

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14563 of 2016 &

WMP No.12746 of 2016

1 K.Loganathan
2 Anjanamma
3 K.G.Prakash
4 Venkatesaperumal
5 Imran Basha
6 Vijaya
7 Ayyapillai
8 Radhakrishnan [PETITIONERS]

Vs

The Registrar of Co-operative Societies (Housing)
Annasalai, Nandanam,
Chennai-35 [RESPONDENT]

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the order of permanent disqualification passed by the respondent under Section 36 of the Tamilnadu Co-operative Societies Act, 1983 in Na.Ka. No.5776/2015/ sa.pa 2 dated 01.04.2016 and quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.L.P.Shanmugha Sundaram
Special Govt. Pleader

O R D E R

Heard Mr.M.S.Palaniswamy, learned Government Advocate appearing for the petitioner, Mr.L.P.Shanmugha Sundaram, learned Special Government Pleader, accepting notice for the respondent and with the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2.The petitioners are all elected members of the Board of the Co-operative Society called as the Hosur Co-Operative House Building Society. The challenge in this Writ Petition is to an order passed by the respondent dated 01.04.2016, invoking the

power under section 36 of the Tamil Nadu Co-operative Societies Act, 1983, thereby, permanently disqualified all the petitioners from the elected office. As a consequence of which, an Administrator has been appointed by the Deputy Registrar (Housing), Vellore Division, by an order dated 11.04.2016.

3. Heard the learned counsel for the petitioners and the learned Special Government Pleader appearing for the respondent.

4. The dispute between the President and the Board Members of the Society has lead to the destruction of the Society itself, thereby defeating the very object of the Co-operative movement. The ongoing dispute is only with regard to the affairs of the Society, but there is personal animosity between the President of the Society who is the first petitioner and the Secretary of the Society one Ms.S.Vanitha and criminal cases are pending against each of them. Earlier the first petitioner herein had approached this Court by filing a Writ Petition in W.P.No.34933 of 2013, in the capacity of the President of the Society. The prayer sought for in the said Writ Petition was to direct the official respondents to open the lock put up by the Secretary of the Society viz. Smt.Vanitha and handed over the entire records relating to the Society, after taking an inventory, within a time to be stipulated by this Court to enable the smooth functioning of the Society.

5. The Court after hearing the parties, disposed of the Writ Petition by an order dated 18.06.2014, wherein it was pointed out that it would suffice to direct the Secretary Smt.Vanitha and the Supervisor Mr.K.Murugesan to handover the entire records available with them to the Deputy Registrar after taking xerox copies of the same to defend their case as they were placed under suspension. Accordingly, a direction was issued to those two persons to handover the entire records to the Deputy Registrar, who in turn was directed to handover the records to the first petitioner herein after taking necessary acknowledgement, within a period of ten days.

6. Both the parties stated before this Court that there were two locks affixed to the Society, one put up by the Secretary Tmt.Vanitha and the other by the first petitioner herein. Taking note of the said submission, the Writ Petition was disposed of by directing the parties to open the lock. Subsequently, the matter was placed before the Court under the caption 'for being mentioned' and an order was passed on 20.08.2014, clarifying that the documents from 2001 are to be furnished to the first petitioner.

7. The petitioner in the capacity of the President of the Society has filed a Contempt Petition in Cont.P.No.316 of 2015, alleging wilful disobedience of the order and direction issued

in W.P.No.34933 of 2013 dated 18.6.2014 and 20.08.2014. In the said Writ Petition, the Court has appointed an Advocate Commissioner to open the lock and examine the records pertaining to the order from 2001 onwards and submitted a report before the said Court within a stipulated time. Police assistance was also granted to the learned Advocate Commissioner. The Contempt Petition is pending and it appears that the learned Advocate Commissioner is to file a report shortly.

