

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

WP(C).No. 37681 of 2015 (I)

PETITIONERS:

1. C V GOPI, CHANDRAVATTATH VEEDU,
28/1824A, PANDARACHIRA ROAD,
KADAVANTHRA P.O., KOCHI -20.
2. S. RAJENDRA BABU,
ROHININ HOUSE,
KONTHURUTHY, THEVARA P.O., KOCHI - 13.
3. K.G. JOHN JOSEPH,
KODUVELIPPARAMBIL,
PONNURUNNI, VYTTILA P.O., KOCHI - 19.
4. E. THARUVEYIKUTTY,
ELAYIDATH VEEDU,
LBS CROSS ROAD, EDAPPALLY P.O.,
KOCHI -24.
5. K. MOHANACHANDRAN NAIR,
KRISHNAKALA, NETHAJI NAGAR,
KADAVANTHRA P.O., KOCHI - 20.
6. A.V. SASI,
DEEPAK NIVAS,
LIG - 798, PANAMPILLY NAGAR, KOCHI - 36.
7. K.K. MOHANAN,
SARASWATHI NIVAS,
NETHAJI NAGAR, KADAVANTHRA P.O.,
KOCHI - 20.

BY ADVS.SRI.C.S.AJITH PRAKASH
SRI.PAUL C THOMAS

RESPONDENTS:

1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM - 695 001.

2. THE JOINT REGISTRAR (GENERAL),
OFFICE OF THE JOINT REGISTRAR (GENERAL),
CO-OPERATIVE SOCIETY, ERNAKULAM - 682 030.
3. THE ASST. REGISTRAR (GENERAL),
OFFICE OF THE CO-OPERATIVE ASSISTANT REGISTRAR,
KANAYANNUR TALUK,
ERNAKULAM, KOCHI - 682 016.
4. THE SENIOR INSPECTOR,
CHENGAMANAD UNIT,
OFFICE OF THE ASSISTANT REGISTRAR (GENERAL) OF ALUVA &
ENQUIRY OFFICER FOR COCHIN SHIPYAR STAFF CO-OPERATIVE
HOUSE CONSTRUCTION SOCIETY LTD. NO.E.346,
ALUVA, PIN - 683 101.

R BY SRI. D. SOMASUNDARAM, SPL. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
15-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX**PETITIONER'S EXHIBITS:**

- EXT.P1 : TRUE COPY OF THE REPLY LETTER DATED 17.11.2009 ISSUED BY THE JOINT REGISTRAR (GENERAL)
- EXT.P2 : TRUE COPY OF THE COMPLAINT DATED 23.12.2009 FILED BEFORE THE C.I OF POLICE, THEVARA.
- EXT.P3 : TRUE COPY OF THE PETITION FOR 65 ENQUIRY DATED 08.02.2010.
- EXT.P4 : TRUE COPY OF THE CONFIDENTIAL COMMUNICATION DATED 06.04.2011.
- EXT.P5 : TRUE COPY OF THE LETTER ISSUED BY THE ADDL. DIRECTOR OF INCOME TAX (INVESTIGATION) DATED 17.02.2011 FORWARDED TO THE CMD, KOCHI SHIPYARD ANNEXED WITH THE CONFIDENTIAL LETTER.
- EXT.P6 : TRUE COPY OF THE LETTER ISSUED BY THE ADDL. DIRECTOR OF INCOME TAX (INVESTIGATION) DATED 21.02.2011 FORWARDED TO THE CMD, KOCH SHIPYARD ANNEXED WITH THE CONFIDENTIAL LETTER.
- EXT.P7 : TRUE COPY OF THE COMPLAINT SUBMITTED TO THE SHO BY THE THEN MANAGING COMMITTEE DATED 18.04.2011.
- EXT.P8 : TRUE COPY OF THE ARC PETITION FILED IN THE YEAR 2010.
- EXT.P9 : TRUE COPY OF THE ORDER DATED 28.02.2011 IN CRL.M.C. NO. 4761/2010.
- EXT.P10 : THE CONCLUSION PORTION OF THE REPORT REFERRING TO EACH ISSUES.
- EXT.P10(a) : ENGLISH TRANSLATION OF EXT.P10.
- EXT.P11 : TRUE COPY OF THE NOTICE NO.M/1679/15 DATED 11.09.2015 ISSUED BY THE ASST. REGISTRAR (GENERAL) KANAYANNUR TALUK WITH ENGLISH TRANSLATION.
- EXT.P12 : TRUE COPY OF THE JOINT REPRESENTATION DATED 09.10.2015 SUBMITTED BY THE PETITIONERS.
- EXT.P13 : TRUE COPY OF THE SAID REPRESENTATION DATED NI.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 37681 of 2015 (I)

Dated this the 15th day of December, 2015.

JUDGMENT

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

2. The learned counsel for the petitioners has submitted that the very enquiry into the affairs of the society was initiated based on Ext.P3 complaint made by the present members of the Board. Eventually, based on the report submitted by the Enquiry Officer under Section 65 of the Kerala Co-operative Societies Act ('the Act' for brevity), the Joint Registrar appointed the 4th respondent to enquire further under Section 68(1) of the Act.

3. The 4th respondent, as part of his enquiry, issued Ext.P11 notice to the petitioners, the present members of the Board. It seems the petitioners have in response submitted Ext.P12 reply/explanation.

4. Having filed this writ petition assailing Ext.P11 notice, the petitioners contend that earlier when a crime was registered at the behest of one of the members of the society, this Court, through

Ext.P9 judgment, has found that there was no prima facie case against the petitioners and accordingly discharged them. Having addressed on various aspects, especially concerning the invalidity of Ext.P11 notice, the learned counsel in the end has submitted that the Assistant Registrar may consider the petitioners' Ext.P12 reply and pass appropriate orders.

5. On the other hand, the learned Special Government Pleader has submitted that the writ petition is premature. According to him, it is only an enquiry under Section 68(1) of the Act, which is to be followed, provided there is sufficient material, by a further enquiry under Section 68(2) of the Act, in which event all the petitioners could be put on notice and heard.

6. The learned Special Government Pleader has further contended that at this juncture the enquiry cannot be scuttled.

7. Indeed, it is an enquiry under Section 68(1) of the Act; and, as is well established, enquiry of this nature cannot be scuttled, unless the authority that has initiated the proceedings lacks the necessary vires or the whole process is mired in mala fides. Neither of the eventualities subsists. At any rate, no harm will be done if the

authority concerned considers the petitioners' Ext.P12 reply or any other representation and pass appropriate orders thereon. It is made clear that the 4th respondent may go ahead with the enquiry.

With the above observations, this writ petition is disposed of.

sd/- DAMA SESHADRI NAIDU, JUDGE.