

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 15439 of 2015 (D)

PETITIONER:

JOJO JOSEPH, PRESIDENT,
KURIANAD KSHEEROLPADAKA
SAHAKARANA SANGAM NO.K-69 (D) APCOS,
KURIANAD P.O., PIN - 686 636.

BY ADVS.SRI.P.RAVINDRAN (SR.)
SRI.SREEDHAR RAVINDRAN

RESPONDENTS:

1. THE DEPUTY DIRECTOR OF DAIRY DEVELOPMENT,
KOTTAYAM DISTRICT - 686 001.
2. STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
AGRICULTURAL & DAIRY DEVELOPMENT DEPARTMENT,
THIRUVANANTHAPURAM - 695 001.

R BY SRI. D. SOMASUNDARAM, SPECIAL GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : TRUE COPY OF THE JUDGMENT IN W.P.(C) NO. 3497/2013 DATED 29.10.2013.
- EXT.P2 : TRUE COPY OF THE NOTICE DATED 18.02.2014 AND THE TRANSLATION OF EXT.P2.
- EXT.P3 : TRUE COPY OF THE JUDGMENT IN W.P.(C) NO. 5806/2014 DATED 10.02.2015.
- EXT.P4 : TRUE COPY OF THE OBJECTION DATED 23.02.2015.
- EXT.P5 : TRUE COPY OF THE ORDER DATED 18.05.2015.
- EXT.P6 : TRUE COPY OF THE APPEAL MEMORANDUM DATED 22.05.2015.
- EXT.P7 : TRUE COPY OF THE APPLICATION FOR STAY DATED 22.05.2015.
- EXT.P8 : TRUE COPY OF THE CHALAN EVIDENCING PAYMENT OF FEE.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 15439 of 2015 (D)

Dated this the 26th day of May, 2015.

JUDGMENT

The petitioner, the elected President of the Kurianad Ksheerolpadaka Sahakarana Sangam No.K-69, has a grievance that the second respondent has not expeditiously considered on merits the petitioner's Ext.P7 stay petition in Ext.P6 appeal memorandum concerning the issue of superseding the Managing Committee.

2. The facts in brief are that when the first respondent initially made efforts to supersede the managing committee headed by the petitioner by invoking Section 32 of the Co-Operative Societies Act (the Act), the petitioner filed W.P.(C) No. 3497 of 2013 and invited Ext.P1 judgment, whereby this Court quashed the orders passed by the first respondent. Ext.P1 is the common judgment in W.P.(C) No. 3497 of 2013 filed by the petitioner and W.P.(C) No. 12629 of 2013 filed by another person.

3. As could be seen from the record, owing to subsequent developments, when the first respondent once again issued Ext.P2 notice for superseding the Board of Directors, the petitioner yet

again filed W.P.(C) No. 5806 of 2014 and invited Ext.P3 judgment in which this Court has observed as follows:

“I do not think that Ext.P11 notice to show cause can be nipped in the bud in the exercise of jurisdiction under Article 226 of the Constitution of India. Interest of justice would be met by permitting the petitioner to submit his version by way of objection to Ext.P11 notice. The first respondent shall pass final orders on the same after notice to the petitioner as well as the additional second respondent. The final order to be passed by the first respondent shall be enforced only after a week of its receipt by the petitioner and the additional second respondent. This is to facilitate them to invoke the statutory remedy of appeal under Section 83(1)(j) of the Kerala Co-Operative Societies Act.”

4. In compliance with the directions of this Court in Ext.P3 judgment, after the petitioner's submitting his representation, eventually the first respondent passed Ext.P5 order directing supersession of the Board of Directors. Aggrieved thereby, when the petitioner filed Ext.P6 statutory appeal along with Ext.P7 stay petition, the second respondent, the appellate authority, has not considered, contends the petitioner, the stay petition expeditiously. Under these circumstances, the petitioner has approached this Court ventilating his grievance that unless there is an expeditious judicial intervention, Ext.P5 order is to come into force by tomorrow (27.05.2015).

5. The learned counsel for the petitioner has submitted that despite persistent intervention by this Court, the first respondent has repeatedly made efforts by passing one order or another to ensure super-session of the Board of Directors which has been duly elected. According to him, this Court in Ext.P3 judgment has clearly observed that any order passed by the first respondent shall not be given effect to for a week's time. The learned counsel has also contended that despite the petitioner's filing the statutory appeal and the stay petition at the earliest, so far the second respondent appellate authority has not considered it. In sum and substance, it is the singular contention of the learned counsel for the petitioner that unless the stay petition or the statutory appeal per se is considered on merits, the very appeal will become otiose.

6. The learned Government Pleader has strenuously opposed the claims and contentions of the petitioner. He has submitted that the record does not reveal whether the petitioner has submitted a statutory appeal either in person or through post. According to him, it is also not clear whether he has filed Ext.P7 stay petition. He has also contended that having filed the statutory appeal, the petitioner

ought to have filed an application urging for an expeditious hearing, instead of rushing to this Court. In the end, the learned Government Pleader would contend that the statutory appeal itself was filed only on 22.05.2015 i.e., barely three days ago.

7. Heard the learned counsel for the petitioner and the learned Special Government Pleader, apart from perusing the record.

8. Indeed, in Ext.P3 this Court directed the first respondent not to enforce its orders to be passed for a week's time; the petitioner, on his part, filed the statutory appeal against Ext.P5 order on 22.05.2015. Though it cannot be stated that there is any inordinate delay on the part of the appellate authority in considering the petitioner's statutory appeal or stay petition filed therewith, the fact still remains that unless there is an expeditious consideration of the matter on merits, Ext.P5 order is bound to come into force, thus stultifying the petitioner's effort to have the benefit of the statutory appeal.

It only serves the ends of justice if this Court disposes of the writ petition and accordingly disposes of the writ petition with a direction to the second respondent appellate authority to consider

Ext.P7 stay petition as expeditiously as possible. Until Ext.P7 stay petition is considered on merits, after affording an opportunity of hearing to the parties concerned, Ext.P5 shall not take effect.

With the above observations and directions, especially without advertng to the merits of the matter, this Court has disposed of the writ petition. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

W.P.(C). No.1543962015

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