

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.09.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No.6556 of 2016
and
W.M.P. No.5833 of 2016

Natesa.Tamilzharvan
President
Needamangalam Taluk
Co-op. Housing Society Ltd. .. Petitioner

Vs.

1. The Registrar (Housing)
Office of the Registrar of
Co-op Societies (Housing)
2nd Floor Annexe, Tamil Nadu
Housing Board Building,
Annal Salai, Nandanam,
Chennai -35.
 2. The Regional Joint Registrar (Housing),
Office of the Joint Registrar (Housing),
Thanjavur - 613 007.
 3. The Deputy Registrar (Housing)
Public Distribution system
Thanjavur. .. Respondents
- (R3 Suo Moto impleaded as per order
dated 06.09.2017 in W.P.)

PRAYER : This Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the impugned order passed by the 1st respondent in Na.Ka. 4003/2015/SaPa2 dated 10.02.2016 and quash the same and pass such other orders.

For Petitioner :Mr.K.Ganesan
For Respondents :Mr.V.Selvaraj,
Additional Government Pleader.

O R D E R

This Writ Petition is filed to quash the order passed by the 1st respondent in Na.Ka. 4003/2015/SaPa2 dated 10.02.2016.

2. The petitioner was elected as a President of 'Needamangalam Taluk Co-operative Housing Society Ltd.' in the year 2013. The 2nd respondent, Regional Joint Registrar (Housing), Thanjavur ordered enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. On the basis of the enquiry report, the 1st respondent issued a show cause notice dated 05.08.2015 to the petitioner. Despite his request, copy of the enquiry report was not furnished to the petitioner. The petitioner filed W.P. No. 26740 of 2015 challenging the show cause notice and to direct the 1st respondent to issue a show cause notice afresh, after furnishing copy of the enquiry report to him. By order dated 27.08.2015, this Court directed the 1st respondent to furnish a copy of the enquiry report to the petitioner.

3. Based on the said order, the 2nd respondent furnished only copy of the findings to the petitioner and did not furnish copy of documents relied on by the enquiry officer. Therefore, the petitioner filed W.P. No. 31741 of 2015 seeking to direct the respondents to furnish copy of the relevant records and statements of witnesses related to the enquiry report dated 19.06.2015. This Court by order dated 08.10.2015 directed the petitioner to inspect all the documents and go through the statements relied upon in the report and give reply to the show cause notice. Whilesso, the 2nd respondent issued summons to the petitioner, calling upon him to appear in person on 08.01.2016 in the recovery proceedings initiated under Section 87 of the Act, in No.4/2015. However, the petitioner sought to peruse the records, based on the orders of this Court. Hence, the 2nd respondent called upon the petitioner to come on 22.01.2016 and inspect the records. According to the petitioner, the 2nd respondent did not show him all the records that were seized from the Society, viz., General Ledger, Cash Receipt Books etc. So, again the petitioner filed W.P. No.4925 of 2016 seeking to direct the 2nd respondent to furnish him copies of the relevant records relating to the enquiry report. This Court passed an order dated 10.02.2016, directing the 2nd respondent to permit the petitioner to inspect the said documents. According to the petitioner, on the same day i.e. 10.02.2016, the 1st respondent has passed the impugned order, disqualifying the petitioner under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983. Assailing the said order, the present writ petition has been filed by the petitioner before this Court.

4. The learned Additional Government Pleader, relying on the counter affidavit filed by the 2nd respondent would submit that the 1st respondent has passed the order, after affording sufficient opportunity to the petitioner. The 1st respondent has passed the order impugned herein, after adhering to the procedures, contemplated as per Rules. Further, if the petitioner is aggrieved, he should have approached the Appellate Authority, as per the provisions of the Act and so prayed to dismiss this writ petition.

5. Heard the rival submissions and perused the material available on record.

6. By an order dated 08.10.2015, this Court directed the petitioner to inspect all the documents and go through the statements relied upon in the report and give reply to the show cause notice. But, the 1st respondent has not produced documents like the General Ledger and Cash Book receipts. Therefore, the petitioner was unable to submit his explanation before the authority. The petitioner again filed W. P. No. 4925 of 2016 seeking to direct the 2nd respondent to furnish him copies of the relevant records relating to the enquiry report. After hearing the submissions of the learned counsel for the respondents and the petitioner, this Court issued the following directions, in paragraphs 4, 5, 6 and 7 :-

"4. Learned Government Advocate submitted that the direction issued by this Court has been strictly complied with and the relevant documents have been furnished to the petitioner and he has also perused the same. However, it is seen that the petitioner has given a reply in which the petitioner has requested for furnishing copies of five documents viz.,

- (1) சம்பள பதிவேடு
- (2) தினப் பேடு (தினப் பேரேடு)
- (3) இயிங் பதிவேடு
- (4) ரொக்க ரசீது பத்தகம்
- (5) பிசங்கரன் (த.பெ) பெயர் பணி பதிவேடு

5. It may be true that the petitioner has been afforded an opportunity to peruse the records earlier. But the above referred records now sought for by the petitioner appears to be the Registers maintained by the Cooperative Society for all its employees. Therefore, one more opportunity can be granted to the petitioner to peruse those records. Though the petitioner has sought for copies of those records, copies cannot be furnished and the petitioner would be entitled to peruse the same in the presence of an officer in the office of the 2nd

respondent and he may also be directed to take notes. Thereafter, the petitioner shall submit his explanation.

6. Accordingly, the petitioner is permitted to peruse the documents which he has now sought for within a period of two weeks from the date of receipt of a copy of this order and on perusal of the same, he is granted a further period of two weeks thereafter to submit his explanation/representation.

