

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

W.A. No.714 of 2016
and C.M.P.No.9298 of 2016

K.Marimuthu ... Appellant

-vs-

1.The Deputy Registrar of Co-operative
Societies, Chidambaram Circle,
Cuddalore District.

2.The Co-operative Sub Registrar /
Field Officer, Parangipettai,
Chidambaram, Cuddalore District.

3.G.Raja

4.N.Selvi

5.R.Chakkravarthy

6.K.Anbukkarasi

7.P.Rajendran

8.G.Palaniammal

9.D.Sakthivel

10.V.Shanmugasundaram

.. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 08.03.2016 made in W.P.No.8187 of 2016 on the file of this Court.

WP.No.8187 of 2016:Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records of the 1st respondent resulting in the impugned proceedings of the 2nd respondent dated 29.02.2016 quash the same and consequently direct the respondents 1 and 2 to conduct detailed enquiry on the basis of explanation given by the petitioner dated 06.02.2016 and 17.02.2016 after affording all sort of opportunities to both parties including oral and documentary evidence.

For Appellant : Mr.M.S.Palaniswamy
For Respondents : Mr.L.P.Shanmugasundaram
Spl.G.P. For RR 1 and 2

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J U D G M E N T

(Judgment of the Court was delivered by
The Hon'ble Chief Justice)

The appellant seeks to assail the order of the learned Single Judge dated 08.03.2016 dismissing the writ petition filed by him assailing the resolution passed by the Board of Directors of the second respondent Society allowing the no confidence motion brought against the appellant in the capacity of the President of the Society.

2.The challenge laid by the appellant was on the ground that the procedure contemplated under Rule 62 of the Tamil Nadu Co-operative Society Rules, 1988, (hereinafter will be referred to as 'the Rules') had not been followed and that there had been no consideration of the resolution, which was mechanically passed. The appellant, thus, claimed that he was entitled to be heard before the resolution was passed. A plea was also sought to be raised that voting by ineligible members in the no confidence motion would make the motion void ab initio. Lastly, no enquiry had been made in respect of the allegations against the appellant before passing the resolution.

3.On the other hand, the stand taken by the first and second respondents in rebuttal as reflected in the impugned order is that the requirements of the Rule have been complied with and two-third of the existing members of the Board made a requisition after following proper procedure under Sub-Rule 3 of Rule 62 of the Rules and action was taken by placing the matter before the Board, which passed the resolution removing the appellant from holding the post of the President of the Society.

4.An objection which was sought to be raised by the respondents before the learned Single Judge was that an effective alternative remedy was available by filing a revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. Despite that, the learned counsel for the appellant pressed ahead for inviting the verdict in the writ petition and seeking a decision on merits, thus effectively giving up his rights for moving a revision petition. It is, in

these circumstances, that the learned Single Judge had no option but to opine on the merits of the controversy.

5. Rule 62 of the Rules is reproduced hereunder:

'62. Removal of an elected office-bearer. - (1) An elected office-bearer may be removed by a resolution expressing no confidence in him passed in a special meeting of the board.

(2) No special meeting of the board shall be convened unless a requisition in writing signed by not less than two-thirds of the existing members of the board of the society at the time of such requisition who are eligible to vote at elections is presented to the Registrar.

(3) As soon as such a requisition is received, the Registrar shall communicate a copy of the requisition to the office-bearer concerned, calling upon him to make his representations, if any, within such time as may be specified by him. The Registrar shall, within thirty days from the date of receipt of such requisition arrange to convene a special meeting of the board of the society, for consideration of the resolution expressing no confidence in the office-bearer for which not less than three clear days' notice shall be given. A copy or gist of the requisition and of the representation, if any, received from the office-bearer concerned shall also be sent to the members along with the notice for the special meeting of the board.

(4) The special meeting of the board shall be presided over and conducted by the Registrar or any officer subordinate to him authorised in this behalf.

(5) The quorum for such special board meeting shall be majority of the existing members of the board who are eligible to vote at elections.

(6) No resolution of the board passing the no confidence motion against an election office-bearer and removing him from the office shall be valid unless such a resolution is passed by not less than two-thirds of the members present and voting at the special meeting of the board.

(7) The society shall communicate a copy of such resolution to the office-bearer concerned who shall cease to be such office-bearer from the date of such resolution.

(8) If the no confidence motion is not carried by such a majority referred to in sub-rule (6), or if the meeting cannot be held for want of the quorum referred to in sub-rule (5), no requisition for bringing any subsequent motion expressing want of confidence in the same office-bearer shall be received until after the expiry of six months of the date of the meeting.''

6. The pre-requisite, thus, for convening a special meeting is the requisition in writing signed by not less than two-thirds of the existing members of the board of the society who are eligible to vote. On receipt of such requisition, the Registrar has to communicate a copy of the requisition to the office-bearer concerned within time specified, which was done. The special meeting required was called for the said purpose. Thus, the mandate as required was followed by the first respondent for purposes of calling the meeting and thus, the categorical finding by the learned Single Judge is that the procedure contemplated under law has been followed, an aspect with which we are in full agreement.

