

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.03.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.8187 of 2016

and

W.M.P.Nos.7279 & 7280 of 2016

K.Marimuthu

...Petitioner

Vs.

1. The Deputy Registrar of
Cooperative Societies,
Chidambaram Circle,
Cuddalore District.

2. The Cooperative 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

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for records of the first respondent, resulting in the impugned proceedings of the second respondent, dated 29.02.2016, and to quash the same and consequently, to 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 opportunities to both parties, including oral and documentary evidence.

For Petitioner

: Mr.M.S.Palaniswamy

For Respondents 1 and 2

: M/s.T.P.Savitha
Government Advocate

O R D E R

Heard Mr.M.S.Palaniswamy, the learned counsel appearing for the petitioner and M/s.T.P.Savitha, the learned Government Advocate for respondents 1 and 2.

2. The challenge in this Writ Petition is to the resolution passed by the Board of Directors of the respondent/Society, allowing non confidence motion brought against the petitioner, President of the Society.

3. The petitioner's contention is that the procedures contemplated under Rule 62 of Tamil Nadu Co-operative Societies Rules, 1988, have not been followed, and there has been no consideration of the resolution, and mechanically, the same has been passed.

4. The learned counsel appearing for the petitioner submitted that the petitioner has not been given any opportunity to putforth his case, and explain his stand, before the non confidence motion was tabled, and he is denied his fundamental rights to defend himself. Further, it is submitted that ineligible members taking part and voting for the non confidence motion is ab initio void. That apart, the respondents 1 and 2 have not conducted any enquiry, before passing such resolution.

5. The learned Government Advocate for respondents 1 and 2 submitted that procedures, which are required to be followed under Rule 62 have been followed, and, as required under sub rule (2) of Rule 62, two-thirds of the existing members of the Board have made a requisition, and after following the procedures under sub Rule 3 of Rule 62, action was taken, and the matter has been placed before the Board, and the Board has passed the impugned resolution, accepting the same and thereby, removing the petitioner from holding the post as President of the Society.

6. At the very outset, it has to be pointed out that, as against the impugned proceedings, the petitioner has an effective alternate remedy to file a Revision under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983. However, the petitioner has not chosen to avail such remedy, and straightaway approached this Court, by way of this Writ Petition. In the light of the same, this Court has to examine as to whether the

procedures required to be followed under Rule 62 of Tamil Nadu Co-operative Societies Rules, 1988 have been properly followed, and, whether there was any violation in following such procedures. Rule 62 deals with removal of an elected office-bearer. In terms of sub rule (1) of Rule 62, an elected office-bearer may be removed by a resolution, expressing no confidence in him passed in a special meeting of the Board, and for the purpose of convening such a special meeting, as per sub rule (2) of Rule 62, a 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 at elections is required, and such requisition has to be presented to the Registrar. The next procedure to be followed, as per sub rule 3 of Rule 62 is that, as soon as a requisition is received, the Registrar has to communicate a copy of such requisition to the office bearer concerned (petitioner in this case), calling upon him to make his representations, if any, within such time as may be specified by him (Registrar), and within 30 days from the date of such requisition, the Registrar has to take steps to convene a special meeting of the Board of the Society for consideration of the resolution expressing non confidence against an officer bearer, (petitioner/President in this case), for which, a notice, not less than 3 clear days has to be issued. Further, sub rule 3 of Rule 62 mandates that along with a notice for convening the special meeting of the Board, a copy of the gist of the requisition and a copy of the representation, if any, given by the officer bearer (petitioner/President) has to be sent to the members.

7. On a perusal of the documents filed in the form of typed-set of papers, filed in support of this Writ Petition, it is seen that all the procedures contemplated under sub rules (1) to (3) of Rule 62 have been followed, since a requisition, dated 01.02.2016, has been presented to the first respondent, signed by two-thirds of the existing members of the Board, who were eligible to vote in the election. On receipt of such requisition, the first respondent issued a show cause notice to the petitioner, dated 02.02.2016, calling upon him to make representation, and, within the prescribed period of 30 days, a notice for convening the special meeting has been issued by the respondent-Society on 20.02.2016, which was accompanied by requisition, dated 01.02.2016 and the petitioner's representation/explanation, dated 06.02.2016, and all these aspects are not disputed by the petitioner. Thus, there is full compliance of procedures contemplated under sub rules 1 to 3 of Rule 62 of the Tamil Nadu Cooperative Societies Rules, 1988.

8. The learned counsel appearing for the petitioner vehemently contended that the Rule contemplates consideration of

the resolution expressing non confidence, and that consideration has not been made, and mechanically, the resolution has been passed. In my view, these issues cannot be adjudicated in a Writ Petition, since the same being disputed questions of fact. The resolution was considered in the special meeting of the Board, in which, the petitioner is a member, as well as there are other office bearers. Therefore, the petitioner has to first establish before the Authority that no consideration was done by the Board, before passing such resolution. This aspect, obviously, cannot be examined in this Writ Petition.

9. The learned counsel appearing for the petitioner, in support of his case, referred to a decision rendered by me, in W.P.(MD)Nos.12964 of 2014, dated 07.08.2014, and submitted that, in the said Writ Petition, a similar situation arose for consideration, and the Writ Petition was partly allowed, and the matter was remanded for fresh consideration. In the said case, the petitioner, who was a elected President of the Society, raised several contentions, first of which being that, four members of the Board were ineligible to vote in the election and they were deemed to have vacated from the Office, and therefore, there was no coram. It was further stated that one of the persons, who was stated to have signed in the Special Meeting has denied his signature, and stated that his signature has been forged, therefore, notice convening special meeting itself was defective. In the said case, I have not quashed the entire proceedings, only the finding of the Cooperative Sub Registrar was set aside, as the same was without jurisdiction. Similarly, the findings recorded by the Sub Registrar in rejecting the petitioner's explanation was set aside, and to the said extent alone, the impugned order was set aside, and the Writ Petition was partly allowed and the matter was remanded for fresh consideration. The facts of the said case are entirely different, and clearly distinguishable of facts, and cannot be applied to the facts of the case on hand.

10. In the light of the above, the prayer sought for herein to quash the impugned resolution cannot be maintained in the Writ Petition on the grounds raised by the petitioner. Accordingly, the Writ Petition is dismissed as not maintainable, leaving it open to the petitioner to workout his remedy under Rule 153 of the Tamil Nadu Cooperative Societies Act, 1983. After the above order was dictated, the learned counsel appearing for the petitioner submitted that the petitioner on filing Revision, a direction may be given to the Registrar to dispose of the Revision expeditiously. Since the Registrar is not a party in this Writ Petition, it is open to the petitioner to file a copy of this order along with the Revision, and the Revisional Authority shall dispose of the Revision after hearing all the parties concerned, within a period of six weeks from the date of receipt of Revision.

11. In the result, the Writ Petition is dismissed, as stated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Registrar of
Cooperative Societies,
Chidambaram Circle,
Cuddalore District.
2. The Cooperative Sub Registrar/
Field Officer,
Parangipettai, Chidambaram,
Cuddalore District.

+1cc to Mr.S.Palaniswamy, Advocate, S.R.No.14793
+1cc to the Government Pleader, S.R.No.15045

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skv(CO)
srg(05/04/2016)

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