



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2016

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.A. (MD) No.800 of 2016
and
C.M.P. (MD) Nos.4862 to 4864 of 2016

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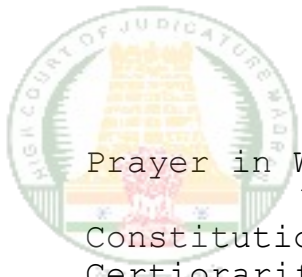
: Appellant/Petitioner

Vs.

1. The Joint Registrar of Co-operative Society,
District Co-operative Election Observer,
Ramnad Region, Ramnad,
Ramanathapuram District.
2. The Deputy Registrar of Co-operative Society/
District Election Officer,
Paramakudi Circle, Paramakudi,
Ramanathapuram District.
3. The Election Officer,
Q-1193, A.Punavasal Primary
Agricultural Co-operative Society,
Kadaladi Taluk,
Ramanathapuram District.
4. R.Kalimuthu
5. Duraipandi
6. A.Chellachamy
7. K.Karuppanan
8. Subramanian
9. Mrs.Murugeshwari
- 10.Mrs.P.Muthurathinam
- 11.Mrs.Rasathi
- 12.K.Karuppasamy

: Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of a learned Single Judge of this Court dated 28.03.2016, in W.P. (MD) No.9262 of 2015.



Prayer in WP(MD). 9262/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus to call for the records of the impugned order of the 2nd respondent in Thava no.1/2015, (Na.Ka.No.1140/2015 Saba) dated 05.06.2015 and quash the same as illegal and consequently forbearing the respondents 1 to 3 from removing the present office bearers who were elected as Directors of Q-1193, A.Punavasal Primary Agricultural Co-operative Society on 04.03.2013 and holding office till date.

For Appellant	: Mr.G.R.Swaminathan, For Mr.M.Kannan
For Respondents 1&2	: Mr.N.S.Karthikeyan, Additional Government Pleader
For Respondents 3&12	: No Appearance
For Respondents 4,5,6,8,10&11:	Mr.C.Jegananathan

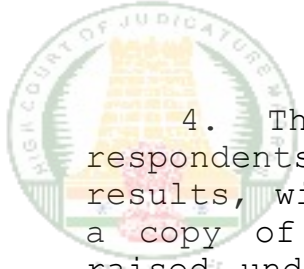
JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

This Writ Appeal has been filed as against the order dated 28.03.2016, made in W.P.(MD)No.9262 of 2015, dismissing the Writ Petition filed to quash the order dated 05.06.2015, passed by the second respondent and consequently, forbear the respondents 1 to 3 from removing the present Office Bearers, who were elected as Directors of Q-1193 A.Punavasal Primary Agricultural Co-operative Society on 04.03.2013.

2. The case of the appellant is that the election for the said Society was declared on 04.03.2013 for electing 11 Directors and from among 11 Directors, one of them would be elected as a President and one of them would be elected as a Vice President. The election was held on 27.04.2013. According to the appellant, totally 21 candidates contested for the post of Directors and the election was properly conducted and counting of votes was done on 30.04.2013 and 11 Directors were elected, who in turn, elected the appellant as President and one K.Duraichamy as Vice President on 06.05.2013.

3. At the time of election, none of them objected for selecting the candidates. Accordingly, the elected Executive Committee took charge on 09.05.2013. In the meanwhile, the fourth respondent, who is the unsuccessful candidate, without impleading the successful candidates, filed a Writ Petition in W.P.(MD)No.16533 of 2013, seeking a direction to the second respondent therein to complete the enquiry in Election Petition No.1519 of 2011 for recounting of votes in the election held on 27.04.2013.



