

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No. 9535 of 2015 (N)

PETITIONER:

ANISH MATHEW KURIAKOSE, AGED 28 YEARS,
S/O. MATHEW KURIAKOSE, THEKKEKARA HOUSE,
NALUNAKKAL P.O., VAKATHANAM, KOTTAYAM DISTRICT.

BY ADVS.SRI.SAM ISAAC POTHYIL
SRI.A.S.SREEJAN

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF CO-OPERATION, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,
(ADMINISTRATION), KOTTAYAM - 686 001.
3. NALUNNAKKAL SERVICE CO-OPERATIVE BANK LIMITED NO. 296,
NALUNAKKAL P.O., VAKATHANAM, KOTTAYAM DISTRICT,
REPRESENTED BY ITS SECRETARY.
4. SECRETART TO GOVERNMENT,
HOME AND VIGILANCVE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
5. T.K. KURIAKOSE ONATTU, AGED 62 YEARS,
S/O. KURIAN, ONATTU HOUSE, NALUNAKKAL P.O.,
VAKATHANAM,
KOTTAYAM DISTRICT - 686 538 (DIRECTOR BOARD MEMBER,
NALUNAKKAL CO-OPERATIVE BANK)
6. SUNNY K. VARKEY, AGED 55 YEARS,
S/O. KURIAN VARKEY, KOCHERIL HOUSE, NALUNAKKAL P.O.,
VAKATHANAM,
KOTTAYAM - 686 538 (DIRECTOR BOARD MEMBER
NALUNAKKAL CO-OPERATIVE BANK)
7. SIBY T. MUKKADA,
AGED 56 YEARS, S/O. THOMAS,
MUKKADA HOUSE, NALUNAKKAL P.O, VAKATHANAM,

KOTTAYAM - 686 538 (DIRECTOR BOARD MEMBER
NALUNAKKAL CO-OPERATIVE BANK)

8. SHEELA SUNNY,
W/O. SUNNY K. VARKEY, KOCHERIL HOUSE, NALUNAKKAL P.O.,
VAKATHANAM, KOTTAYAM - 686 538.

9. SHERLY SIBY
W/O. SIBY T. MUKKADA, MUKKADA HOUSE, NALUNAKKAL P.O.,
VAKATHANAM, KOTTAYAM - 686 538.

10. VINCY KURIAKOSE,
W/O.T.K. KURIAKOSE ONATTU, ONATTU HOUSE,
NALUNAKKAL P.O., VAKATHANAM, KOTTAYAM - 686 538.

R3 BY ADV. SRI.S.SUBHASH CHAND
R3 BY ADV. SRI.S.JAYAKRISHNAN
R3 BY ADV. SRI.VINO V.GEORGE
R3 BY ADV. SRI.S.PARAMESWARA PRASAD
R3 BY ADV. SMT.S.USHA KUMARI
R5-R7 & R8 -R10 BY ADV. SRI. REJI GEORGE
R5-R7 BY ADV. SRI.BINOY DAVIS
R8 -R 10 BY ADV. SMT.ANUPAMA JOHNY
R BY SRI. D. SOMASUNDARAM, SPL. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT-P1-TRUE COPY OF THE MEMBERSHIP IDENTITY CARD ISSUED FROM NALUNAKKAL SERVICE CO-OPERATIVE BANK LIMITED.

EXHIBIT-P2-TRUE COPY OF THE SALE DEED NO. 2865/2011 OF THENGANA SUB REGISTRAR'S OFFICE DATED 03/10/2011.

EXHIBIT-P3-TRUE COPY OF THE SALE DEED NO. 2866/2011 OF THENGANA SUB REGISTRAR'S OFFICE DATED 03/10/2011.

EXHIBIT-P4-TRUE COPY OF THE SALE DEED NO. 2867/2011 OF THENGANA SUB REGISTRAR'S OFFICE DATED 03/10/2011.

EXHIBIT-P5-TRUE COPY OF THE SALE DEED NO. 3687 OF 2011 OF THENGANA SUB REGISTRAR'S OFFICE DATED 26/12/2011.

EXHIBIT-P6-TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DATED 14/08/2014.

