IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.9199 of 2014
and
M.P.No.1 of 2014

1. B.Kannan
2. G.Ramachandran
3. R.Hema
4. L.Natarajan
5. R.Veeramani
6. S.Thamizharasi
7. R.Balan
8. S.Indira
9. V.Ramanujam
10. B.Ismail
11. C.Ramu
12. P.Sakthivel
13. G.Sivaparakasam
14. B.Viswananathan
15. X.Victor Nicholas
16. T.K.Ramalingam
17. S.Selvarangam
18. G.Paramasivam
19. S.Samson Santha
20. T.Purushothaman .. Petitioners

Vs.

1. The Deputy Registrar of Cooperative Societies,
Beach Road, Cuddalore - 607 001,
Cuddalore Taluk and District.

2. President,
Highways Department Employees' Cooperative
Thrift and Credit Society Limited,
No.E.1587, Beach Road,
Cuddalore 607 001.

3. Secretarty,.
Highways Department Employees' Cooperative
Thrift and Credit Society Limited,
No.E.1587, Beach Road,
Cuddalore 607 001.

4. The Tahsildar,
Cuddalore Taluk,
Cuddalore 607 001. .. Respondents

PRAYER:

Writ Petition is filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARIFIED MANDUMUS calling for the records, quash the proceedings of the 2nd respondent dated 4.1.2014 and consequently direct the respondents 2 and 3 to implement the resolution dated 9.4.2001, passed by Cuddalore and Villupuram District Highways Department Employees' Cooperative Thrift and Credit Society Limited, No.E.1587, by executing sale deeds in favour of the petitioners for the areas respectively allotted and have it registered.

For petitioner : Mr.R.Gururaj

For R 1 & R 4 : Mrs.T.Girija,
Government Adocate.

For R2 & R3 : Mr.L.P.Shanmugasundaram,
Special Government Pleader

ORDER:

The petitioners have filed this Writ Petition to issue a WRIT OF CERTIORARIFIED MANDUMUS calling for the records, quash the proceedings of the 2nd respondent dated 4.1.2014 and consequently direct the respondents 2 and 3 to implement the resolution dated 9.4.2001, passed by Cuddalore and Villupuram District Highways Department Employees' Cooperative Thrift and Credit Society Limited, No.E.1587, by executing sale deeds in favour of the petitioners for the areas respectively allotted and have it registered.

2. According to the petitioners, they are all either employees or retired employees of the Highways Department of the State Government, the second and third respondent passed a resolution on 09.04.2001 for allotment of 20 plots to the petitioners respectively, and allotment orders were issued on the very same day. On 18.10.2013, it was noticed in the newspaper that the society had decided to enclose the entire property by putting up a fence, as if the property belongs to the Society. Noticing this, the petitioners issued a notice dated 21.10.2013 to respondents 2 and 3. In reply dated

24.10.2013, the respondents informed that the petitioners were not interested in getting the property registered. The petitioners further state that they sent a letter in support of their claim, but the second respondent sent a communication on 04.01.2014 rejecting the claim of the petitioners.

3. The learned counsel for the petitioner would submit that the employees purchased the property in the name of the Society. Therefore, the respondents have to implement the resolution dated 09.04.2001 passed by the Society. Hence, challenging the impugned order dated 04.01.2014, the petitioners have filed this Writ Petition before this Court.

4. Per contra, the learned Additional Government Pleader would submit that, at the outset, the Writ Petition is not maintainable. The petitioners have challenged the Order passed by the second respondent Society. If the petitioners are aggrieved by the impugned order passed by the second respondent, an appeal should be filed under Section 153 of the Tamil Nadu Cooperative Societies Act. Moreover, the petitioners, without exhausting the appeal remedy, have filed this Writ Petition before this Court and hence, the same is liable to be dismissed.

5. I have considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents. In the decision rendered by this Court in the case of K.Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal-636 001 and another reported in 2006 (4) CTC 689, this court has held as follows.

