

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-02-2017

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.No.668 of 2017
and W.M.P.No.719 of 2017

1. P. Loganathan
2. M. Krishnamoorthy
3. K.Loganathan
4. N.Kondan ... Petitioners

Vs.

1. The Joint Registrar of Co-operative Societies
Collectorate
Namakkal
2. The Management of
S 1223, Chandrasekarapuram Primary Agricultural Co-operative
Credit Society Ltd., Rep. by its Secretary
Chandrasekarapuram Post
Rasipuram Taluk
Namakkal District.
3. G. Vasanthi .. Respondents

(3rd respondent impleaded as per order dated 20-02-2017 in
W.M.P.No.4346 of 2017)

Writ Petition filed under Article 226 of the Constitution of
India praying for a writ of Certiorari calling for the records
relating to the order dated 24-11-2016 made in
Na.Ka.No.2450/16/sa.pa on the file of the respondent herein and
quash the same.

For petitioners :: Ms. T.P. Savitha
For respondents :: Mr.L.P. Shanmugha Sundaram,
Special Government Pleader
for R1
Mr. V. Selvaraj for R2
Mr. J. Srinivasa Mohan for R3

O R D E R

This writ petitioner is aggrieved by the order dated 24.11.2016 passed by the first respondent under Section 88(1) of the Tamil Nadu Co-operative Societies Act, 1983 ("the Act" in short) in and by which the elected Board of the second respondent Society has been superseded.

2. The brief facts of the case are narrated as follows:

The first petitioner is the elected President of S 1223, Chandrasekarapuram Primary Agricultural Co-operative Credit Society Limited and the petitioners 2 and 4 are the elected Board of Directors and they assumed office on 19-05-2013. The administration of the second respondent-Society is managed by the elected Board members and the same is supervised by higher authorities, including the first respondent herein. National Bank for Agriculture and Rural Development ("NABARD" in short) has sanctioned financial assistance for the construction of 31 godowns of 100 M.T. capacity in 31 PACCS in Namakkal Region under the RIDF-XIX Assistance from NABARD. The first respondent has constituted a Supervision Committee for all the 31 societies, including the second respondent-Society, in which, the first petitioner held the post of President vide proceedings, R.C.No.745/2013/VISA dated 23-05-2014 and the construction work got completed on 31-03-2015. The godowns are now being utilised by the Society. Earlier, the construction work was monitored by the first respondent and he was the person who released money at different stages of construction. Notwithstanding the fact that the sanctioned money was disbursed at every stage of construction only by the first respondent, to the shock and surprise of the petitioners, the first respondent had issued a notice on 23-05-2016 to show cause as to why the elected Board shall not be superseded for the reason that the Committee has not been constituted as per Na.Ka.80702/2012/GC 1 dated 13-07-2013, Na.Ka.8030/2013/GC1 dated 19-05-2014 and Na.Ka.8030/2013/GC1 dated 01-10-2014 and only the Supervision Committee has been constituted by the Management. Immediately, on receipt of the show cause notice, the petitioners sought certain documents from the first respondent on 28-05-2016. However, without considering the said request, the first respondent has passed an order dated 24-11-2016, superseding the elected Board under Section 88(1) of the Act. Aggrieved by the said order of supersession, the petitioners have come forward with this writ petition.

3. Heard Ms. T. Savitha, learned counsel for the petitioners, Mr.L.P. Shanmugha Sundaram, Special Government Pleader for the first respondent, Mr. V. Selvaraj for the second respondent and Mr. J. Srinivasa Mohan for the third respondent.

4. The learned counsel for the petitioners submitted that the first respondent, without furnishing the documents as sought by the petitioners, has hurriedly passed the impugned order. Further, she submitted that the entire construction work was undertaken only under the direct supervision of the first respondent, who was solely responsible for the release of fund at the different stages of construction. Ergo, the learned counsel would submit that the respondents have not levelled any allegation of misappropriation of funds, fraudulent retention of any money or property, breach of trust or corrupt practice or mismanagement in relation to the society on the part of the petitioners and hence, would pray for quashing the order of supersession and consequential allowing of the writ petition.

