

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 31432 of 2013 (D)

PETITIONER(S):

1. CHENGOTTIL RAGHAVAN, AGED 65 YEARS,
S/O.KUTTIAKKINI, CHENGOTTIL HOUSE, NADUVANNUR P.O.,
CALICUT DISTRICT, PIN 673614.
2. N.ALI, AGED 55 YEARS, S/O.KUTTOOSA, MEKOTH KUNIYIL,
NADUVANNUR P.O., CALICUT DISTRICT, PIN 673614.
3. GANGADHARAN NADUKUNIYIL, AGED 70 YEARS
S/O.SANKARAN, NADUKUNIYIL HOUSE, ORAVIL P.O.
NADUVANNUR (VIA), CALICUT DISTRICT, PIN 673 614.
4. R.P.APPU NAIR, AGED 66 YEARS,
S/O.KUNHIKANNAN NAIR, RAROTH PARAMBATH,
ORAVIL P.O., NADUVANNUR, CALICUT, PIN 673614.

BY ADVS.SRI.M.M.MONAYE
SRI.M.PAUL VARGHESE
SRI.DESI MATTHAI

RESPONDENT(S):

1. NADUVANNUR SERVICE CO-OPERATIVE BANK LTD.NO. LL68,
NADUVANNUR P.O., CALICUT DISTRICT, PIN 673614,
REPRESENTED BY THE LIQUIDATOR.
2. LIQUIDATOR/KOYILANDI UNIT INSPECTOR
OFFICE OF THE ASSISTANT REGISTRAR OF
CO-OPERATIVE SOCIETIES (GENERAL)
KOYILANDI, KOYILANDI P.O., PIN 673305.
3. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
OFFICE OF THE JOINT REGISTRAR
RAILWAY STATION LINK ROAD, PIN 673001.
4. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
DEPARTMENT OF CO-OPERATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
5. NADUVANNUR REGIONAL CO-OPERATIVE BANK LTD.NO.F 1269,
NADUVANNUR P.O., CALICUT DISTRICT, PIN 673614.

R1 TO R4 BY GOVERNMENT PLEADER SRI.RAFEEQ
R5 BY ADV. SRI.P.P.JACOB

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT-P1: TRUE COPY OF THE REPRESENTATION DATED 26.6.2013.
- EXHIBIT-P2: TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.17295/2013 DATED 26.7.2013.
- EXHIBIT-P3: TRUE COPY OF THE NOTICE DATED 5.10.2013.
- EXHIBIT-P4: TRUE COPY OF THE STATEMENT SUBMITTED BY THE PETITIONER ON 11.10.2013.
- EXHIBIT-P5: TRUE COPY OF THE ORDER OF 3RD RESPONDENT DATED 18.10.2013.
- EXHIBIT-P6: TRUE COPY OF THE STATEMENT OF LIABILITY DATED NIL ADDRESSED TO SRI.M.RAMUNNI.
- EXHIBIT-P7: TRUE COPY OF THE RELEVANT PORTION OF THE CERTIFICATE OF POSTING, ISSUED BY NADUVANNUR P.O. WHICH CONTAIN THE NAME OF THE 1ST PETITIONER.
- EXHIBIT-P8: TRUE COPY OF THE RELEVANT PORTION OF THE CERTIFICATE OF POSTING, ISSUED BY ORAVIL P.O. WHICH CONTAIN THE NAME OF THE 2ND PETITIONER.
- EXHIBIT-P9: TRUE COPY OF THE RELEVANT PORTION OF THE PASS BOOK OF SRI.K.K.KUTTIKRISHNAN NAIR.

RESPONDENT(S)' EXHIBITS:

- EXHIBIT-R5(a): TRUE PHOTOCOY OF THE LIST OF MEMBERS, FIRST PAGE, PAGE NO.4 AND 8 OF THE FIFTH RESPONDENT.

//TRUE COPY//

P.A. TO JUDGE

STK

P.V.ASHA, J.

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W.P.(C)No.31432 of 2013

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Dated this the 3rd day of July, 2015

JUDGMENT

This writ petition is filed challenging Ext.P5 order passed by the Joint Registrar upholding the procedure adopted by the liquidator in respect of transfer of assets and liabilities of the first respondent Service Co-operative Bank to the 5th respondent, Regional Co-operative Bank, while rejecting the complaint of the petitioners.