7. Learned counsel for the appellant did seek to contend that some of the signatures were allegedly forged. However, this was the stand of some other members and not of the members who had signed the requisition. Not only that those members were present in the meeting and voted against the appellant. In such a democratic polity, once the procedures for election and removal are prescribed, a candidate must learn to accept both, when the President was elected and when he loses the trust of the remaining members, he has to move out. This reality does not seem to have dawned on the appellant.

8. We are also not in agreement with the submission of the learned counsel for the appellant that the removal would be stigmatic in character, as the complaints made had not led to an enquiry. If there were any findings recorded against the appellant, then only would the occasion arise for the same to be stigmatic. As to whether an enquiry is to be held and what would be result of the same is another matter. The issue in question is only of the appellant losing the trust of the members and consequently, being removed as per procedures prescribed by law.

9. Learned counsel for the appellant also sought to contend that he did not get a chance to fully put forth his stand. Once again this plea is to be rejected as the appellant had intimation of what was going to transpire, was present in the meeting to offer his explanation, but his explanation did not find faith with the other members. There is, thus, no question of any violation of the rules or audi alteram partem as sought

to be canvassed by the appellant.

10. Another aspect sought to be contended by the learned counsel for the appellant is that the same learned Judge has taken a different view while deciding W.P.(MD) No.12964 of 2014 on 07.08.2014, without any distinction. We are to reject this plea once again as the discussion in para 9 makes it abundantly clear the points on distinction. In that matter, the issue was referred back on account of serious question about ineligibility of the four members to vote and there being absence of coram. There was denial of appending the signatures by the very members who have signed the special meeting requisition. None of these factors are present in the case in question and thus, those principles would naturally not apply.

11. We are, thus, of the view that the learned Single Judge has actually decided the merits of the controversy itself and to that extent really speaking nothing is left to be referred to to be decided in the revision petition as has been observed by the learned Single Judge in para 10 of the order. The appellant cannot make a grievance that these findings have foreclosed his remedy of revision petition for the reason that it is the appellant and the counsel who insisted on proceeding with the matter despite being cautioned about the remedy of revision available to them. Thus, really speaking, no purpose would be served in now giving leave to the appellant to file the revision petition.

12. The aforesaid being the only pleas advanced, we see no reason to interfere with the order of the learned Single Judge except with aforesaid extent.

13. Writ Appeal, accordingly, stands dismissed. No costs. Consequently, C.M.P.No.9298 of 2016 also stands dismissed.

-s/d-
Assistant Registrar

True Copy

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Sub-Assistant Registrar

sra

To

1.The Deputy Registrar of Co-operative
Societies, Chidambaram Circle,
Cuddalore District.

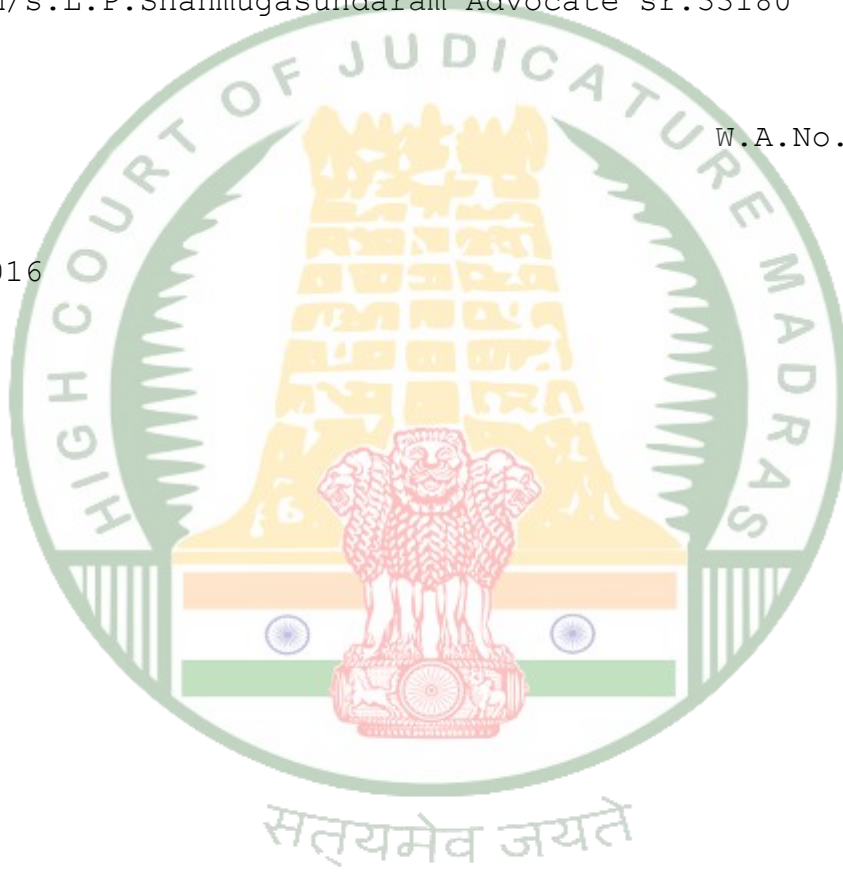
2.The Co-operative Sub Registrar /
Field Officer, Parangipettai,
Chidambaram, Cuddalore District.

+1 cc to M/s.M.S.Palanisamy Advocate sr.33059

+1 cc to M/s.L.P.Shanmugasundaram Advocate sr.33180

W.A.No.714 of 2016

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