

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

Writ Appeal No.265 of 2012
& M.P.No.1 of 2012

- 1.The Registrar of Co-operative Societies,
"NVN Maaligai",
No.170, EVR Periyar Salai,
Kilpauk, Chennai-10
 - 2.The Deputy Registrar of Co-operative Societies,
Erode Region,
Erode-1
- ...Appellants

-vs-

Ms.A.Vasanthi

..Respondent

WRIT APPEAL filed under Clause 15 of Letters Patent against the order passed in W.P.No.9910 of 2011 dated 30.09.2011. Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records relating to 2nd Respondent's order made in Na.Ka.No.2838/2010/Na.Ka, dated 22.10.2010 to quash the same and consequently direct the respondents to permit the petitioner to function as a registered society on the basing of deemed registration as per the relevant provisions of the Act.

For Appellants :Mr.L.P.Shanmugasundaram,
Spl.G.P. (Co-op)

For Respondent : Mr.L.Chandrakumar

J U D G M E N T

(Judgment of the Court was delivered by A.SELVAM, J)

This Writ Appeal has been directed against the order dated 30.09.2011, passed in W.P.No.9910 of 2011, by the learned single Judge of this Court.

2. The respondent herein, as writ petitioner, has filed Writ Petition No.9910 of 2011, on the file of this Court, under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus so as to call for the records relating to the impugned order dated 22.10.2010, passed by the second appellant herein and quash the same.

3. It is averred in the writ petition that the respondent/petitioner has sent an application to the second appellant/second respondent, on 17.4.2008, to register the Society mentioned therein. But the second appellant/second respondent has failed to send any communication with regard to registration and abruptly passed the impugned order dated 22.10.2010, wherein it has been specifically stated that the application of the respondent/petitioner is returned for the reasons mentioned therein. Under the said circumstances, the writ petition has been filed for getting the relief sought therein.

4. In the counter filed on the side of the appellants/respondents, it is averred that the second appellant/second respondent, after considering the relevant Rules of the Tamil Nadu Co-operative Societies Act, 1983, has rightly returned the application of the respondent/petitioner and further, the respondent/petitioner has given a fresh application on 4.12.2009 and under the said circumstances, the relief sought in the writ petition cannot be granted and altogether the same is liable to be dismissed.

5. On the basis of the divergent contentions raised on either side, the learned single Judge has allowed the writ petition No.9910 of 2011. Against the order passed by the learned single Judge, the present writ appeal has been preferred, at the instance of the respondents, as appellants.

6. The learned counsel appearing for the appellants has strenuously contended that the period mentioned in Section 9 (3) of the Tamil Nadu Co-operative Societies Act, 1983 is not mandatory and it is only a directory and further as per Rule 7 (7) of the Tamil Nadu Co-operative Rules 1988, no Certificate of Registration has been given to the respondent, even if a deemed registration is given. But the learned single Judge has failed to follow the Rules mentioned supra and therefore, the impugned order passed by the learned single Judge is liable to be set aside.

7. In order to repudiate the contentions put forth on the side of the appellants/respondents, the learned counsel appearing for the respondent/petitioner has sparingly contended

that as per Section 9(3) of the Tamil Nadu Co-operative Societies Act, 1983, if an application is received and the same has not been considered within a period of 120 days, it is deemed that the Society mentioned therein has been registered and the learned single Judge, after considering the provision of Section 9(3) of the said Act, has rightly allowed the writ petition and the same does not require any interference.

8. It is an admitted fact that on 17.4.2008 the respondent/petitioner has given an application to the second appellant/respondent society to register the Society mentioned therein. It is also equally an admitted fact that on 22.10.2010, the second appellant has returned the application of the respondent/petitioner by way of passing the impugned order.

9. The short point that involves in the present writ appeal is as to whether the period mentioned in Section 9(3) of the Tamil Nadu Co-operative Societies Act, 1983 is mandatory or directory? For better appreciation, the Court has to look into the provision of Section 9(3) of the said Act and the same reads as follows:

"9(3) Where no order of refusal is communicated under sub-section (2) within the said period of one hundred and twenty days, it shall be deemed that the Registrar has registered the society and its by-laws on the one hundred and twentieth day from the date of receipt by the Registrar of the application for registration."

10. Even a cursory look of the said provision would go to show that if an order of refusal is not communicated within a period of 120 days, it shall be deemed that the Registrar has registered the society mentioned in the application.

11. The entire argument put forth on the side of the appellants is based upon Rule 7(7) of the Tamil Nadu Co-operative Societies Rules, 1988 and the same reads as follows:

"7(7). Where a Society and its by-laws are registered under sub-rule (5) or are deemed to have been registered under sub-Section (3) of Section 9, the Registrar shall issue to the chief promoter a certificate of registration in Form No.6 signed by him and bearing his official seal together with two certified copies of the by-laws, one for safe custody and the other for reference as registered or deemed to have been registered by him."

12. A mere reading of that Rule would go to show that if a deemed registration is given, a duty is cast upon the Registrar to issue certificate of registration. On the basis of Rule 7(7), the Court cannot come to a conclusion that the period mentioned in Section 9(3) is not mandatory.

13. The learned counsel appearing for the appellants has relied upon the decision of this Court in S.V.K.Sahasramam vs. Deputy Registrar of Co-op.Societies, Tiruvannamalai Circle, Tiruvannamali and Others (reported in 2008(8) MLJ 231), wherein, the Division Bench of this Court has specifically held that if any enquiry is contemplated under Section 81 of the Tamil Nadu Co-operative Societies Act (Act 30/1983), the period mentioned is not mandatory if finance of the Society is involved.

14. In fact, the facts mentioned in the decision are totally alien to the facts of the present petition. Under the said circumstances, the dictum given in 2008(8) MLJ 231 cannot be attuned in the present writ appeal.

15. The learned single Judge, after considering the rival contentions raised on either side, has rightly allowed the writ petition. In view of the foregoing enunciation of both factual and legal aspects, this Court has not found any valid ground to make interference in the order passed by the learned single Judge and altogether the present writ appeal is liable to be dismissed.

In fine, this writ appeal is dismissed. No costs. Connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

msk

To

1. The Registrar of Co-Operative Societies,
NVN Maaligai, No.170, EVR Periyar Salai,
Kilpauk, Chennai 10.

2. The Deputy Registrar of
Co-Operative Societies,
Erode Region, Erode 1.

1 cc ot Mr.L.Chandrakumar, Advocate, sr.30351

W.A. No.265 of 2012

vd co, kra 13.06.2016