

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.09.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9234 of 2017

and W.M.P.Nos. 10175 & 10176 of 2017

K. Govindarajan

.. Petitioner

vs.

1.The Joint Registrar of Co-op. Societies,
Vellore Region,
Vellore District.

2.The Deputy Registrar of Co-op. Societies,
Thirupattur Circle,
Vellore District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the impugned order in Na.Ka.3061/2016/Sa Pa dated 27.10.2016 passed by the second respondent herein and quash the same.

For Petitioner : Mr. M. Vijay Anand

For Respondents : Mr.L.P. Shanmugasundaram
Special Government Pleader

O R D E R

The order issued under Section 81 of the Tamilnadu Co-operative Societies Act [hereinafter called as the "Act"] issued by the second respondent in proceedings dated 27.10.2016 is under challenge in this writ petition.

2.The learned counsel appearing for the writ petitioner submits that the writ petitioner joined as an Office Assistant in the second respondent/ Co-operative Society through employment exchange and thereafter, promoted to the post of Attender during the year 2000. The writ petitioner was posted Clerk during the year 2005, further promoted to the post of Secretary. The Deputy Registrar of the Co-operative Society, Thirupattur issued an order in proceedings dated 27.10.2016, for conducting an enquiry under Section 81 of the Tamil Nadu Co-

operative Societies Act. Initiation of an order for an enquiry under Section 81 of the Act is now under challenge in this writ petition.

3. Under the provisions of the Tamil Nadu Co-operative Societies Act, Registrar is empowered to initiate order for an enquiry under Section 81 of the Act. The power of the Registrar has been delegated by way of notification to the Deputy Registrar of Co-operative Societies in this regard.

4. Section 81 of the Act is extracted hereunder:-

"81. Inquiry.- (1) The Registrar may, of his own motion and shall, on the application of a majority of the board or of not less than one-third of the members or on the request of the financing bank or of the District Collector, hold an inquiry, or direct some person authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financing condition of a registered society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice, or mismanagement in relation to that society or into any particular aspect of the working of that society.

(2) The Registrar or the person authorized by him under sub-section (1) shall have the following powers, namely:-

(a) He shall at all reasonable times have free access to the books, accounts, documents, security, cash and other properties belonging to, or in the custody of the society and may summon any person in possession of, or responsible for the custody of, any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the head quarters of the society or any branch thereof.

(b) Where any person summoned under clause (a) fails or refuses to produce any record or property of the registered society as specified in the summons, any Metropolitan Magistrate or any Judicial Magistrate of the first class in whose jurisdiction the office of such society or the records and properties of such society is or are situated, shall, on application by the Registrar, or the person authorized by him under sub-section (1), direct the delivery to the Registrar of such person of the possession of the records and properties of such society.

Provided that no such application shall be made by the person authorized under sub-section (1) without the previous sanction of the Registrar.

(c) He may seize the books, accounts or documents of the society, if he considers that such seizure is necessary to ensure the safety of such books, accounts or documents or to facilitate his inquiry, and shall give the person from whose custody the books, accounts or documents have been seized a receipt for the same: Provided that the books, accounts or documents seized shall be retained by him only for so long as may be necessary for their examination and for the purpose of inquiry:

Provided further that the books, accounts or documents seized shall not be retained for more than three months at a time except with the permission of the next higher authority.

(d) He may summon any person who, he has reason to believe, has knowledge of any the affairs of the society and may examine such person on oath and may summon any person to produce any books, accounts or documents belonging to him or in his custody if the Registrar, or the person authorized as aforesaid has reason to believe that such books, accounts or documents contain any entry relating to transactions of the society.

(e) (i) He may, notwithstanding any rule or by-laws specifying the period of notice for a general meeting of the society or for a meeting of the board, require any officer or officers of the society to call a general meeting or a meeting of the board at such time and place at headquarters of the society or any branch thereof to consider such matters as may be specified by him and the provisions of sub-clauses (i) and (ii) of clause (b) of sub-section (4) of section 32 shall apply to any meeting called under this sub-clause as if it were a meeting called in pursuance of a requisition under clause (a) of sub-section (3) of that section.

(ii) If the officer or officers of the society refuses or refuse or fails or fail to call such meeting or if in the opinion of the Registrar there is no board or officer or officers competent under this Act, the rules or the by-laws to call such meeting, or if there be an order of the Registrar or of the Civil Court restraining the board to function, the Registrar or the person authorized by him under sub-section (1) shall have power to call the meeting himself and provisions of clause (b) of sub-section (4) of section 32 and sub-section (5) of that section shall apply to such meeting as if it were a meeting called under clause (a) of the said sub-section (4).