5. The learned Special Government Pleader (Co-operatives) has filed a counter affidavit wherein it is stated inter alia, that for construction of 100 M.T. godowns, orders were issued to all 31 Primary Agricultural Co-operative Credit Society for formation of Tender Finalization Committee, which consists of the President, two Board of Directors, Secretary of the concerned PACCS, Co-operative Sub-Registrar and Chartered Engineer, including the second respondent-Society. However, the Management of the second respondent has not constituted such a Committee and has violated the order issued by the Registrar, pursuant to which, a show cause notice dated 23-05-2016 was issued to the petitioners. On receipt of the said show cause notice, the President, who is the first petitioner herein, has filed W.P.No.19416 of 2016 challenging the same. This Court was pleased to dismiss the said writ petition granting two weeks' time to furnish their explanation/reply to the said notice, by an order dated 09-06-2016. However, even on 28-05-2016, the petitioners submitted their letter seeking certain documents, which was issued to them by the respondent on 26-08-2016. But, for the reasons best known to them, the petitioners have not submitted their explanation till 13-11-2016. Left with no other option, as the first respondent did not receive any explanation from the petitioners, the first respondent, with the concurrence of the Salem District Central Co-operative Bank dated 13-11-2016, passed an order of supersession dated 24-11-2016, under Section 88(1) of the Act and if at all, the petitioners are aggrieved by the said order of supersession, they are at liberty to move the appellate authority under Section 152 of the Act. However, the petitioners, without exhausting the alternative remedy available to them, have approached this Court by way of filing this writ petition and hence, this writ petition is liable to be dismissed.

6. The learned counsel for the third respondent would submit that the first petitioner, without calling for tenders, has engaged a private contractor in violation of the order of

the Registrar of Co-operative Societies and the third respondent has objected the same and filed a writ petition in W.P.No.9165 of 2015, which was ordered by this Court on 25-01-2016, granting her liberty to make a representation before the Registrar of Co-operative Societies. However, the Joint Registrar and Deputy Registrar conspiring against the third respondent, has initiated enquiry against her under Section 81 of the Act and the said enquiry was challenged by her in W.P.No.10121 of 2016 and this Court, setting aside the said proceedings, had directed the Registrar to call for the entire records and to comply with the directions already issued in W.P.No.9165 of 2015. Consequent thereto, the Registrar, on going through the entire records, directed the first respondent to take action, who, in turn, issued a notice under Section 88(1) of the Act to the petitioners herein. The petitioners, in turn, filed W.P.No.19416 of 2016 challenging the show cause notice and the said writ petition was disposed of on 09-06-2016, directing the petitioners to submit their reply within a period of two weeks. The first petitioner sought certain documents from the first respondent and even after receipt of the said documents, they have not submitted their reply, which resulted in the passing of the impugned order. The learned counsel would further submit that while the entire proceedings were initiated at the instance of the third respondent, who made a complaint to the Registrar of Co-operative Societies stating that the first petitioner, suppressing the material facts, had misused the funds and violated the orders of the Registrar, without impleading the third respondent, this writ petition has been filed to mislead this Court and accordingly prayed for the dismissal of the writ petition.

7. This Court has carefully analysed the submissions made on either side and also considered the entire materials placed on record.

8. The question that has to be decided by this Court is as to whether the impugned order of supersession passed by the first respondent under Section 88(1) of the Act is non est in the eye of law and whether the same can be upheld.