2. Heard the learned counsel appearing on either side.

3. The petitioners had earlier approached this Court in W.P.(C) No. 17295/2013 alleging that liquidator was taking steps to transfer the assets of the first respondent, Service Co-operative Bank to the 5th respondent Bank without following any procedure and without issuing notice to its members. By Ext.P2 judgment, this court directed the Joint Registrar to consider Ext.P1 representation submitted by the petitioners, in

accordance with law and to pass appropriate orders thereon after affording an opportunity of being heard to the petitioners. Complaint of the petitioners is that no General Body Meeting was convened before taking the decision for transferring the assets. Notice was not issued to any of the members before convening the General Body. The main complaint is the property worth crores in the name of the first respondent Service Co-operative Bank was being snatched by the 5th respondent bank in collusion with the liquidator and 3rd respondent.

4. The joint Registrar, after hearing the petitioners as well as the liquidator, issued Ext.P5 order. It is stated that the liquidator had affixed notice in the office of the Panchayat, Village Office, District Co-operative Bank, office of the Assistant Registrar (General), Kozhikode, office of Joint Registrar (General), etc announcing the convening of general body. At the same time Liquidator had stated that notice could not be issued to the members individually, in the absence of any records containing their address and notice by paper

publication could not be made due to the want of sufficient funds. As nobody attended the general body, the liquidator took the decision to transfer the assets in order to meet the huge liabilities incurred by the 1st respondent. On being convinced that the society was in debt and circumstances necessitated urgent action, the Joint Registrar found that the action taken by the liquidator was in accordance with law. Moreover, the Joint Registrar found that the petitioners could not establish their membership in the society, so as to be aggrieved by the alleged absence of notice for convening the General Body Meeting and by the proceedings of the liquidator.

5. This writ petition is filed challenging Ext.P5 proceedings of Joint Registrar alleging that the proceedings of the liquidator are in violation of Section 14 of the Kerala Co-operative Societies Act and Rule 13(3) of the Kerala Co-operative Societies Rules for transfer of the assets and liabilities or amalgamation of the 1st respondent society in so far as the General Body Meeting was not convened in accordance with the procedure prescribed, after serving the

notice to the members.

6. The 5th respondent as well as the liquidator who is the second respondent filed separate counter affidavits, refuting the contentions raised by the petitioners. The liquidator explained that the 1st respondent Bank was under the control of Administrator from 18.07.1996 to 31.10.2003 and the liquidator took charge on 01.11.2003 onwards. According to him, there is no membership register or other details of members of the 1st respondent available and hence the 2nd respondent is not in a position to issue notice to the members for convening the General Body Meeting of the 1st respondent Co-operative Bank. It is also submitted that the 2nd respondent published notice for convening the general body meeting by affixing the same in the notice boards of various Government Offices within the area of operation of the 1st respondent including the Village Office and Grama Panchayath office and also at various public places. It is submitted that no members were present in the general body meeting thus convened and nobody raised any objection. The decision was taken by the liquidator to transfer

the assets and liabilities of the 1st respondent Bank to the 5th respondent Bank in order to preserve the assets of the 1st respondent and to safeguard the interest of members. He further stated that there is a liability of ₹59,627/- together with 5% collection charges to the Kerala State Electricity Board and an amount of ₹36,67,173/- to the Kozhikode District Co-operative Bank towards borrowings.

7. In the counter affidavit of the 5th respondent, it is stated that the liquidator has full power and authority to decide the matter on the basis of the procedures prescribed in the Act and Rules and that the provisions contained in chapter X of the Co-operative Societies Act has overriding effect over Chapter II of the Act. Thus there is no valid or sustainable contention against the order Ext P5.

8. Apart from that, the main contention raised by the 5th respondent is that the petitioners are the members of the 5th respondent bank and not members of the first respondent. In order to meet the contention that the petitioners are not members of the first respondent bank, petitioners filed

I.A.No.5562/2015 producing Exts.P7 to P9 claiming that Ext.P7 is the list of members of the 1st respondent Bank in which the postal authorities have affixed their seal towards sending notice to the members under 'Certificate of Posting'. The name of the 1st petitioner is shown at sl no.6811. Similarly the second petitioner is shown as number 9565 in Ext.P8. A copy of the pass book in the name of one Mr.K.K.Kutty Krishnan Nair is produced as Ext.P9. In reply to this the 5th respondent filed a counter affidavit producing Ext.R5(a) showing the list of members, in which the name of petitioners appear with the very same membership number as given in Ext P7 and P8. The learned counsel for the 5th respondent made available the register containing the list of members, maintained by the 5th respondent bank in which the name of the petitioners appear with the very same membership number as given in Exts. P7 and P8. Therefore there is every reason to assume that the petitioners have produced some fabricated records before this Court.

9. From the conduct of the petitioners in producing

documents like Ext P7 and P8, it is evident that there is no bonfides in this Writ Petition. In the aforesaid circumstances, petitioners do not deserve any relief under Article 226 of the Constitution of India.

In the result, this writ petition fails and is dismissed.

Sd/-
P.V.ASHA
JUDGE

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//TRUE COPY//

P.A. TO JUDGE