

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 17188 of 2012 (W)

PETITIONER:

DR. SAJI CKACKO, AGED 53 YEARS
S/O.CHACKO, KUZHIVELIL HOUSE, THURUTHIKKADU.P.O.
KALLOOPPARA VILLAGE, MALLAPPALY THALUK
PATHANAMTHITTA DISTRICT.

BY ADVS.M/S.VARGHESE & JACOB
SRI.VARUGHESE M EASO
SRI.VIVEK VARGHESE P.J.
SRI.XAVIER CHERIAN
SRI.VENKATESH GOPI

RESPONDENT(S) :

1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL), PATHANAMTHITTA-689645.

2. SURESH BABU
PALAAZHI HOUSE, KUNNAMTHANAM.P.O.
MALLAPPALLY, MALLAPPALLY THALUK,
PATHANAMTHITTA DISTRICT-689581.

3. THE PRIMARY CO-OPERATIVE AGRICULTURAL AND RURAL
DEVELOPMENT BANK LTD NO. PT 234
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER
MALLAPPALLY.P.O. PIN-689585, PATHANMTHITTA DISTRICT.

4. THE SPECIAL OFFICER
(ASSISTANT REGISTRAR PLANNING)
JOINT REGISTRAR (GENERAL) OFFICE
PATHANAMTHITTA-689645.

R2 BY ADV. SRI.P.N.MOHANAN
RR3 BY ADV. SRI.SURIN GEORGE IPE
R BY SPL. GOVERNMENT PLEADER SHRI D.SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-03-2015, THE COURT ON 19-03-2015, DELIVERED THE
FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE NOTICE DT.14.07.12 CONVENING THE MANAGING COMMITTEE.

EXT.P2: TRUE COPY OF THE MAHAZAR REPORT ALONG WITH AUTORIKSHAW CHARGE VOUCHER DT.17.7.2012.

EXT.P3: TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES BOOK EVIDENCING THE CONVENING OF THE MEETING, UNANIMOUS ELECTION OF ITS PRESIDENT AND TAKING OVER CHARGE DT.19.7.12.

EXT.P4: TRUE COPY OF THE ORDER NO.3575/12 DT.19.07.2012 ISSUED BY THE 1ST RESPONDENT.

EXT.P5: TRUE COPY OF THE NOTICE DT.20/07/12 BY THE CHIEF EXECUTIVE OFFICER.

EXT.P6: TRUE COPY OF THE ORDER DT.19.07.12 IN WPC.NO.16873/12 OF THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

K.SURENDRA MOHAN, J.

W.P(C) No.17188 of 2012-W

Dated this the 19th day of March, 2015

JUDGMENT

The petitioner has filed this Writ Petition aggrieved by the action of the 1st respondent in rescinding the decisions taken at a meeting of the Managing Committee of the 3rd respondent held on 19.07.2012, invoking his power under Rule 176 of the Kerala Co-operative Societies Rule, 1969 (hereinafter referred to as 'the Rules' for short). Ext.P4 is the impugned order.

2. The short facts of the case are the following. The election to the Managing Committee of the 3rd respondent bank was held on 14.07.2012. 13 persons including the petitioner were elected as members of the Managing Committee. The results were declared on the same day, 14.07.12 itself. According to the petitioner, as directed by the Returning Officer, the Chief Executive Officer of the bank had issued a notice convening the first meeting of the newly elected Managing Committee on 19.07.2012 at 4 p.m. The petitioner and 11 members of the elected Managing Committee accepted the

notice. However, the 2nd respondent did not receive the notice. The Chief Executive Officer of the bank had contacted the 2nd respondent over telephone and informed him of the meeting. He assured that he would accept the notice on 16.07.2012.

3. Since the 2nd respondent did not turn up to receive the notice as assured, on 17.07.2012 the Chief Executive Officer along with the Senior Supervisor of the bank visited the house of the 2nd respondent for the purpose of serving the notice. However, he was not at home. His mother who was present refused to accept the notice. Therefore, the Chief Executive Officer served notice by affixture at the residence of the 2nd respondent, in the presence of witnesses. Ext.P1 is the notice and Ext.P2 is the mahazar prepared at the time of service of the notice by affixture. Thereafter, the meeting was held, as notified. The petitioner was unanimously elected as the President of the bank. Ext.P3 is the minutes of the said meeting. The petitioner took charge and started functioning as the President.

4. In the above circumstances, the 1st respondent issued Ext.P4 rescinding the decision taken at the meeting held on

19.07.12. Ext.P4 states that the action was taken on the basis of a complaint received from the 2nd respondent alleging that the meeting had been held without serving notice on him. Pursuant to Ext.P4, the 4th respondent who is the Special Officer of the bank took charge and issued Ext.P5 notice convening a fresh meeting of the Managing Committee on 30.07.12. According to the petitioner, the said action is absolutely illegal and liable to be set aside. Consequently, the petitioner and the newly elected members of the Managing Committee are kept out of office, without any justification. Since Rule 38 of the Rules mandates that the newly elected committee has to meet within a period of one week, the meeting that was notified on 19.07.12 could not be postponed. The 2nd respondent had been initially intimated over telephone and thereafter, by affixing notice on his residence. The meeting having been conducted and the President and the Vice President having been duly elected, it is contended that the said election could be set aside only by invoking the remedy provided by Section 69 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as 'the Act' for short). The 1st respondent has no power under Rule 176 to set aside the

election of office bearers. The 1st respondent also does not have any power to take over management of any society. For the above reasons, it is contended that the impugned proceedings are liable to be set aside.

