

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.6778 of 2017

K. Loganathan

.. Petitioner

vs.

1. State of Tami Nadu
rep. by its Secretary to Govt.
Housing & Urban Development
Department, Fort St. George
Chennai - 600 009.
2. The Registrar of Co-operative
Societies (Housing),
Tamil Nadu Housing Board Complex,
No. 493, anna Salai
Nandanam, Chennai - 600 035.
3. The Deputy Registrar of
Co-operative Societies (Housing)
Vellore Region
No.873 Kangeyanallur Road
Gandhi Nagar, Vellore - 632 006.
4. K.M. Velliangiri
Registrar of Co-operative
Societies (Housing),
Tamil Nadu Housing Board Complex,
No. 493, anna Salai
Nandanam, Chennai - 600 035.
5. A. Jayaraj
Deputy Registrar of
Co-operative Societies (Housing)
Vellore Region
No.15, 1st West Main Road
Gandhi Nagar, Vellore - 632 006.
6. Vanitha
7. K. Murugesan

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the 1st respondent Government to order for an enquiry against the respondents 4 and 5 who failed in their statutory duties by not conducting the inquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, against the respondents 6 and 7 for their grave irregularities committed in the society during the tenure of the Special Officers and pass further orders.

For Petitioner : Mr. R. Krishnamoorthy

For Respondents : Mrs. T. Girija, G.A for R1 to R3
No Appearance for R4 & R5
Mr. V. Jeeva Giridharan for R6 & R7

ORDER

The petitioner has filed this writ petition seeking to direct the 1st respondent Government to order for an enquiry against the respondents 4 and 5, who failed in their statutory duties by not conducting the inquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, against the respondents 6 and 7 for their grave irregularities committed in the society during the tenure of the Special Officers.

2. Brief facts of the case is as follows :-

The petitioner, as the President of the then elected Board of Directors of the Hosur Cooperative House Building Society Ltd., initiated action against the 6th respondent on the basis of various complaints alleging serious irregularities in the Society. Since the 6th respondent failed to comply with the order dated 06.08.2013, the petitioner made representations on 20.08.2013 and 30.08.2013 to the 2nd respondent, the Registrar of Cooperative Societies (Housing), to take suitable action against the 6th respondent. But no action was taken against the 6th respondent, for the irregularities committed by her. The petitioner also preferred complaints on 04.11.2013 and 06.11.2013 to the police authorities and requested them to secure the books of accounts, cash, keys and other securities of the society from the individual. Under these circumstances, the petitioner preferred W.P. No. 34933 of 2013 before this Court. By order dated 18.06.2016, this court directed the 6th and 7th respondents to hand over the connected records to the 3rd respondent, the Deputy Registrar of Cooperative Societies. The order passed in the above said writ petition was not complied and so the petitioner filed contempt petition in C.P. No. 316 of 2016, appointing an Advocate Commissioner to open the locks and examine the records. The learned Advocate Commissioner

conducted enquiry and submitted his report. Based on the report of the Advocate Commissioner, this Court passed the following order on 15.06.2016 :

" .. if the petitioner society is willing to have inventory in the presence of officers, the 2nd respondent herein shall consider the representation made by the society and pass orders on the same within a period of 15 days."

Pursuant to the above said orders, the petitioner made a representation on 18.07.2016 to the 3rd respondent, to secure all the documents from the 6th respondent.

3. In the meantime, the 1st respondent issued a show cause notice under Section 36 of the Tamil Nadu Cooperative Societies Act and passed a non-speaking order in Na.Ka. No. 5776/2015/sa.pa.2 dated 01.04.2016, permanently disqualifying the petitioner and other Directors. Though a reply was submitted on 16.03.2016, the same was not considered and without hearing the petitioner, the said order was passed. Against the said disqualifying order, the petitioner along with other Directors filed W.P. No. 14563 of 2016. This Court allowed the writ petition on 20.04.2016 thereby quashing the order of disqualification and the order of appointment of an Administrator on 11.04.2016 and remanded the matter back to the stage of show cause notice and further the 2nd respondent was directed to await the directions in the Cont. Petition No.316 of 2015 and thereafter to proceed in accordance with law. According to the petitioner, without complying with the orders of this Court in the Contempt Petition, the 2nd respondent issued another show cause notice dated 21.09.2016 to the petitioner and other elected Directors of the Board, to disqualify their services. Without considering the representation by the Board of Directors, seeking to defend the allegations under Section 36 of the Act, the 1st respondent again passed an order of disqualification on 27.10.2016. Challenging the said order, the petitioner and other elected Board of Directors, filed W.P. No. 41880 of 2016 and obtained an order of interim injunction and the writ petition is pending before this Court. The present writ petition is filed by the President of the Board, namely, K. Loganathan, for the aforesaid prayer. The entire allegations in the writ petition are against the 4th and 5th respondent stating that they have deliberately avoided to secure the books of accounts and records, inspite of the orders of this Court. Till date, the Government has not initiated any action against the respondents 4 and 5 and hence the present writ petition has been filed.

