

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.29128 of 2014 &
M.P.No.1 of 2014

K.Vadivel

PETITIONER

Vs

- 1 The Registrar of Co-operative Societies
E.V.R. Periyar Road,
Kilpauk, Chennai-600 010.
- 2 The Deputy Registrar of Co-operative Societies
Krishnagiri District , Krishnagiri
- 3 R.Babu [RESPONDENTS]

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records pertaining to Election Case No.1477/2013/C.E. dated 3.11.2014 on the file of the Deputy Registrar of Cooperative Societies Krishnagiri District, Krishnagiri and quash the same as illegal incompetent and ultravires.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mr.R.Bala Ramesh - R1 & R2
Additional Government Pleader

Mr.S.Doraisamy - R3

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. Heard Mr.R.Jayaprakash, learned Counsel appearing for the petitioner, Mr.R.Bala Ramesh, learned Additional Government Pleader, appearing for the respondents 1 & 2 and Mr.S.Doraisamy, learned counsel appearing for the third respondent.

3.The petitioner in this writ petition challenges the order dated 3.11.2014, passed by the second respondent under section 90 of the Tamil Nadu Co-operative Societies Act (in short the 'Act').

4.The only contention raised by the learned counsel for the petitioner is that the second respondent has no jurisdiction to pass the impugned order as the second respondent has referred to the provisions of section 34(1)(b)(i) of the Act and if that be the case the procedure contemplated under sub section (3) of section 34 of the Act has to be followed and it is the Board of the Registrar of Co-operative Societies, who is competent to take up the matter.

5.At the first blush, the arguments advanced by the learned counsel for the petitioner is impressive, but on a closer scrutiny of the case, the conclusion to be taken has to be necessarily different.

6.In this case, the second respondent has not passed orders suo motu invoking the provisions under section 34 (1)(b) of the Tamil Nadu Co-operative Societies Act. The impugned order is as result of an Election Petition filed by the third respondent, challenging the rejection of his petition on the ground that he is a defaulter.

7.The learned counsel for the petitioner submits that no such default has been committed by the petitioner.

8.However, this question cannot be gone into at this stage, since the petitioner has hierarchy of remedies under the Act, as against the impugned order. Further, on a plain reading of section 34 (1)(b) of the Act shows that no person shall be eligible for being an elected Member of the board of the registered society if he is in default to such registered society or any other registered society in respect of any loan or advance taken by him or dues under credit purchases made by him for a period exceeding three months.

9.It is not in dispute that the petitioner was a borrower/guarantor in respect of a loan said to have been availed by his brother. The question as to whether the default

has been committed or not, is a factual dispute to be determined by the appropriate authority. In the event such a conclusion is arrived at, then the procedure under section 34(3) of the Act has to be followed. However, power under section 34(3) of the Act can also be exercised suo motu by the Board or on an application by any person. Therefore, when it comes to the notice of the Board that one of the person elected who was nominated as the Member of the Board of Director was a defaulter, then the procedure to disqualify him to hold such office shall be in accordance with the procedure prescribed under section 34 of the Act. The said provision will have no application to the facts of the present case, since the present impugned order has been passed by the second respondent in an election dispute raised by the third respondent under section 90 of the Act.

10. In the light of the above, this Court is not inclined to examine the correctness of the order, since the petitioner has an effective alternate remedy of revision under section 153 of the Act and the revisional remedy is a very effective and efficacious remedy and provides an opportunity to make representations etc. Therefore, no valid reason has been made out to bypass the alternative remedy available under the Act.

11. Accordingly the Writ Petition is dismissed as not maintainable, giving liberty to the petitioner to avail alternate remedy under the Tamil Nadu Co-operative Society Act and the Rules framed thereunder. It is made clear that the revisional authority shall decide such petition unfluenced by any observations made in this order. The Revisional authority, while calculating limitation, may exclude the period during which the writ petition was pending i.e. from 7.11.2014 to till the certified copy of this order is made ready. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rpa

To

- 1 The Registrar of Co-operative Societies
E.V.R. Periyar Road,
Kilpauk, Chennai-600 010.
- 2 The Deputy Registrar of Co-operative Societies
Krishnagiri District , Krishnagiri

+1 cc to Mr.R.Jayaprakash Advocate sr.62201
+1 cc to Government Pleader sr.no.61776
+2 ccs to Mr.R.Jayaprakash Advocate sr.61354

W.P. No. 29128 of 2014

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