brevity). Aggrieved, the managing committee though preferred an appeal under Section 83 of the Act, the Government rejected it through Ext.P4 order, dated 16.11.2013.

3. Further aggrieved, when the managing committee filed W.P. (C) No. 28972 of 2013, this Court through Ext.P5 judgment set aside Ext.P3 order of supersession. Essentially, this Court has found fault with Ext.P3 on the ground that the Department did not consult the Financing Bank and the Circle Co-operative Union before passing the order of supersession. At any rate, this Court has left it open for the Department to proceed further on the strength of Ext.P2 inspection report after the necessary consultation.

4. As can be seen, though the petitioner took the matter in writ appeal, a learned Division Bench of this Court, through Ext.P6 judgment, has refused to interfere with Ext.P5 judgment. Nevertheless, the learned Division Bench has further observed that if there is any delay on the part of the Department in proceeding further with the issue, the petitioner can take advantage of the observations of the learned single Judge and seek expeditious action by the Department. Under these circumstances, complaining that though this Court disposed of the writ appeal on 13.01.2015, to this day, the Department has not initiated any action against the managing committee, the petitioner has once again approached this Court.

5. The learned counsel for the petitioner has submitted that the term of the present managing committee is come to an end by 13.12.2015, and that unless expeditious action is taken by the Department, fresh elections could be held and the question of supersession or disqualification would not arise.

6. On the other hand, the learned counsel for respondents 1 and 2, the society and the Board of Directors respectively, has submitted that if there were to be a peremptory direction by this Court that the Department should act in terms of Ext.P2, of course,

keeping in view the directions of this Court in Ext.P5 judgment, it would still become a fait accompli. And the Department would rush through the proceedings to penalise the second respondent. He has, nevertheless, submitted that it is open for the Department to follow the due procedure, after affording a proper opportunity to the second respondent. In other words, it is the contention of the learned counsel for respondents 1 and 2 that the Department shall proceed in terms of Section 66 of the Act.

7. Nevertheless, in reply, the learned counsel for the petitioner has submitted that Section 66 of the Act does not contemplate any further action. According to him, further action could be taken either under Section 32 or under Section 68 of the Act.

8. Be that as it may, this Court does not intend to pronounce on the rival contentions concerning the next course of action to be taken by the Department. Suffice it to observe that in the light of the directions given by this Court in Ext.P5 and also subsequently in Ext.P6 judgments, it is for the third respondent to take further steps in the wake of Ext.P2 inspection report.

9. At this juncture, the learned Government Pleader has submitted that the third respondent will take appropriate steps based

on Ext.P2 inspection report, keeping in view the observations of this Court in Exts.P5 and P6 judgments.

10. I do see some force in the contention of the learned counsel for the petitioner that though this Court disposed of the writ appeal in January, 2015, to this day, the third respondent does not seem to have taken any steps based on Ext.P2 inspection report.

11. Allaying the apprehension of the learned counsel for respondents 1 and 2, this Court disposes of the writ petition with a direction to the third respondent to take further steps on the basis of Ext.P2 inspection report, especially keeping in view the observations in Exts.P5 and P6 judgments and take the issue to a logical conclusion, of course, after affording an opportunity to the second respondent in statutory terms.

12. It is made clear that the third respondent shall complete the process as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.

With the above observation, this writ petition stands disposed of. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