5. The contentions of the petitioner are opposed by the learned Special Government Pleader Sri D.Somasundaram. According to the learned Special Government Pleader, the meeting convened on 19.07.12 was of no consequence for the reason that the same was not with notice to all the elected members of the committee. The 2nd respondent had submitted a complaint to the 1st respondent that no notice of the meeting was served on him. It was found that the said contention was correct. It was for the said reason that Ext.P4 was issued. Since what has been directed is only to convene a proper meeting of the Managing Committee, it is contended that no prejudice has been caused to the petitioner.

6. Advocate P.N.Mohanan appears for the 2nd respondent. A counter affidavit has also been filed. According to the learned counsel, though Rule 38 mandates that a meeting of the elected Managing Committee be convened immediately

after the election, such a meeting cannot be held without serving notice on all the members. Section 104 of the Act prescribes the mode of service of notice. According to the above provision of law, the proper mode of service of notice is by registered post. Admittedly in the present case, no notice was issued to the 2nd respondent by registered post. According to the learned counsel, his client had not been served with any notice of the meeting that is said to have been held on 19.07.12. The notice Ext.P1 as well as the Mahazar Ext.P2 are all documents concocted subsequently to support the case of the petitioner, it is alleged. Reliance is placed on the decision in **Karunakaran v. Special Sale Officer** [1986 KLT 701] to contend that no mode of service of notice other than what is specified by Section 104 is permissible. Therefore, it is contended that the Writ Petition is only to be dismissed.

7. Heard. The only question that arises for determination is whether Ext.P4 issued by the 1st respondent is sustainable or not. It is not disputed that, the petitioner and the 2nd respondent along with the other members of the Managing Committee had been elected on 14.07.2013. Rule 38(1) of the

Rules reads as follows:

“38. Constitution of committee, resignation and removal from membership:-- [(1) When a committee is constituted under S.28, the Secretary or the Chief Executive or any other officer discharging the functions of the Secretary or the Chief Executive shall, within [three months] from the date of the constitution of the committee convene the committee to elect its President and other office bearers. The Committee so convened shall elect its President and other office bearers and also by resolution authorise the officers concerned to take charge from the outgoing office bearers].”

The above provision shows that the first meeting of the elected Managing Committee is to be held within a period of 3 months and not one week, as contended. The provision has been amended in the year 2009, substituting the words, “one week”, with the words “3 months”. The election in the present case was held on 14.07.12, long after the amendment of the provision. Therefore, there was no imminent necessity of holding the first meeting of the Managing Committee in such a hasty manner as in the present case.

8. Ext.P1 is the notice that was issued. Ext.P2 is a

mahazar prepared at the time of the alleged affixture of the notice on the residence of the 2nd respondent. A perusal of Ext.P2 shows that the person who has prepared the mahazar is one Smt.Sujatha.R. The same has been witnessed by one Smt.K.G.Sobhanakumari. In para.3 of the Writ Petition, according to the petitioner, Smt.Sobhanakumari is the Senior Supervisor of the bank. Therefore, other than the Chief Executive Officer who is stated to have visited the house of the 2nd respondent for serving the notice, and Smt.Sobhanakumari, no independent witness has signed the mahazar. The said mahazar could therefore have been prepared at any time, sitting in office of the bank. In view of the above, Ext.P2 cannot be accepted as evidence for service of the notice by affixture. There is no evidence for the statement that the 2nd respondent had been informed about the same over phone. The resultant position therefore is that, there is nothing on record to show that notice of the meeting of 19.07.12 had been served on the 2nd respondent. Section 104 stipulates service of notice by registered post. This Court has held in the decision reported in **Karunakaran v. Special Sale Officer** (supra) that, notice

could be served through any acceptable mode of service. The decision has considered the scope of Section 104 in the following words:

“In other words, the Section permits service of notice by registered post and prescribes that in such a case, actual service or delivery need not be separately proved. This is different from saying that service by registered post is the only permissible statutory method. The Section does not exclude other well-known methods of effecting service such as service through a bearer or process-server.”

In the present case, there is nothing on record to show that notice had been served on the 2nd respondent.

9. The above being the factual situation, it cannot be said that the meeting held on 19.07.12 was valid. The same was infirm, since no notice had been served on one of the elected members of the Managing Committee. The decisions taken at the said meeting as well as the election conducted are also of no consequence. The said proceedings could not and cannot confer any right or advantage on the petitioner. It has been held by this Court in **Umesan v. Ezhupunna South Co-op. Bank Ltd.** [2009(2) KLT 843] that holding of a meeting without giving even

24 hours time was not justified. There is no evidence in this case to show that sufficient notice of the meeting was given to all the members.

For the above reasons, I do not find any infirmity in the impugned proceedings Ext.P10. This Writ Petition fails and is accordingly dismissed. No costs.

Sd/-
(K.SURENDRA MOHAN, JUDGE)

rtr/

/true copy/

P.S to Judge