EXHIBIT-P7-TRUE COPY OF THE LETTER DATED 10/02/2015 ISSUED BY THE PUBLIC INFORMATION OFFICER/DEPUTY REGISTRAR (ADMINISTRATION), KOTTAYAM.

EXHIBIT-P8-TRUE COPY OF THE AUDIT REPORT DATED 12/08/2013.

EXHIBIT-P9-TRUE COPY OF THE COMPLAINT TO THE MINISTER FOR HOME AND VIGILANCE, SECRETARIAT, THIRUVANANTHAPURAM DATED 16/03/2015.

EXHIBIT-P10-TRUE COPY OF THE NEWS ITEM APPEARED IN MATHRUBHUMI DAILY DATED 13/10/2014.

EXHIBIT P11: TRUE COPY OF THE REPORT DATED 30.10.2014 SUBMITTED BEFORE THE 2ND RESPONDENT BY THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), CHANGANACHERRY.

RESPONDENTS' EXHIBITS:

EXHIBIT R5(a): TRUE COPY OF THE AGREEMENT FOR SALE EXECUTED BY SRI. RINUMON M.S. AND HIS MOTHER SMT. RESHEEDA BEEVI IN FAVOUR OF RESPONDENTS NOS. 8, 9 AND 10.

EXHIBIT R5(b): TRUE TRANSLATION OF EXHIBIT R5(a)

EXHIBIT R5(c):TRUE COPY OF PERSONAL LEDGER FOR SAVINGS DEPOSITS OF ACCOUNT NO.1639 IN THE NAME OF RINUMON M.S.

EXHIBIT R5(d): TRUE COPY OF THE PERSONAL LEDGER FOR SAVINGS DEPOSITS OF ACCOUNT NO.278 IN THE NAME OF RESHEEDA BEEVI M.S. AND RINUMON M.S.

EXHIBIT R5(e): TRUE COPY OF THE PERSONAL LEDGER FOR SAVINGS DEPOSITS OF ACCOUNT NO.1641 IN THE NAME OF RESEENA BEEGAM.

EXHIBIT R5(f): TRUE COPY OF THE INCOME TAX RETURN DATED 30.05.2012 FILED BY RESPONDENT NO.8.

EXHIBIT R5(g): TRUE COPY OF THE INCOME TAX RETURN DATED 30.05.2012 FILED BY RESPONDENT NO.9.

EXHIBIT R5(h): TRUE COPY OF THE INCOME TAX RETURN DATED 30.05.2012 FILED BY RESPONDENT NO.10.

EXHIBIT R3(a): TRUE COPY OF THE RESOLUTION ADOPTED BY THE ANNUAL GENERAL BODY MEETING THAT WAS HELD ON 12.11.2011 ALONG WITH ITS ENGLISH TRANSLATION.

EXHIBIT R3(b): TRUE COPY OF THE RELEVANT PAGE NOS. 1, 18 AND 19 OF THE ANNUAL REPORT FOR THE YEAR 2010-2011 APPROVED BY THE GENERAL BODY OF THE BANK ALONG WITH ITS ENGLISH TRANSLATION.

EXHIBIT R3(c): TRUE COPY OF THE RESOLUTION DATED 16.11.2012 ALONG WITH ITS ENGLISH TRANSLATION.

EXHIBIT R3(d): TRUE COPY OF THE NOTICE DATED 06.12.2011 ISSUED FOR THE PURPOSE OF INVITING QUOTATIONS FROM PROSPECTIVE VENDORS ALONG WITH ITS ENGLISH TRANSLATION.

EXHIBIT R3(e): TRUE COPY OF THE SUB COMMITTEE REPORT DATED 14.12.2011 SUBMITTED BEFORE THE BOARD OF DIRECTORS OF THE BANK ALONG WITH ITS ENGLISH TRANSLATION.

EXHIBIT R3(f): TRUE COPY OF THE RESOLUTION DATED 16.12.2011 OF THE BOARD OF DIRECTORS OF THE BANK ALONG WITH ITS ENGLISH TRANSLATION.

EXHIBIT R3(g): TRUE COPY OF THE RELEVANT PAGE NOS. 1, 6, 10 AND 11 OF THE ANNUAL REPORT FOR THE YEAR 2012-2013 ALONG WITH ITS ENGLISH TRANSLATION.

