

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.3442 of 2003
and WPMP Nos.4325 and 4326 of 2003

D.Balraj

Petitioner

Vs

1.The Government of Tamil Nadu
rep by its Secretary to Government
Housing and Urban Development Department
Fort St.George
Chennai 9.

2.The Registrar of Co-operative
Societies (Housing)
79, 4th Main Road, Gandhi Nagar
Adyar, Chennai 20.

3.The Deputy Registrar of Co-operative
Societies (Housing)
Coimbatore Region
Coimbatore.

4.The Co-operative Sub Registrar (Housing)
Coimbatore.

5.The Special Officer
K-1709, Periyannayakkanpalayam Co-operative
Housing Building Society Ltd.
Kurunthachala Nagar
K.Vadamadurai Post
Coimbatore 641 017.

Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records of the fourth respondent relating to the report submitted to the third respondent on 16.12.2002 under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 and the consequential proceedings of the third respondent bearing Ref.Na.Ka.2260/2001 Sa.Pa. dt.16.12.2002 under Section 87 of the said Act and quash the same insofar as the petitioner is concerned.

For petitioner : Mr.V.Sanjeevi
For R1 to R4 : Mr.V.Selvaraj
Addl.Govt. Pleader
For R5 : Mr.Varadharajan

O R D E R

This petition has been filed to call for the records of the fourth respondent relating to the report submitted to the third respondent on 16.12.2002 under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (for short "the Act") and the consequential proceedings of the third respondent bearing Ref.Na.Ka.2260/2001 Sa.Pa. dt.16.12.2002 under Section 87 of the said Act and quash the same insofar as the petitioner is concerned.

2. The petitioner was the President of K-1709, Periyannayakkanpalayam Co-operative Housing Building Society. The Deputy Registrar of Co-operative Societies has initiated surcharge proceedings u/s 87(1) of the Act by order dated 16.12.2002, challenging which, the petitioner is before this Court.

3. This is the second round of litigation by the petitioner. Earlier, the Deputy Registrar of Co-operative Societies (Housing) passed an order dated 31.05.2001, authorising the Sub Registrar to conduct inspection under Section 82 of the Act. Challenging the said order, the petitioner filed WP.No.4071 of 2002, which was allowed, by a learned Single Judge of this Court on 12.04.2002 on the ground that in view of the G.O.Ms.31, Housing & Urban, dated 08.01.1990, the Deputy Registrar of the Co-operative Societies (Housing) does not have the power under Section 82 of the Act and only the Sub Registrar of the Co-operative Societies (Housing) has the power.

4. The Co-operative Society (Housing) took the matter on appeal in WA.No.3769 of 2002, where a Division Bench of this Court, by order dated 18.11.2009, confirmed the order passed by the learned Single Judge, thereby holding that the Deputy Registrar of the Co-operative Societies (Housing) does not have the power ordering inspection under Section 82 of the Act.

5. Thereafter, the Deputy Registrar of the Co-operative Societies (Housing), by order dated 16.12.2002, initiated surcharge proceedings under Section 87 of the Act, challenging which, the petitioner has filed the above writ petition.

6. The challenge to the order dated 15.12.2002 was built on the premise that the Deputy Registrar of the Co-operative Societies (Housing) does not have the powers to initiate Surcharge Proceedings under Section 87 of the Act, in the light of G.O.Ms.31, Housing & Urban, dated 08.01.1990 referred to above.

7. During the course of hearing, Mr.V.Sanjeevi, learned counsel appearing for the petitioner brought to the notice of this Court the order passed by the learned Single Judge in WP.No.4071 of 2002 and the order of the Division Bench of this Court in WA.No.3769 of 2002.

8. This Court carefully studied the two orders and it is true, that the Division Bench of this Court in WA.No.3769 of 2002 has confirmed the order of the learned Single Judge passed in WP.No.4071 of 2002 on certain concessions made by the other side. G.O.Ms.31 dated 08.01.1990 reads as follows:-

[G.O.Ms.No.31, H & U, dated 8th January 1990]
No.II(2)/HOU/402/90 - In exercise of the powers conferred by Section 3 of the Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983) and in supersession of all previous order of the subject issued under the Tamil Nadu Co-operative Societies Act, 1961 (Tamil Nadu Act 53 of 1961) the Governor of Tamil Nadu hereby confers on the officers specified in column (1) of the table below, the powers of the Registrar under the Tamil Nadu Act 30 of 1983 specified in the corresponding entries in column (2) thereof-

Officers (1)	Powers (2)
Joint Registrar of Co-operative Societies (Inspection Cell)	In respect of any registered society, all the powers of a Registrar under the said Act, except those referred to in sections 14, 33(4), 75, 91 to 136, 153 and 181; and ii) In respect of any apex society all the powers of the Registrar under the said Act, except those referred to in Section 12, 14, 18, 32 (2) (i) (a), 33(4), 33(6), 33 (12), 35, 36, 66, 68, 69, 75, 76, 77, 88, 89, 91 to 136, 137(1), 140, 142, 152(2) (a), 153, 164, 178 and 181.

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Deputy Registrar of Co-operative Societies (Housing)

i) In respect of any registered society, all the powers of a Registrar under the said Act, except those referred to in sections 12, 14, 18, 33(4), 33(7), 35, 36, 68, 69, 75, 76, 88, 91 to 136, 137(1), 152(2)(a), 153, 173, 178 and 181;
ii) In respect of any apex society, all the powers of a Registrar under the said Act, except those referred to in sections 12, 14, 18, 32(2)(i)(a), 33(4), 33(6), 33(7), 33(12), 35, 36, 66, 68, 69, 75, 76, 77, 78, 89, 91 to 136, 137(1), 152(2)(a), 153, 164, 166, 173, 178 and 181; and
iii) In respect of any society ordered to be wound up by the Deputy Registrar of Co-operative Societies under Section 137(2), all the powers of a Registrar under Sections 140 and 142.