> 7. In Pradeep Kumar Biswas v. Indian Institute of Chemical Technology, 2002 (2) CTC 474 : 2002 (5) SCC 111, the majority judgment considered a catena of decisions on the point and it has been observed in paragraph-25 of the judgment (SCC p.129) that --
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> "the tests propounded by Mathew,J.in Sukhdev Singh were elaborated in Ramana and were reformulated two years later by a Constitution Bench in Ajay Hasia. What may have been technically characterised as obiter dicta in Sukhdev Singh and Ramana (since in both cases the 'authority' in fact involved was a statutory corporation), formed the ratio decidendi of Ajay Hasia".
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> Thereafter, the Court has extracted paragraph-11, at pp 737-38 of the case of Ajay Hasia, as follows:

"The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute, but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company of society is an instrumentality or agency of the Government so as to come within the meaning of the expression 'authority' in Article 12."

It is then observed that Ramana's case is noted with approval in Ajay Hasia, and quoted the tests laid down in the case of Ajay Hasia at p.737 in para 9, which reads as follows: (SCC pp.130-31, Para-27)

"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government (SCC p.507, Para 14);

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character (SCC p.508, Para 15);

(3) It may also be a relevant factor...., whether the corporation enjoys monopoly status which is State-conferred or State protected (SCC)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality (SCC p.508, Para 15);

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) 'Specifically', if a Department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government (SCC p.510, Para 18)".

The Court observed in paragraph-31 as follows: (SCC pp.131-32)

“31. The tests to determine whether a body falls within the definition of 'State' in Article 12 laid down in Ramana with the Constitution Bench imprimatur in Ajay Hasia form the keystone of the subsequent jurisprudential superstructure judicially crafter on the subject which is apparent from a chronological consideration on the authorities cited”.
After considering a number of decisions, it has been observed in Para 40 of Pradeep Kumar Biswas as follows: (SCC p.134)

“40. The picture that ultimately emergies is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, exhypothesis, be considered to be a State within the meaning of Article 12. The question in each case would be - whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.”

21. From the above discussion, the following propositions emerge:

(i) If a particular co-operative society can be characterised as a 'State' within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be 'an authority' within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of Writ Petition;

(ii) Applying the tests in Ajay Hasia it is held that a co-operative society carrying on banking business cannot be termed as an instrumentality of the Stage within the meaning of Article 12 of the Constitution;

(iii) Even if a society cannot be characterised as a 'State' within the meaning of Article 12 of the Constitution, a Writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a 'person' or 'an authority' within the meaning of Article 226 fo the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv) A society, which is not a 'State' would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be a statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.

(v) Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a 'State' a writ would lie when the case falls under Clauses (iii) and (iv) above.

(iv) The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a 'State', the service conditions of its employees governed by its bye-laws cannot be enforced through a Writ Petition.

(vii) In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.

(viii) The decision in M.Thanikkachalam v. Madhuranthagam Agricultural Co-operative Society, 2000 (4) CTC 556, is no longer good law, in view of the decision of the Seven-Judge Bench of the Supreme Court in Pradeep Kumar Biswas case and the other decisions referred to here before”.

6. In the light of the aforesaid judgment and also considering the facts that the petitioners, without exhausting the alternative remedy available under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983, have approached this

Court, the Writ Petition is liable to be dismissed, as not maintainable.

7. The Writ Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Registrar of Cooperative Societies,
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Cuddalore Taluk and District.

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Thrift and Credit Society Limited,
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4. The Tahsildar,
Cuddalore Taluk,
Cuddalore 607 001.

+1cc to Mr.R.Gururaj, Advocate, S.R.No.40568
+1cc to Government Pleader, in S.R.No.40643

W.P. No.9199 of 2014
and
M.P.No.1 of 2014

LRS(CO)
CS/13/07/17