



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON: 01.02.2017

ORDER PRONOUNCED ON: 17 .02.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A. (MD) No.644 of 2015
and
W.P. (MD) .No.17448 of 2014

1.G.Muthuramalingam
2.A.Moorthy
3.R.Dhanasekaran
4.M.Selvaraj
5.V.Kavitha
6.T.Elakkiya
7.V.Duraiaraj

... Appellants/Respondents
No. 4 to 9

Vs

1.PS.Nagarajan

...1st respondent/writ petitioner

2.The Deputy Registrar of
Cooperative Societies,
Karaikudi Region,
Sivagangai District.

3.The Coop Sub Registrar/Field Officer,
Singampunari,
Sivagangai District.

... Respondents 2 and 3/
Respondents 1 and 2

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 26.03.2015 made in W.P.(MD).No.17448 of 2014.

Prayer in WP(MD). 17448/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records in pursuant to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No. 2989/2014 Sa.Pa dated 07.10.2014 and quash the same.



For Appellants :Mr.D.Sadiq Raja
For R1 :Mr.M.Saravanakumar

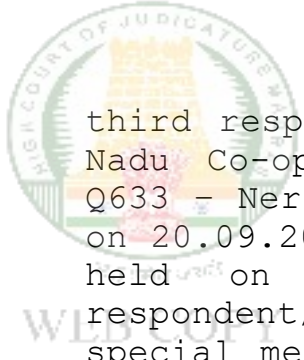
JUDGMENT

[Judgment of the Court was delivered by **R.SUBBIAH, J.**]

This Writ Appeal has been filed against the order dated 26.03.2015 made in W.P.(MD).No.17448 of 2014.

2.In the writ petition filed by the first respondent herein, he seeks to quash the impugned order passed by the second respondent herein/Deputy Registrar of Co-operative Societies, Karaikudi Region, Sivagangai District, in his proceedings dated 07.10.2014, directing him to hand over the charges to the Vice President of the Society.

3.The case of the first respondent/writ petitioner before the learned single Judge is that he was elected as one of the Directors in Q633 - Ner Kuppai Primary Agricultural Co-operative Credit Society. The elected Directors, elected the first respondent/writ petitioner as President of the said society on 09.05.2013 and to that effect resolution was also passed. While so, the second respondent herein/ Deputy Registrar of Co-operative Societies, Karaikudi Region, Sivagangai District, issued a notice in his proceedings in Na.Ka.No.1923/2014, dated 06.06.2014 stating that Mr.Markas, Secretary of Q633 - Ner Kuppai Primary Agricultural Co-operative Credit Society misappropriated the society funds and ordered for enquiry under Section 81 of the Tamil Nadu Societies Act. Hence, the first respondent/writ petitioner passed an order in his proceedings dated 26.08.2014 and suspended the Secretary Mr.Markas for misappropriation of society funds to the tune of Rs.45 lakhs. Immediately, the Secretary Mr.Markas by joining hands with some of the Directors misguided them to make a representation to the second respondent herein on 14.08.2014 with a request to convene a No Confidence meeting against the first respondent/writ petitioner. But even without communicating the representation dated 14.08.2014, submitted by some of the Directors, the second respondent issued a notice in his proceedings dated 21.08.2014 and directed the first respondent/writ petitioner to submit his explanation on the No Confidence Motion within one week from the date of receipt of the notice. Immediately, the first respondent/writ petitioner approached the second respondent herein in person and requested him to furnish the copy of the representation dated 14.08.2014, but the second respondent refused to furnish the same. While so, to the shock and surprise, the second respondent herein in his letter dated 19.09.2014, delegated the powers to the third respondent to convene a No Confidence Special Meeting in Q633 - Ner Kuppai Primary Agricultural Co-operative Credit Society, as per the request made by some of the directors. On receipt of the same, the



third respondent issued notice under Rule 62(3) and (4) of Tamil Nadu Co-operative Societies Rules, 1988, to the Directors of Q633 - Ner Kuppai Primary Agricultural Co-operative Credit Society on 20.09.2014 stating that No Confidence Special Meeting was to be held on 27.09.2014. But in the absence of the first respondent/writ petitioner, the third respondent convened the special meeting contrary to the Tamil Nadu Co-operative Societies Act and passed a resolution against the first respondent/writ petitioner and sent the same to the second respondent herein to pass further orders. Based on the report submitted by the third respondent/Co-operative Sub-Register, the second respondent herein passed the present impugned order in his proceedings Na.Ka.No.2989/2014 Sa Pa, dated 07.10.2014 and the same was served on the first respondent/writ petitioner on 20.10.2014 stating that based on the No Confidence Motion resolution, the first respondent/writ petitioner was relieved from the President post and also directed the first respondent/writ petitioner to hand over the charges to the Vice President, who was selected as President of the said Society. Hence, the first respondent has filed the writ petition to quash the order, dated 07.10.2014 issued by the second respondent herein.