7. The writ petition is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed."

Instead, on the very same day, the 1st respondent has passed the impugned order. Learned counsel for the petitioner mainly contended that sufficient opportunity was not given to the petitioner for perusal of the documents, to submit his explanation, inspite of the orders passed by this Court in the writ petitions cited supra. In the impugned order, it is clearly mentioned that except 'Cash receipts', the other documents have been perused by the petitioner.

7. As directed by this Court, Mr. Sampath Kumar, Deputy Registrar (Housing) of Co-operative Societies, Thanjavur was present in the court, along with the records. On perusal of the records, it is seen that the petitioner has requested to furnish copy of the cash receipts and other documents. It is seen from the earlier order dated 10.02.2016, passed by this Court in W.P. No.4925 of 2016, which was disposed of, at the admission stage itself, the petitioner was permitted to peruse the documents, within a period of two weeks from the date of receipt of a copy of this order and thereafter, on perusal of the same, further period of two weeks time was granted, to submit his explanation or representation. According to the respondents, the said order copy was received by the learned counsel for the respondents only on 23.02.2016 from the Registry of the High Court. But, prior to that, the impugned order has been passed. Further, it is contended that the petitioner has not impleaded the Deputy Registrar of the Co-operative Societies as a party respondent in the earlier writ petition as well as in the present writ petition. The Regional Joint Registrar of Housing, Thanjavur Region has been impleaded as the 2nd respondent, by the petitioner. According to the respondents, there is no such post available in the Office of the Registrar of Co-operative Societies. The Writ Petition being filed without impleading the necessary parties, this Court has also deprecated the conduct of the Petitioner filing Writ Petition without impleading necessary parties in the Writ Petition. However, in the interest

of justice, the order passed by this Court has to be complied with, in letter and spirit by the respondents, in view of the admitted fact in the impugned order, 'cash receipt' documents were not perused by the writ petitioner. The Deputy Registrar, on receipt of the order passed by this Court, without getting any clarifications or review of the order passed in W.P. No. 4925/2016, have filed the counter affidavit, by stating that the petitioner has perused and obtained the copy of the said document, which is contrary to the fact stated in the impugned order passed by the 1st respondent. Therefore, the impugned order passed by the respondent is liable to be quashed.

8. In the interest of justice, to afford an opportunity to the petitioner and in compliance to the earlier order passed in W.P. No.4925 of 2016, this Court is inclined to quash the impugned proceedings passed by the 1st respondent and remit the matter to the Deputy Registrar/third respondent, who has been suo-moto impleaded as a third respondent and the 3rd respondent is directed to permit the petitioner to peruse the records, in compliance with the earlier order dated 10.02.2016 passed by this Court in W.P. No.4925 of 2016 and pass orders on the merits, in accordance with law, after providing opportunity to the petitioner.

9. The Writ Petition is allowed, on the above terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

avr/ rkp

To

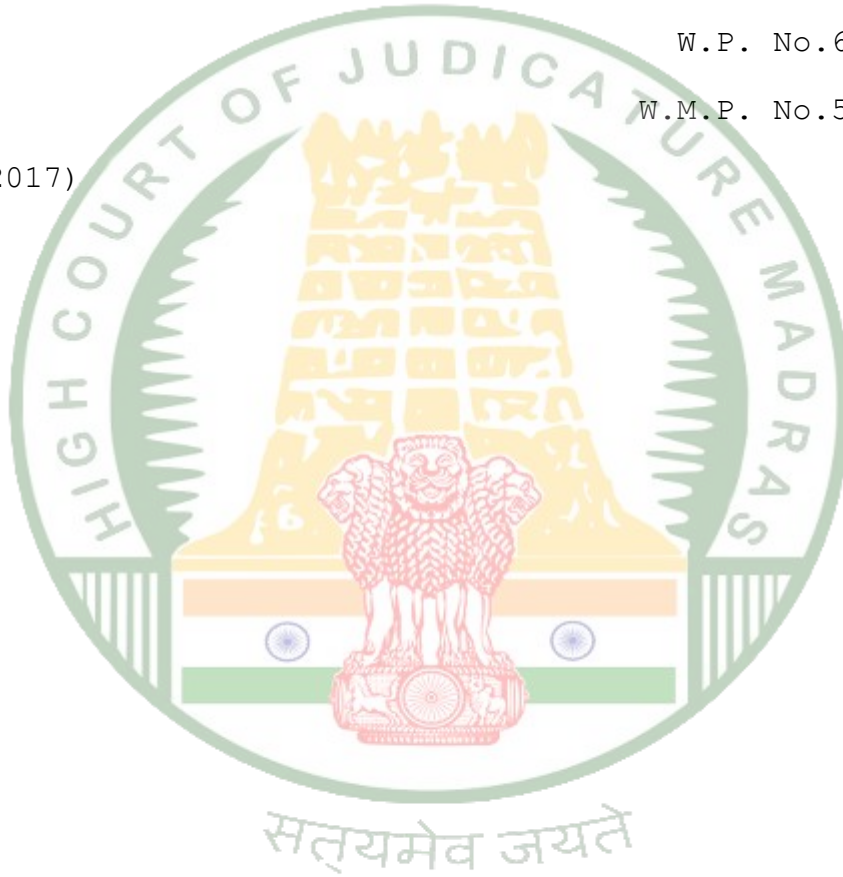
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Thanjavur.

+1 CC to Mr.K. Ashok Kumar,advocate sr 64581.
+1 Cc to Govt. Pleader sr 65427.

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SP(07/11/2017)



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