

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.5.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.3870 of 2017

and W.M.P.No.3932 of 2017

R.Baskaran

...Petitioner

Vs.

- 1 The Registrar of Co-operative Societies
N.V.Natarajan Maligai
No.170, E.V.R. High Road,
Kilpauk,
Chennai 600 010.
- 2 The Joint Registrar of Co-operative Societies,
Thiruvarur District,
Thiruvarur.
- 3 The Deputy Registrar of Co-operative Societies,
Mannargudi,
Thiruvarur District.
- 4 The Managing Director,
T-793, The Mannargudi Agricultural Producers
Co-operative Marketing Society Ltd.,
Kamarajar Street,
Pathaladi, Mannargudi,
Thiruvarur District.
- 5 R.Ayyappan
Vice President and Executive Committee Member,
T-793 The Mannargudi Agricultural Producers
Co-operative Marketing Society Ltd.,
Kamarajar Street, Panthaladi
Mannargudi, Thiruvarur District. ...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned resolutions dated 24.11.2016 and 14.12.2016 passed by the 4th and 5th respondents respectively and to quash the same.

For Petitioner : Mr.C.Prabakaran
For Respondents 1 to 3 : Mr.V.Selvaraj, A.G.P.
For Respondent No.4 : Mr.L.P. Shanmugasundaram
Spl. Govt. Pleader
For Respondent No.5 : Mr.K.Rajendran

O R D E R

According to the petitioner, 4th respondent conducted enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 and pursuant to the enquiry report, surcharge proceedings was initiated against the petitioner under Section 87(1) of the said Act. The enquiry was conducted for the period from 1.4.2013 to 31.10.2014. The petitioner assumed the charge as President of the Society on 11.6.2013. The petitioner has nothing to do with the allegations made by the respondents. The third respondent also lodged complaint to the Inspector of Police, CCIW, Thiruvavur. A criminal case has been registered in Cr.No.4 of 2016 for the alleged offences punishable under Section 408, 409, 468, 471, 477(A) and 34 of I.P.C. and he was arrested on 16.11.2016. Subsequently, the petitioner was released on bail on 28.11.2016.

2 The case of the petitioner is that on the basis of the criminal case registered against the petitioner, the fourth respondent passed the impugned resolution, dated 24.11.2016 removing the petitioner from the post of President of the Society and elected the 5th respondent as additional in-charge for the post of President through a resolution No.1, 2 and 3. Followed by the same, the 5th respondent passed a resolution, dated 14.12.2016 by revoking the earlier resolution passed by the 4th respondent and passed a fresh resolution to the effect that the 5th respondent has taken charge as President of the Society. The aforesaid impugned resolutions passed by the respondent No.4 and 5 are violating the provisions under Section 34 of the Act and Rule 62 of the Tamil Nadu Co-operative Societies Rules 1988. The respondents 4 and 5 have no authority for removal of the petitioner from the post of President. The competent authority is Registrar under Section 34 of the said Act. Therefore, the impugned resolutions passed by the respondents 4 and 5 are liable to be quashed.

3 The third respondent filed counter stating that the petitioner was remanded to judicial custody for more than 10 days since 15.11.2016, then the office of the President was vacant for more than 10 days, the 5th respondent/Vice President has exercised power under Rule 57 of the TNCS Rules, 1988.

4 The learned Additional Govt. Pleader appearing for the respondents 1 to 3 submitted that statutory enquiry was conducted and the report submitted to the third respondent/Deputy Registrar. On the basis of the enquiry report that the petitioner involved in misappropriation and committed breach of trust in relation to the society and gross mismanagement of the affairs of the society, the third respondent has recommended for disqualification and removal of the President from the Society under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983. The said proceeding is still pending before the second respondent/Joint Registrar. He further submitted that on the basis of the enquiry report, a criminal complaint was lodged with the Inspector of Police, CCIW (CID), Tiruvarur and F.I.R. has been registered in Cr.No.4 of 2016 on 15.11.2016 for the alleged offences punishable under Section 408, 409, 468, 471, 471-A and 34 of I.P.C. for misappropriation of Rs.13,21,349/- against the petitioner and others. During the investigation, petitioner was arrested by the police on 16.11.2016 and he was produced before the Judicial Magistrate, Mannargudi and remanded to judicial custody for 13 days. Thereafter, he was released on bail on 28.11.2016 by the Principal Sessions Judge, Tiruvarur in CrI. M.P.No.1739 of 2016. The learned Additional Govt. Pleader further submitted that the resolution No.1 passed by the fourth respondent, dated 24.11.2016 removing the petitioner from the office of the President was subsequently cancelled by another resolution, dated 14.12.2016 passed by the 5th respondent/Vice President and other remaining Board members. Hence, the resolution, dated 24.11.2016 passed by the Managing Director ceased to operate and nothing survives to challenge the said resolution. Further, the learned Additional Govt. Pleader submitted that in so far as the Resolution No.3, dated 14.12.2016, it is passed by the 5th respondent/Vice President in view of the disqualification attracted against the petitioner since he was arrested for the aforesaid criminal case. Therefore, Vice President assumed office as President and he has exercised power under Rule 57 of the TNCS Rules, 1988. Hence, the writ petition is liable to be dismissed.