EXHIBIT R3(h): TRUE COPY OF THE GENERAL BODY RESOLUTION DATED 12.10.2012 ALONG WITH ITS ENGLISH TRANSLATION.

EXHIBIT R3(i): TRUE COPY OF THE AGREEMENT OF SALE EXECUTED ON 01.10.2011 BETWEEN RESPONDENT NOS. 8, 9 AND 10 ALONG WITH ITS ENGLISH TRANSLATION.

EXHIBIT R3(j): TRUE COPY OF THE RELEVANT PAGE OF THE LEDGER RELATING TO THE PERSONAL ACCOUNT TO WHICH THE SAID AMOUNT OF RS.87,50,000/- WAS TRANSFERRED TO THE VENDORS.

EXHIBIT R3(k): TRUE COPY OF THE RLEVANT PAGE OF THE LEDGER RELATING TO THE PESONAL ACCOUNT TO WHICH THE SAID AMOUNT OF RS.87,50,000/- WAS TRANSFERRED TO THE VENDORS.

EXHIBIT R3(l): TRUE COPY OF THE RELEVANT PAGE OF THE LEDGER RELATING TO THE PERSONAL ACCOUNT TO WHICH THE SAID AMOUNT OF RS.87,50,000/- WAS TRANSFERRED TO THE VENDORS.

EXHIBIT R3(m): TRUE COPY OF THE VALUATION CERTIFICATE DATED 19.10.2012 ISSUED BY THE APPROVED VALUATION OF STATE BANK OF TRAVANCORE FOR THE SAID 4 ARES OF PROPERTY.

EXHIBIT R3(n): TRUE COPY OF THE NEWS ITEM PUBLISHED IN MALAYALA MANORAMA DAILY DATED 14.07.2015 ALONG WITH ITS ENGLISH TRANSLATION.

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 9535 of 2015

Dated this the 29th day of October, 2015.

JUDGMENT

Heard the learned Counsel for the petitioner, the learned Special Government Pleader, the learned counsel for the respondent Bank, and the learned counsel for respondents 5 to 10, apart from perusing the record.

2. The petitioner has made serious allegations against respondents 5 to 10, the members of the manging committee. The gravamen of the allegations is that those respondents as the members of the manging committee have abused their position and committed many irregularities, including that of purchasing properties from their spouses and constructing buildings for the society thereof.

3. Eventually, ventilating his grievance that respondents 1 to 3 are not initiating any action against respondents 5 to 10, the petitioner has filed the present writ petition.

4. To begin with, the learned counsel for the third respondent, the Bank, has submitted that the petitioner's grievance

is without substance and his very complaint lacks bona fides. He has further submitted, in tune with the averments made in the counter affidavit filed by the third respondent, that the building has already been completed, and that the writ petition has become infructuous. In the end, the the learned counsel would submit that the managing committee of the third respondent Bank have not committed any irregularities.

5. The learned counsel for respondents 5 to 10 has submitted in tune with the submissions of the learned counsel for the third respondent.

6. The learned Special Government Pleader, on instructions, has submitted that the second respondent has already been seized of the issue and that he would be conducting an enquiry into the affairs of the society under Section 66 of the Kerala Co-operative Societies Act. He has, nevertheless, submitted that, in statutory terms, the petitioner shall deposit the necessary expenditure, so that the second respondent could conduct the enquiry.

7. The learned counsel for the petitioner, on his part, has submitted that the petitioner is willing to deposit the necessary

expenditure as has been statutorily mandated. He has further submitted that during the course of enquiry, he shall be heard.

8. In the facts and circumstances, having regard to the respective submissions of the learned Counsel for the petitioner, the learned Special Government Pleader, the learned counsel for the respondent Bank, and the learned counsel for respondents 5 to 10, this Court disposes of the writ petition with a direction to the 2nd respondent to enquire into the petitioner's complaint based on Ext.P11 report of the Assistant Registrar and complete the process, as expeditiously as possible, at any rate, within four months after the petitioner's depositing the requisite amount.

It is made clear that during the course of disposing the writ petition whatever observations made by this Court shall not be construed as any expression of opinion on the merits of the matter by this Court.

sd/- DAMA SESHADRI NAIDU, JUDGE.