8. When the facts stood thus, the position after the order was passed on 25.02.2016, in the Contempt Petition appointing the Advocate Commissioner, the respondent could not have issued a show cause notice on 01.04.2016, calling upon the petitioners to explain as to why they should not be permanently disqualified from their office in terms of Section 36 of the Act. The petitioners have stated that they require time to submit their objections and each of the petitioners sought for copies of the documents which proposed to be relied upon. Those requests made by the petitioners have been received by the respondent on 21.03.2016, as may be seen from the postal acknowledgement card. However, the respondent without considering the said request, by the impugned order dated 01.04.2016, has removed all the petitioners from the elected office. Though the impugned order is a five page order, the only reason assigned for rejection of the petitioners request is found in the last three lines of the last paragraph of the order. All that is stated is that the petitioners explanations are not acceptable.

9. It is to be noted that none of the petitioners have given any explanation and they only wanted copies of the documents to enable them to submit their objections/explanations. Further, the respondent in a hurried manner has passed the impugned order without even referring to the nature of the representations given by them. This is sufficient to hold that the impugned order is unsustainable in law.

10. Accordingly, the Writ Petition is allowed and the impugned order dated 01.04.2016, is quashed, as a consequence of which an order appointing the Administrator namely Thiru K.Ravichandran, Sub-Registrar of Co-operative Society, Vandavasi, dated 11.04.2016 is also set aside and the matter is restored to the state of show cause notice dated 01.03.2016. The respondent is directed to await the further direction that

may be issued in Contempt Petition No.316 of 2015 and thereafter, proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

r p a

s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

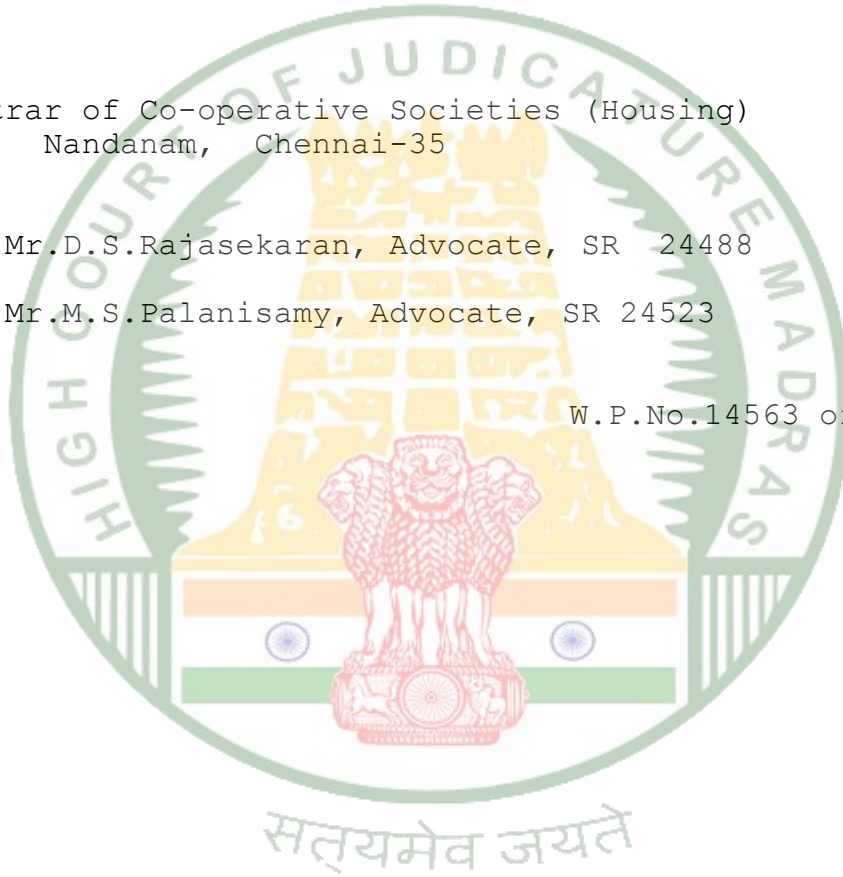
The Registrar of Co-operative Societies (Housing)
Annasalai, Nandanam, Chennai-35

+ 1 cc to Mr.D.S.Rajasekaran, Advocate, SR 24488

+ 1 cc to Mr.M.S.Palanisamy, Advocate, SR 24523

nr(co)
prk2/5

W.P.No.14563 of 2016



WEB COPY