

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937HJ13

WP(C).No. 28182 of 2014 (W)

PETITIONER:

M.K.ABDUL RAZACK,
NARUKKOTTIL KONNADAN, NEELANCHERI P.O., MALAPPURAM,
CHIEF PROMOTER,
PROPOSED NEELANCHERI AGRICULTURIST DEVELOPMENT AND WELFARE
CO-OPERATIVE SOCIETY LTD.,
NEELANCHERI, MALAPPURAM.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

1. ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (G), MANJERI,
MALAPPURAM - 676 121.

2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (G),
MALAPPURAM,
OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (G)
MALAPPURAM - 676 121.

3. THE TUVVUR PANCHAYATH SERVICE CO-OPERATIVE BANK
LTD.NO.M 492,
TUVVUR, MALAPPURAM - 679 327,
REPRESENTED BY SECRETARY.

4. JYOTHI N.
CHIEF PROMOTER, NEELANCHERI VANITHA
CO-OPERATIVE SOCIETY LTD., NEELANCHERI, MALAPPURAM,
PIN:676 525. [DELETED]

[4TH RESPONDENT IS DELETED FROM THE PARTY ARRAY AS PER ORDER
DATED 06.10.2015 IN IA 14419/15.]

R3 BY ADV. SRI.T.PRASAD

R2 BY ADV. SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1: TRUE PHOTOCOPY OF THE ORDER ISSUED BY SECOND RESPONDENT DATED 18.8.2014.

EXHIBIT P2: TRUE PHOTOCOPY OF THE REPRESENTATION FILED BY THE THIRD RESPONDENT BEFORE THE SECOND RESPONDENT DATED 19.9.2014.

EXHIBIT P3: TRUE PHOTOCOPY OF THE REPRESENTATION FILED BY THE 4TH RESPONDENT BEFORE THE SECOND RESPONDENT DATED 19.9.2014.

EXHIBIT P4: TRUE PHOTOCOPY OF THE RECEIPT ISSUED BY THE DISTRICT CO-OPERATIVE BANK, DATED 8.10.2014 TO THE PETITIONER.

EXHIBIT P5: TRUE PHOTOCOPY OF THE NOTICE ISSUED BY SECOND RESPONDENT DATED 27.9.2014.

EXHIBIT P6: TRUE PHOTOCOPY OF THE REPLY FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT DATED 14.10.2014.

EXHIBIT P7: TRUE PHOTOCOPY OF THE ORDER ISSUED BY THE SECOND RESPONDENT DATED 10.10.2014.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 28182 of 2014 (W)

Dated this the 20th day of October, 2015.

JUDGMENT

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

2. The petitioner, the Chief Promoter of the proposed society, Neelancheri Agriculturist Development and Welfare Co-operative Society Ltd., ventilates his grievance that the second respondent has passed Ext.P7 order arbitrarily and illegally, denying registration.

3. The facts in brief are that the petitioner, desirous of establishing a miscellaneous Co-operative society, submitted an application to the first respondent, who, having processed the application, sent it to the second respondent with a positive recommendation. The second respondent, in turn, issued Ext.P1 order permitting the petitioner to collect the share money as a preparatory step for establishing the society. In fact, the said official has further directed the petitioner to submit the application

for registration of the society along with the bye-laws prepared in accordance with the Act and the Rules holding the field.

4. In the course of time, the third respondent filed Ext.P2 objection concerning what is said to be overlapping of the area. Further, another person, who was initially arrayed as respondent No.4 and whose name was subsequently deleted from the array of the parties at the behest of the petitioner, filed Ext.P3 objection.

5. Eventually, the second respondent, after issuing Ext.P5 notice to the parties and after receiving Ext.P6 explanation from the petitioner, adjudicated upon the issue and passed Ext.P7 order declining to grant permission to the petitioner to have the society registered. Assailing Ext.P7, the petitioner has filed the present writ petition.

6. Indeed, the learned counsel for the petitioner has submitted extensively on the unsustainability and illegality of Ext.P7.

7. The learned counsel for the third respondent has joined the issue and made counter submissions. This Court does not intend to go into the merits of the matter for the simple reason that the petitioner has an efficacious alternative remedy by way of an appeal

under Section 83 of the Kerala Co-operative Societies Act before the Government. Any observation in the present instance may cause prejudice to either of the parties to the lis.

8. In the facts and circumstances, this Court, without adverting to the merits of the matter, closes the writ petition with an observation that the petitioner is at liberty to lay challenge against Ext.P7 before the Government by invoking Section 83 of the Act.

9. At this juncture, the learned counsel for the petitioner has submitted that Section 83 of the Act mandates that an appeal should be filed within 60 days. As can be seen, the statute has not prescribed any express prohibition against the application of the provisions of the Limitation Act. As such, it is entirely open for the petitioner to take recourse to Section 5 or Section 14 of the Limitation Act, as the case may be, to seek the condonation or exclusion of delay.

10. It is made clear that though this Court does not intend to spell out anything on merits, it still needs to be observed that the petitioner up to this point of time has bona fide pursued the writ petition; this Court, in fact, has closed the writ petition only on the

singular ground that the petitioner has an efficacious alternative remedy.

11. Again, the learned counsel for the petitioner has submitted that the petitioner will immediately file an appeal and that this Court may observe that the petitioner be given the advantage of Section 14 of the Limitation Act.

This Court by making any peremptory observation that the delay should be condoned does not intend to take away the discretionary power of the appellate authority. Nevertheless, it behoves this Court to observe under the facts and circumstances that up to this point of time, the petitioner has pursued the writ remedy bona fide. The appellate authority may take the issue into consideration while its considering any application for the delay condonation. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