9. Prima facie, on receiving the complaint, the first respondent has issued a notice on 23-05-2016 to explain as to why the elected Board shall not be superseded for the reason that the Committee has not been constituted as per Na.Ka.80702/2012/GC 1 dated 13-07-2013, Na.Ka.8030/2013/GC1 dated 19-05-2014 and Na.Ka.8030/2013/GC1 dated 01-10-2014 and only the Supervision Committee has been constituted by the Management. The petitioners, on receipt of the notice, have filed a writ petition and this Court has issued a direction to submit their reply within a period of two weeks. However, pending writ petition, the petitioners had sought certain

documents by their letter dated 28-05-2016. In reply to the same, the official respondents have provided the necessary documents only with respect to the Circulars and the Registrar's decision, on receipt of the judgment of this Court in W.P.No. 10121 of 2016. However, no documents have been furnished to the petitioners with regard to the inspection report sent by the Officers at the time of construction; the counter affidavit filed by the third respondent; the information provided by the Joint Registrar to the Registrar; the report regarding construction of godowns under Section 82 of the Act and the recommendation report given by the Joint Registrar to pass the order of supersession. This being so, it is not known how the official respondents could plead that even after receipt of the particulars sought by them, the petitioners have not come forward to submit their explanation. In addition thereto, the respondents have not produced any evidence to prove their case that after receipt of the documents sought by them and even after the lapse of time given to them, the petitioners have not submitted their explanation.

10. On a scrutiny of the records, it is clear that no enquiry has been initiated as per Section 81 of the Act and also no inspection has been carried out as per Section 82 of the Act. Only on a frivolous stand that a Committee has not been constituted as per the orders of the Registrar, the drastic order of supersession has been passed under Section 81 of the Act. The respondents have also not levelled any allegations of misappropriation of funds, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to the second respondent society on the part of the petitioners. Considering the fact that the official respondents have not held any enquiry under Section 81 of the Act, this Court finds that it is inevitable to hold that the impugned order passed hurriedly superseding the elected Board does not have legs to stand. Accordingly, the impugned order dated 24.11.2016 is hereby set aside.

11. Further, Section 88(1) of the Act says that the Board of the registered society should be given an opportunity of making a representation. Under the provisions of the Co-operative Societies Act and the Rules, it is clear that in a democratic set up, unless grounds are made out, the democratic management can be removed from the office only after fully satisfying with the provisions of the statute. Supersession of the elected Board is a serious step and hence, the authorities are not expected to interfere with the management of the society on a frivolous ground. When there are disputed questions of fact, a duty is cast upon the authorities to verify whether the facts stated by it alone are sufficient to supersede an elected Board by holding an enquiry.

12. A reading of the entire provisions of the Act makes it clear that the Registrar and the authorities under the Act have to act very cautiously. It is also clear that it is an extraordinary power which could be resorted to only when an extraordinary situation has arisen. If an elected body feels that certain acts taken are in the best interest of the Society, that is the matter, the authority will have to consider very seriously. Only after reasonable opportunity is given to the Board, the satisfaction has to be entered that supersession is necessary and if the authorities feel that the grounds have been made out for supersession, it shall not look back, except to supersede. May be the satisfaction is subjective, but it cannot be exercised arbitrarily. Therefore, the principles of natural justice have to be fully applied in such cases. Even though the Court cannot act as an appellate authority, the documents placed on record before this Court, candidly show that a reasonable opportunity was not given to the Board. Therefore, this Court is of the view that the action of the first respondent requires reconsideration on the question whether the Board has to be superseded or not. Accordingly, the same shall be considered by the respondents afresh, after complying with all the formalities and also the principles of the natural justice, i.e., after conducting necessary enquiry, fresh orders will have to be passed.

13. This writ petition stands disposed of with the above observations. No costs. Connected W.M.P. is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

सत्यमेव जयते

To

1. The Joint Registrar of Co-operative Societies
Collectorate
Namakkal
2. The Secretary,
The Management of
S 1223, Chandrasekarapuram Primary Agricultural Co-operative
Credit Society Ltd.,
Chandrasekarapuram Post
Rasipuram Taluk
Namakkal District.

+1 cc to M/s.T.P.Santha Advocate sr 10799
+1 cc to M/s.J.Srinivasa Mohan Advocate sr 10795
+1 cc to the Government Pleader High Court Madras
sr 10864

W.P.No.668 of 2017

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