

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.11.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

WP.No.2055/2015 & MP.No.1/2015

A.Jayapal

.. Petitioner

Versus

1.The Deputy Registrar of Coop. Societies
Nagapattinam Circle, Nagapattinam
Nagapattinam District.

2.V.Kalidoss

3.V.Umapathy

4.M.Rajendran

..Respondents

**R4 impleaded as per the order of this
Court dated 03.11.2015 made in MP.2/2015

Prayer:-Writ petition filed under Article 226 of the
Constitution of India praying for a issuance of a writ of
certiorari calling for the entire records relating to the
impugned order passed by the 1st respondent in his proceedings
Na.Ka.No.5/2015/Ku.Na. Dated 23.01.2015 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents: Ms.T.P.Kavitha, GA [Coop.] for R1
Mr.R.Arun Dattan for R4

ORDER

Heard the learned counsel for the petitioner ;
Ms.T.P.Kavitha, learned Government Advocate [Coop.] appearing
for the 1st respondent and Mr.R.Arun Dattan learned counsel for
the 4th respondent and with their consent, the writ petition is
taken up for final disposal.

2 This writ petition has been filed challenging the order
passed by the 1st respondent dated 23.01.2015. By the impugned

order, the resolution passed by the Board of Directors of the Society dated 11.12.2014 by which the respondents 2 and 3 held to have been disqualified to be Directors on account of the non-attending the meetings, was set aside. The 1st respondent has passed the impugned order on the ground that the procedure contemplated under the Tamil Nadu Cooperative Societies Rules, 1988, have not been followed and in particular, Rule No.61 and 61-A of the Rules. The petitioner has challenged the impugned proceedings on the ground that before passing the impugned order, the petitioner was not afforded an opportunity and no notice was issued to the petitioner. Further, it is submitted that the respondents 2 and 3 were removed by the Board of Directors of the Society by invoking Section 34[2][d] of the Tamil Nadu Cooperative Societies Act, 1983, on the ground that they have not attended six meetings continuously. It is the further contention of the petitioner that Rule 61 and 61-A have no application to the facts and circumstances of the case.

3 A counter affidavit has been filed by the 1st respondent, from which it is seen that the 1st respondent has not specifically stated as to the applicability of Rules 61 and 61-A to the present proceedings. All that has been stated in the counter affidavit is that the President [In-charge], viz., the petitioner did not follow the mandatory provisions by giving adequate opportunity of representation to the members of the Board before taking a decision under section 34[2][d] of the Act. During the pendency of the writ petition, election to the Board of Directors was conducted on 02.02.2015 and in the said election, one Rajendran has been declared as the elected person as he has secured six votes. The 2nd respondent herein, viz., V.Kalidoss has also been permitted to participate in the election ; but he was unsuccessful on account of the fact that he has secured only five votes. The contention of the petitioner is that when the 2nd respondent has been removed from the Board of Directors by the Resolution dated 11.12.2014, the 2nd respondent, without challenging the said Resolution by filing a revision petition, should not have been permitted to file his nomination in the elections held on 02.02.2015.

4 Heard the learned counsel for the parties and perused the materials placed on record.

5 The impugned proceedings is challenged mainly on two grounds. Firstly on the ground that it is in violation of principles of natural justice and secondly, by contending that rules which have been referred to in the impugned order, viz., Rules 61 and 61-A of the Rules, have no application to the facts of the case. The ground on which the impugned order has been challenged is prima facie correct, since Rules 61 and 61-A deals

with removal of members of the elected Board by expressing "No Confidence". Therefore, the said procedure cannot be imported into the proceedings under section 34[2][d] of the Act. Having held so, it has to be seen as to whether the petitioner would be entitled to be succeeded merely on the said ground. Though the petitioner complains that the impugned order has been passed in violation of principles of natural justice, it has to be noted that the respondents 2 and 3 were removed from the office of the Director, without opportunity being granted to them. The petitioner seeks to rely on the Resolution dated 11.12.2014. On a perusal of the said Resolution, it is seen that the respondents 2 and 3 were not issued with any notice prior to they being removed from the post of Directors. Therefore, the Resolution dated 11.12.2014 is in violation of principles of natural justice since the elected Board of Directors, viz., the respondents 2 and 3 were not given opportunity to submit their objections to the proposal to remove them from the elected office. Therefore, to that extent, the impugned order passed by the 1st respondent is sustainable since the order of removal has been made in violation of principles of natural justice.