4.The writ petition was originally filed as against the second and third respondents herein, but later, the appellants herein, who are directors of the Society got themselves impleaded in the said writ petition and opposed the prayer of the first respondent stating that as against the removal order, the first respondent should have approached the alternative forum to file an appeal provided under Rule 153 of the Tamil Nadu Co-operative Society Rules. Further they have opposed the said writ petition stating that from the date of assuming office, the first respondent/writ petitioner was acting detrimental to the interest of the society and when notice was issued calling upon him to give an explanation, he has not chosen to give any reply and the first respondent/writ petitioner did not attend the meeting and all the members have voted in favour of the No Confidence resolution. Therefore, Under Rule 62(4) of the Rules, he ceases to be member of the society from the date of resolution. Hence, they sought for dismissal of the writ petition.

5.The learned single Judge after hearing both sides, allowed the writ petition mainly on the ground that as per Rule 62(3) of the Rules, the Registrar can exercise the power under Sections 33 (14) and 33(15) only within 30 days from the date of receipt of notice inviting exercise of such powers. In the instant case, notice was issued on 21.08.2014 calling upon the first respondent/writ petitioner to give his explanation, but he did not give any reply. Thereafter, the second respondent herein delegated the power to the third respondent herein and thereafter, the meeting was convened only on 27.09.2014 i.e. beyond the 30 days time from the date of notice viz., 21.08.2014. Hence the learned



single Judge has quashed the impugned order. Aggrieved over the same, the present appeal has been filed by the Directors of the Society.

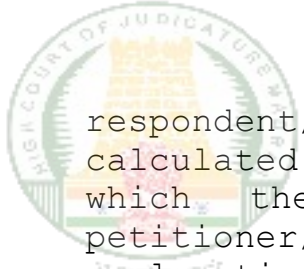
6. It is the main contention of the learned counsel for the appellants that the first respondent/writ petitioner without challenging the resolution dated 27.09.2014, has challenged only the communication dated 07.10.2014 sent by the second respondent herein directing the first respondent/writ petitioner to hand over the charge to the Vice President. Since the resolution dated 27.09.2014 was not challenged, the learned single Judge ought to have dismissed the writ petition on that ground. That apart, the learned counsel for the appellants submitted that though notice was sent on 21.08.2014 calling upon the first respondent/writ petitioner to submit his explanation within a period of one week, subsequently, another communication was sent on 11.09.2014, but suppressing this communication, he has filed the writ petition.

7. Keeping in mind the submissions made by either side, we have perused the materials available on record.

8. Admittedly, notice was sent only on 21.08.2014 calling upon the first respondent/writ petitioner to submit his explanation within one week. As per Rule 62(3) of the Rules, the Registrar shall exercise his power within 30 days from the date of receipt of notice for consideration of the resolution. Rule 62(3) of the Tamil Nadu Co-operative Societies Rules, 1988, reads as under:-

"As soon as such a requisition is received, the Registrar shall communicate a copy of the requisition to the office-bearer concerned, calling upon him to make his representation, if any, within such time as may be specified by him. The Registrar shall, within thirty days from the date of receipt of such requisition arrange to convene a special Meeting of the Board of the Society, for consideration of the resolution expressing no confidence in the office-bearer for which not less than three clear days' notice shall be given. A copy or gist of the requisition and of the representation, if any, received from the office-bearer concerned shall also be sent to the Members along with the notice for the special Meeting of the Board."

9. The reading of the said provision would show that the Registrar shall arrange to convene a special meeting of the Board of the Society within 30 days from the date of receipt of requisition for convening the meeting of the Board of the Society for the consideration of the resolution for expressing No Confidence against the office bearers. In the instant case, the representation was submitted by some of the Directors on 14.08.2014 to convene a No Confidence Meeting against the first



respondent/writ petitioner. However, the learned single Judge has calculated 30 days time only from 21.08.2014 i.e. the date on which the second respondent issued notice to the writ petitioner/first respondent calling upon him to submit his explanation on the representation dated 14.08.2014 made by some of the Directors. But even from 21.08.2014 the Registrar has not convened the meeting of the Board for consideration of the resolution expressing No Confidence against the first respondent/writ petitioner within 30 days. Admittedly, it was passed only on 27.09.2014. Considering these aspects only the learned Judge has quashed the order. Hence, absolutely we do not find any infirmity in the order passed by the learned single Judge.

10. Though it is contended by the learned counsel for the appellants that the writ petition ought to have been dismissed on the ground that the first respondent/writ petitioner without challenging the resolution dated 27.09.2014, has only challenged the communication dated 07.10.2014, the learned Judge has assigned a specific reason that when the original order is patently illegal, the Court cannot shut its eyes and merely throw the writ petition on the ground that consequential order alone has been questioned. Hence, we do not find any infirmity on the said reasoning. In fact, the learned Single Judge has allowed the writ petition by well considered reasoning, which admittedly needs no interference.

11. In the result, the writ appeal is dismissed. No costs.

Sd/-

Assistant Registrar (C)

/True Copy/

Sub Assistant Registrar

To

1. The Deputy Registrar of
Cooperative Societies,
Karaikudi Region,
Sivagangai District.

2. The Coop Sub Registrar/Field Officer,
Singampunari,
Sivagangai District.

+1 cc to MR.D.SADIQRAJA, Advocate SR.No.9059

+1 cc to M/S.M.SARAVANAKUMAR, Advocate SR.No.9048

+1 cc to Special Government Pleader SR.No.9215

W.A (MD) .No.644 of 2015

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