5 The learned counsel for the respondent No.5 also submitted that in view of the criminal case registered against the petitioner and he was arrested and remanded, the petitioner was disqualified to act as President and hence, the resolution was passed by the 5th respondent in the absence of the President and he had taken charge as President. Pursuant to the interim order passed by this Court, the petitioner resumed charge as President and now functioning as President of the Society. However, proceedings under Section 34 of the TNCS Act is pending before the authority concerned. In view of the interim order

granted by this Court, no decision has been taken under Section 34 of the Act.

6 Heard the learned counsel for the petitioner, learned Additional Govt. Pleader appearing for the respondents 1 to 3, learned Special Govt. Pleader for the respondent No.4 and the learned counsel for the 5th respondent and perused the materials on record.

7 It is seen from the records, the petitioner was President of the fourth respondent Society. The third respondent ordered statutory inquiry into the alleged financial irregularities. The enquiry was conducted under Section 81 of the Tamil Nadu Co-op. Societies Act, 1983 and the report was submitted to the third respondent. On the basis of the enquiry report, the third respondent lodged a complaint and F.I.R. has been registered in Cr.No.4 of 2016 for the alleged offences punishable under Section 408, 409, 468, 471, 471-A and 34 of I.P.C. for misappropriation of Rs.13,21,349/- against the petitioner and others and the petitioner was arrested. Subsequently, he was released on bail.

8 Further, Deputy Registrar/third respondent also forwarded recommendation for disqualification and removal of the petitioner from the post of President under Section 34 and 36 of TNCS Act to the second respondent and the said proceeding is still pending before the second respondent. At this juncture, the fourth respondent passed the impugned resolution by removing the petitioner as President of the Society. Subsequently, the 5th respondent passed the impugned resolution, dated 14.12.2016 by cancelling the resolution, dated 24.11.2016 passed by the 4th respondent. Therefore, Vice President/ 5th respondent assumed office as President and has exercised power under Rule 57 of the TNCS Rules, 1988. In the aforesaid resolution, it has been mentioned that on account of disqualification attracted against the petitioner, Rule 57 of the TNCS Rules, 1988 has been invoked and the 5th respondent assumed the office of the President and exercised the power under Rule 57 of the TNCS Rules, 1988 in the absence of the petitioner.

9 Admittedly, the petitioner was arrested for the alleged offences as stated supra and subsequently released on bail. Pursuant to the interim order granted by this Court, petitioner is now functioning as President of the Society. Further, it has been stated by the third respondent that on the basis of the enquiry report, the third respondent has recommended for disqualification and removal of the petitioner from the office of President under Section 34 and 36 of TNCS Act. The said proceeding is still pending with the second respondent.

10 On a perusal of Section 36 of the Act, the President of the society shall be removed from the office by the competent authority viz., the Registrar. According to the learned Additional Govt. Pleader, the impugned resolution has been passed under Rule 57 of the TNCS Rules, 1988 when the office of the President is vacant or the President continue to absent, the Vice President shall exercise all the powers of the President. The Board authorised 5th respondent/Vice President to act as President. Subsequently, the petitioner was released on bail. In view of the interim order granted by this Court, the Joint Registrar/ second respondent has to pass orders on the proposal submitted by the Deputy Registrar/third respondent.

11 The learned counsel for the petitioner would also submits that subsequently, final surcharge proceedings under Section 87(1) of the said Act has been passed wherein the name of the petitioner was dropped in the said proceedings. Admittedly, the criminal case registered in Cr.No.4 of 2016 by the Inspector of Police, CCIW (CID), Tiruvarur is still pending before the concerned Court.

12 Recording the submission made by the learned Additional Govt. Pleader for the respondents 1 to 3 that the petitioner assumed office of the President of the Society by virtue of the interim order granted by this Court, this writ petition is disposed of. However, liberty is granted to the respondents 2 and 3 to proceed against the petitioner in accordance with law.

13 Accordingly, the writ petition stands disposed of. No costs. Consequently, connected W.M.P.No.3932 of 2017 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1 The Registrar of Co-operative Societies
N.V.Natarajan Maligai
No.170, E.V.R. High Road,
Kilpauk,
Chennai 600 010.
- 2 The Joint Registrar of Co-operative Societies,
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- 3 The Deputy Registrar of Co-operative Societies,
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Vice President and Executive Committee Member,
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Kamarajar Street, Pathaladi,
Mannargudi, Thiruvarur District.

+1cc to Mr.K.Rajendran, Advocate, S.R.No.37791
+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.37792
+1cc to Mr.C.Prabakaran, Advocate, S.R.No.37645
+1cc to Government Pleader, S.R.No.37778

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AK(CO)
RS(08/06/2017)

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