4. On perusal of the records, it is found that the petitioner mainly relies upon the order passed by this Court in W.P. No. 34933 of 2013 on 18.06.2016, wherein this Court has directed the 3rd & 4th respondents to handover the entire records to the 2nd respondent, after taking xerox copies of the same, after taking acknowledgement from the 2nd respondent, within a period of 15 days from the date of receipt of a copy of that order. In turn, the 2nd respondent shall handover the entire records to the petitioner, after taking necessary acknowledgement from the petitioner, within a period of 10 days thereafter. Pursuant to the above said order, the petitioner filed a contempt petition in C.P. No. 316 of 2015 before this Court. The said contempt petition was closed on 15.06.2016, observing as follows :-

"5. Considering the facts and circumstances of the case, if the petitioner wants to take inventory of the records, it is open to him to make a representation before the Board/ Registrar and it is for the Board/ Registrar to consider the same. However, as the petitioner is willing to have inventory in the presence of the Society officers, the Board/Registrar shall consider the representation if any made by the writ petitioner and pass orders on the same within a period of 15 days from the date of receipt of a copy of this order, if there are no legal impediments."

5. Pursuant to the said orders, the petitioner made a representation. However, the 2nd respondent passed an order disqualifying the petitioner and the other Directors of the Board, under Section 36 of the Act. Challenging the order, writ petition in W.P. No.14563 of 2016 was filed before this Court and the same is pending. Now the petitioner has filed this writ petition for the aforesaid prayer. In spite of the orders of this Court, the 2nd respondent has failed to secure the books and records from the 6th and 7th respondents. But, the 2nd respondent has proceeded to permanently disqualify the bonafide elected Board of Directors, without following the legal procedures. On these reasons, the petitioner has sought the present prayer against the 1st respondent to conduct an enquiry against the 4th and 5th respondents, for the failure to discharge his duties by not conducting proper enquiry under Section 36 of the Act. The fact reveals that the 2nd respondent issued notice under Section 36 of the Tamil Nadu Cooperative Societies Act for disqualifying the Board of Directors, which was challenged in W.P. No. 14563 of 2016 and the same is pending.

6. Perusal of the orders passed by this Court shows that this Court has not issued any positive directions to the 2nd respondent. The allegation in the present affidavit is that the 2nd respondent is interfering with the functions of the Board of Management and is acting detrimental to the interest of the above said Cooperative Society and its elected Board of Management. Merely for these allegations made in the affidavit by the petitioner, the present writ petition cannot be entertained. No material has been placed before this Court to show that the respondents had interfered with the fixation and acting detrimental to the interest of the Society. Even if there is any violation of the court order, the petitioner can seek his remedy in the manner known to law. Hence, no prima facie case has been made out by the petitioner to entertain the present writ petition and the same is liable to be dismissed.

7. Considering the facts and circumstances of the case, this Court is not inclined to grant relief to the petitioner, as prayed in the writ petition. Therefore, the writ petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

avr

To

1. The Secretary to Govt.
Housing & Urban Development
Department, Fort St. George
Chennai - 600 009.

2. The Registrar of Co-operative
Societies (Housing),
Tamil Nadu Housing Board Complex,
No. 493, anna Salai
Nandanam, Chennai - 600 035.

3. The Deputy Registrar of
Co-operative Societies (Housing)
Vellore Region
No.873 Kangeyanallur Road
Gandhi Nagar, Vellore - 632 006.

+1cc to Mr. R. Krishnamoorthy, Advocate, S.R.No.40575
+1cc to the Government Pleader, S.R.No.40645

W.P.No.6778 of 2017

SCD(CO)
CS/03/08/17



WEB COPY