(3) When an inquiry is held under this section, the Registrar shall within such time as may be prescribed communicate the result of the inquiry-

(i) In case the Government have subscribed directly to the share capital of the registered society or in case any moneys are due from the registered society either to the Principal State Partnership Fund or to the Subsidiary State Partnership Fund referred to in Chapter VI, to the Government or to any officer appointed by the Government in this behalf;

(ii) to the financing bank, if any, to which the society is affiliated, and.

(iii) to the society concerned.

(4) The inquiry shall be completed within a period of three months from the date of ordering the inquiry or such further period or periods not exceeding three months as a time as the next higher authority may permit provided that such extended periods shall not exceed six months in the aggregate.

(5) It shall be competent for the Registrar to withdraw any inquiry from the person authorized by him under sub-section (1) and to hold the inquiry himself or entrust it to any other person as he deems fit.

(6) The Registrar may, by order in writing, direct the registered society or any officer of the society or its financing bank to take such action as may be specified in the order to remedy, within such time as may be specified therein, the defects, if any, disclosed as a result of the inquiry."

5.A mere initiation of an enquiry under Section 81 will not confer any right on the writ petitioner to move this writ petition under Article 226 of the Constitution of India. A Mere commencement of an enquiry will not provide a cause of action for the writ petitioner.

6.It is the duty of the Registrar under the Act to control the affairs and the functioning of the Co-operative Societies. Thus, the initiation of Section 81 of the Act for conducting an enquiry is a power provided under the Act to conduct enquiry into the affairs of the Co-operative Societies. Unless an enquiry is conducted and a report is submitted no cause of action will arise for the writ petitioner to move a writ under Article 226 of the Constitution of India.

7.Thus, the writ petitioner cannot be construed as an aggrieved person, so as to move this writ petition under Article 226 of the Constitution of India. Thus, the the grounds raised in this writ petitioner deserves no further consideration at all. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently connected

miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

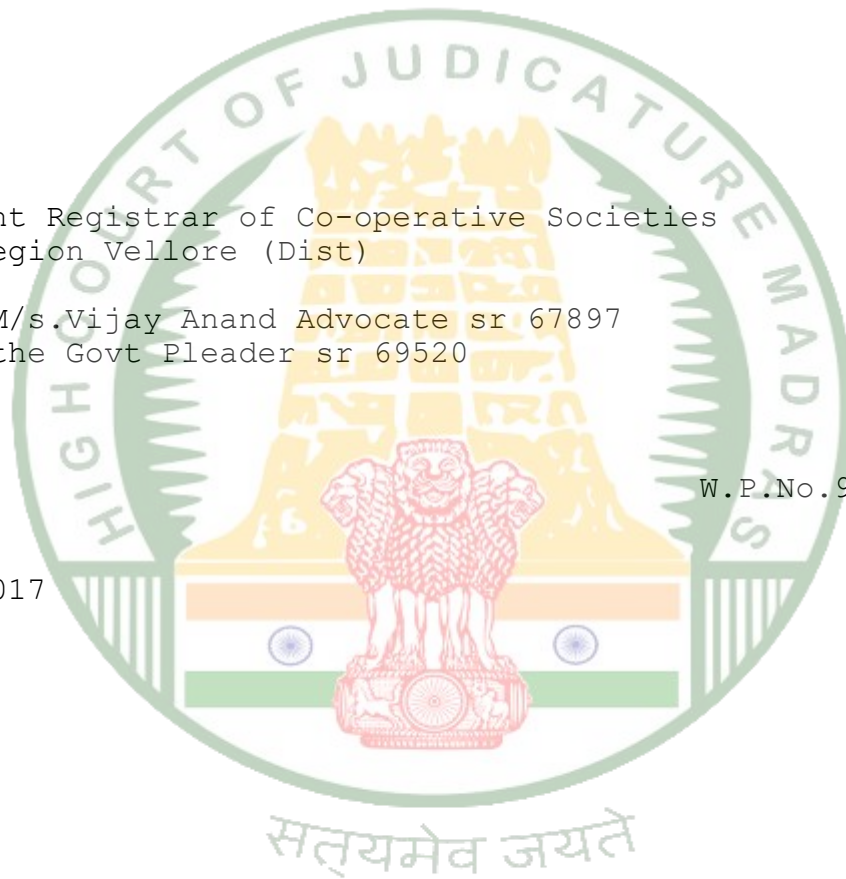
rpl/maya
To

1.The Joint Registrar of Co-operative Societies
Vellore Region Vellore (Dist)

+1 cc to M/s.Vijay Anand Advocate sr 67897
+1 cc to the Govt Pleader sr 69520

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