4. This Court, by order dated 07.10.2013, directed the respondents therein to complete the exercise and publish the results, within a period of four months from the date of receipt of a copy of the said order. Further, the election dispute can be raised under Section 90 of the Tamil Nadu Co-operative Societies Act. In the election petition filed by the fourth respondent, there is not even a whisper about the irregularities alleged to have been committed and the election petition has been filed only based on mere conjecture and surmise. This Court directed the respondents 1 to 3 to conduct an enquiry on the election petition, whereas the second respondent issued a notice on 02.12.2013 as if this Court has given a direction for recounting, in W.P.(MD)No.16533 of 2013. The appellant herein raised an objection immediately. However, in spite of objection, recounting was proceeded with by the second respondent. While so, the appellant approached this Court with W.P. (MD)Nos.20681 to 20683 of 2013 and W.P.(MD)Nos.20943, 20951 to 20956 of 2013. But, ultimately, the Writ Petitions were dismissed on 25.04.2014 holding that the appellant can prefer an appeal under Section 90 of the Act. As against the same, the appellant preferred an appeal in W.A.(MD)Nos.664 to 673 of 2014 and also obtained an order of *status quo* and finally, it was dismissed holding that the appellant should prefer a statutory appeal. Pursuant to the same, the appellant preferred a statutory appeal under Section 152 of the Tamil Nadu Co-operative Societies Act and since the stay petition was refused to be numbered, he preferred another Writ Petition in W.P.(MD)No.7587 of 2015, wherein, an interim protection was given to the appellant. However, the second respondent rejected the petition preferred by the appellant on 20.04.2015. Challenging the same, the appellant preferred a Writ Petition in W.P.(MD)No.7882 of 2015 in Appeal No.1140 of 2015 filed against the order of declaration of recounting results for the election for the post of Directors of the Society.

5. This Court, by order dated 06.05.2015, directed the first respondent to take the appeal on file and to dispose of the same, within a period of four weeks. Thereafter, the impugned order dated 05.06.2015 came to be passed, whereby and whereunder, the appellant was directed to hand over the charge to the fourth respondent. Challenging the same, the present Writ Petition has been filed. However, the Writ Petition was dismissed by the learned Single Judge on a finding that there is no procedural irregularity as alleged by the appellant and everything has been done as per the direction of this Court. Thus, no interference is necessary in the order impugned in the Writ Petition. Aggrieved over the same, the appellant has filed the present Writ Appeal.

6. The only allegation of the appellant is that this Court has never permitted for recounting of the votes. This Court has directed only to conduct enquiry under Section 90 of the Tamil Nadu Co-operative Societies Act. However, the second respondent, by way of impugned order dated 05.06.2015, confirmed the action of recounting and, therefore, the impugned order is not legally sustainable and



the same is liable to be set aside.

7. Heard the submission made on other side.

8. Keeping in mind the above said submissions made by the learned counsel on either side, we have carefully gone through the materials available on record.

9. A perusal of the materials available on record would go to show that at no point of time, this Court has directed the authority to recount votes. Therefore, we are of the opinion that the finding of the second respondent to the effect that the recounting was done, pursuant to the order of this Court, is liable to be set aside and accordingly, the impugned order to that effect alone is set aside. The matter is remitted back to the second respondent for fresh consideration and the second respondent is directed to pass an order on merits and as per law, based on the enquiry that has already been conducted with regard to recounting of votes, within a period of two weeks from the date of receipt of a copy of this order. Till such time, the respondents are directed to maintain *status quo* as on today.

10. The Writ Appeal is allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Joint Registrar of Co-operative Society,
District Co-operative Election Observer,
Ramnad Region, Ramnad,
Ramanathapuram District.
2. The Deputy Registrar of Co-operative Society/
District Election Officer,
Paramakudi Circle, Paramakudi,
Ramanathapuram District.

+ 1 CC TO M/s.VEERA ASSOCIATES, IN SR No. 80590
+ 1 CC TO Mr.M.KANNAN, ADVOCATE IN SR No. 80403

SML

TE/SKN : 27/12/2016 : 4P/5C

Judgment made in
W.A.(MD)No.800 of 2016 and
C.M.P.(MD)Nos.4862 to 4864 of 2016
Dated:
09.12.2016