6 In such circumstances, the 1st respondent exercising jurisdiction over the affairs of the petitioner's Society was entitled to interfere with the impugned order. However, before doing so, the petitioner should have been given an opportunity. However, at this stage of the matter, the question of granting opportunity does not arise, since already the election has been conducted, though subject to the result of the writ petition.

7 Accordingly, the challenge to the impugned proceedings stands rejected and the writ petition stands closed in the light of the above observations and also taking note of the fact that in the elections conducted on 02.02.2015, the 2nd respondent was unsuccessful. In the light of the above order passed on the technical ground of non-compliance of principles of natural justice, it would be open to the petitioner to follow the procedure contemplated under the Acts and Rules and proceed in accordance with law. No costs. Consequently, the connected miscellaneous petition is also closed.

sd/
ASSISTANT REGISTRAR (CS-II)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

AP

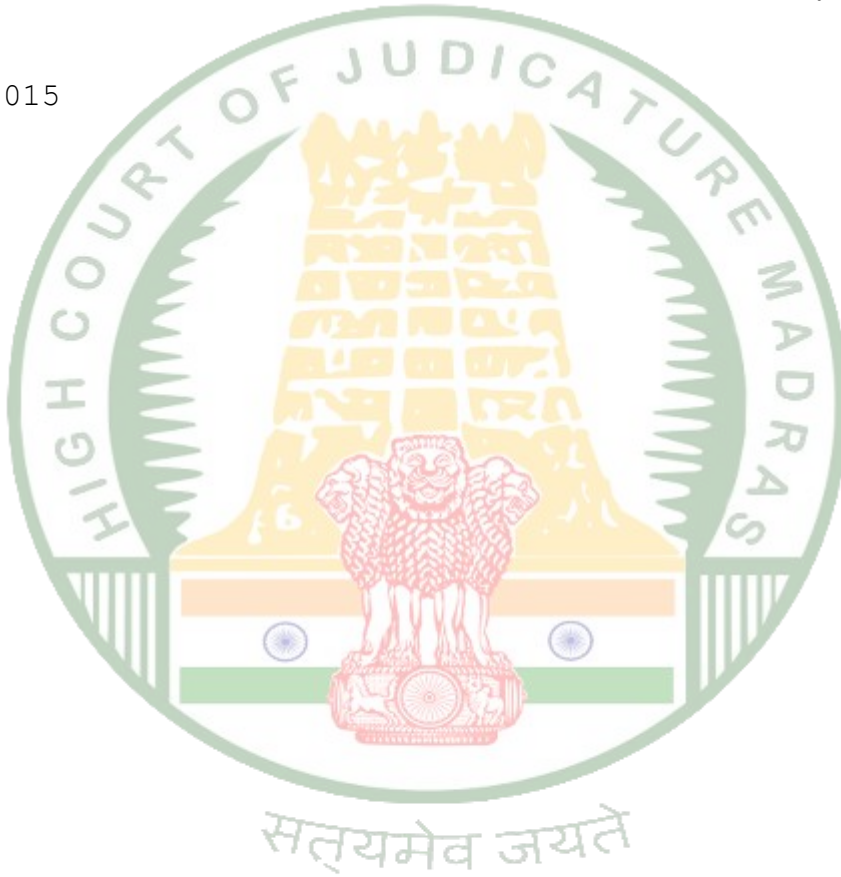
To

The Deputy Registrar of Coop. Societies
Nagapattinam Circle, Nagapattinam
Nagapattinam District.

+1 CC to MR.C.Prakasam Advocate. SR.NO.64025
+1 CC to Govt.Pleader. SR.NO. 63922

WP.No.2055/2015

CO-MG
JD 30/11/2015



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