Co-operative Sub-Registrars (Housing)

i) In respect of any registered society, all the powers of a Registrar under Sections 72, 80, 87, 90, 143 and 144 subject to the condition that the Co-operative Sub Registrars shall so exercise the powers under Section 87 or under Section 90 not exceeding Rs.10,000 and under Section 144 only in respect of cases involving a sum not exceeding Rs.5,000.
ii) In respect of any primary society, all the powers of a Registrars under Sections 21, 24, 32(3), 32(4), 32(5), 81, 82 and 85.

9. A mere reading of G.O.Ms.31 dated 08.01.1990 shows that certain powers of the Registrar have been conferred on the Joint Registrar, Deputy Registrar and Sub Registrar, by virtue of the powers under Section 3 of the Act. Neither Section 3 which is a source of power for the G.O. nor the G.O. has abrogated the original powers of the Registrar in any way. Thus, the authorities have been given concurrent powers to deal with certain matters. The G.O. cannot be interpreted to mean that the Deputy Registrar of the Co-operative Societies (Housing) does not have the power under Sections 81 or 82 of the Act and such power has been exclusively conferred on the Sub Registrar.

10. The present G.O. came up for consideration before a Division Bench of this Court in N.Varadarajan (Co-operative Sub-

Registrar) Special Officer -Vs- State of Tamil Nadu [(2001) 3 MLJ 582] and the Division Bench has held that "there were no scope for any clash of powers or the clash of jurisdiction in respect of the exercise of the powers". Had this Judgment been brought to the notice of the Division Bench of this Court during the hearing of WA.No.3769 of 2002. I am sure, that the Division Bench of this Court would not have concurred with the learned Single Judge.

11. Therefore, I am of the firm view that the Deputy Registrar of the Co-operative Societies (Housing) has the power to take action under Sections 81, 82 and 87 of the Tamil Nadu Co-operative Societies Act.

12. Mr.V.Sanjeevi, learned counsel submitted that during the pendency of this writ petition, the Board of the Society was dissolved and a Special Officer was appointed to manage the affairs of the Society and that the Special Officer has by Resolution dated 20.04.2007, has come to a conclusion that there was no loss to the Society in respect of the allegations in the surcharge proceedings dated 16.12.2002 and that a further recommendation should be given to the Deputy Registrar of Co-operative Societies (Housing) for dropping the surcharge proceedings, in view of the profit earned by the Society. Mr.Sanjeevi, learned counsel produced a copy of the proceedings, which was also served on the learned Additional Government Pleader.

13. In the light of the above, this Court directs the petitioner to place the said Resolution dated 20.04.2007 passed by the Special Officer before the Deputy Registrar, in response to the surcharge proceedings dated 16.12.2002, within a period of four weeks from the date of receipt of a copy of this order. The Deputy Registrar of Co-operative Societies (Housing) is directed to look into the genuineness and authenticity of the Resolution dated 20.04.2007 and take action in accordance with law.

The writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

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The Government of Tamil Nadu
Housing and Urban Development Department
Fort St.George,Chennai 9.

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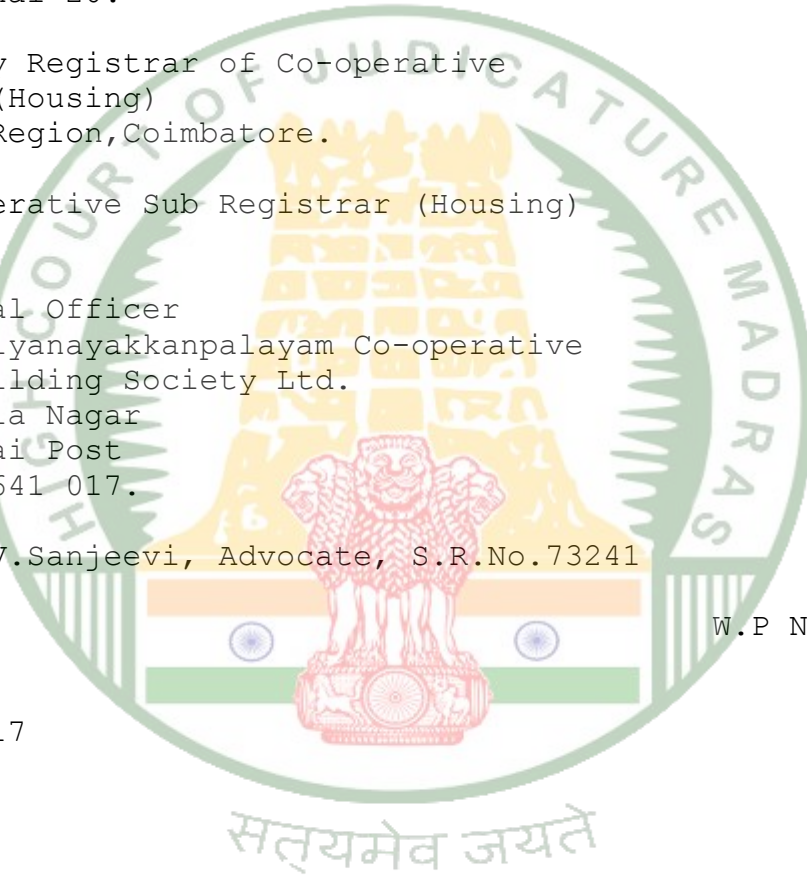
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+1cc to Mr.V.Sanjeevi, Advocate, S.R.No.73241

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