

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 21.11.2017
CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP.Nos.27723, 27724 & 27725 of 2013
& MP.Nos.1,1,1 & 2,2,2 of 2013

V.Kathavarayan	...Petitioner	in WP.No.27723 of 2013
A.Saravanan	...Petitioner	in WP.No.27724 of 2013
N.K.R.Jothivel	...Petitioner	in WP.No.27725 of 2013

Versus

- 1.The Deputy Registrar of Cooperative Societies (Housing)
East Garden Street,
Opp: Saradha Vidhyalaya Higher,
Secondary School,
Fairlands, Salem-600 016.
- 2.The Gangavalli Women Urban,
Cooperative Housing Society Ltd.,
Rep.by the President,
Gangavalli, Salem District.
- 3.The Cooperative Sub Registrar/
Inspection Officer,
The Gangavalli Women Urban
Cooperative Housing Society Ltd.,
Rep.by the President,
Gangavallim, Salem District. Respondents in all WPs.

COMMON PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records relating to the order dated 31.07.2013 made in Na.Ka.No.1129/2008/U passed by the 1st respondent and the consequential proceedings dated 02.09.2013 passed by the 2nd respondent, quash the same.

For Petitioner in all WPs : Mr.N.Manoharan
For Respondents in all WPs : Mr.L.P.Shanmugasundaram
Spl GP for R1
M/s.T.P.Savitha for R2 & R3

COMMON ORDER

The relief sought for in these writ petitions is to quash the order dated 31.07.2013 and the show cause notice issued by the 2nd respondent/ Cooperative Society.

2. The learned counsel appearing for the writ petitioners contended that the inspection under Section 82 of the Tamil Nadu Cooperative Societies Act was conducted by the 3rd respondent and accordingly, a report was submitted. Based on the inspection report, the Deputy Registrar of Cooperative Societies, Housing (Salem) /1st respondent issued instruction to the Management of the 2nd respondent Society to initiate action against the employees, in respect of compensating the financial loss occurred to the Society. Based on the instructions issued by the Deputy Registrar to the Management, in proceedings dated 31.07.2013, the second respondent Management issued the show cause notice in proceedings dated 02.09.2013 to the writ petitioners. Thus, the writ petitioners are constrained to challenge both the proceedings issued by the 1st respondent and the 2nd respondent.

3. The learned counsel appearing for the writ petitioners submit that the 2nd respondent / Management has no jurisdiction to issue the show cause notice under Section 87 of the Tamil Nadu Cooperative Societies Act. This apart, communication of the Deputy Registrar to the Management is also erroneous on the ground that the inspection was not conducted in accordance with the procedures contemplated under the Tamil Nadu Cooperative Societies Act. Since, the 2nd respondent is incompetent to issue the show cause notice, the writ petitions deserve to be considered.

4. The learned Special Government Pleader appearing for the 1st respondent opposed the contention by stating that the writ petitions are not maintainable on the ground that the second show cause notice was issued by the Management of the 2nd respondent Cooperative Society and in view of the Larger Bench Judgment, no writ can be entertained.

5. Considering the arguments countered by the respective learned counsel appearing on behalf of the petitioner and the respondents, this Court is of the opinion that the internal communication between the Deputy Registrar and the Management of the Cooperative Society dated 31.07.2013 is certainly not communicated to the petitioners. The enquiry under Section 81 and the inspection under Section 82 of the Tamil Nadu Cooperative Societies Act are statutory in character. Thus, the enquiry and inspection can be conducted into the affairs of the cooperative Societies by the Registrar of the Cooperative Societies. The power of the Registrar is delegated to his subordinates namely the Deputy Registrar of Cooperative Society for ordering an enquiry or inspection under Section 81 and 82 of the Tamil Nadu Cooperative Society Act. When an enquiry or inspection is ordered against the cooperative Society, the

officer appointed for the purpose of conducting an enquiry or inspection shall verify the records or statement and collect evidences in respect of the complaints regarding irregularity or otherwise and submit a detailed report to the Deputy Registrar of Cooperative Society. Based on the report, the Deputy Registrar can issue suitable instructions under the provisions of the Act to the Management to initiate appropriate action against the employees or against all other persons, who are liable or committed any such irregularity or illegalities into the affairs of the Cooperative Society. Thus, it is the preliminary stage, where the competent authority on receipt of an inspection report instructed the management to initiate action against the concerned employees. Based on the report, the 2nd respondent Management issued the show cause notice. Thus, this Court is of the opinion that the internal communication between the Deputy Registrar and the Management in proceedings dated 31.07.2013 has been challenged in this writ petition only with a view to circumvent the legal principles settled by the larger Bench of this Court in the case of K.Marappan Vs. Deputy Registrar of Coperative societies, Namakkal Circle, Namakkal 636 001 and another reported in 2006 4 CTC 689. Thus, this Court cannot encourage such writ petition filed to circumvent the decision of larger bench of this Court.

6. The writ petitioners are directly concerned with the show cause notice issued to them based on the inspection report. Even otherwise there is a provision for revision under Section 153 of the Tamil Nadu Cooperative Society Act and it is left open to the writ petitioner to approach the competent authority under the Act to redress the grievances including the ground with regard to jurisdiction. The power of revision under section 153 of the Act is quasi judicial in nature and the respondent authority has to conduct an enquiry in this regard, if any grounds relating to jurisdiction is raised by the petitioner. Thus there is an effective alternate remedy is available under the Act itself. Thus, no writ can be entertained by this Court and the present writ petitions are certainly premature and not maintainable.

7. The writ petition is liable to be rejected on two grounds:

[1] the show cause notice cannot be challenged by way of writ petition under Section 226 of the Constitution of India and further the show cause notice was issued by the Management of Cooperative Society and no writ can be entertained against the Management of the Cooperative Society, in view of the legal principles settled by the larger Bench of this Court in the case of Marappan (cited supra).

[2] An effective alternate remedy is provided under the Act itself and without exhausting the remedy available under the Act, no writ can be entertained so as to adjudicate on merits.

8. Thus, it is left open to the writ petitioners to approach the competent authority in this regard under the provisions of the Tamil Nadu Cooperative Society Act in order to redress their grievances.

9. Accordingly, the writ petition stands dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Registrar of
Cooperative Societies (Housing)
East Garden Street,
Opp: Saradha Vidhyalaya Higher,
Secondary School,
Fairlands, Salem-600 016.

2.The Gangavalli Women Urban,
Cooperative Housing Society Ltd.,
Rep.by the President,
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3.The Cooperative Sub Registrar/
Inspection Officer,
The Gangavalli Women Urban
Cooperative Housing Society Ltd.

+3cc to Mr.N.Manokaran, Advocate SR.No.82777,82778,82779,
dt.22/11/17

+3cc to M/s.T.P.Savitha, Advocate SR.No.82395,82396,82397
dt.22/11/17

+1cc to Government Pleader SR.No.82859 dt.22/11/17

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AD(CO)
sm:18.12.2017