IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.01.2018
Delivered on : 01.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.404 of 2017,
C.M.P.No.6406 of 2017

G.Vasanthi ...Appellant/3rd Respondent

Vs

1.P.Loganathan
2.M.Krishnamurthy
3.K.Loganathan
4.N.Kondan
5.The Joint Registrar of Cooperative Societies
Collectorate, Namakkal.

6.The Management of S1223
Chandrasekarapuram Primary Agricultural
Cooperative Credit Society Ltd.,
Rep.by it Secretary,
Chandrasekarapuram Post,
Rasipuram Taluk, Namakkal District. ...Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 20.02.2017 made in W.P.No.668 of 2017.

Writ Petition filed under Article 226 of the constitution of India praying to issue a Writ of Certiorarified mandamus, calling for the records relating to the Order dated 24/11/2016 made in Na.Ka.No.2450 of 2016/Sa.Pa. On the file of the respondent herein and quash the same.

For Appellant : Mr.J.Srinivasa Mohan

For R1 to R4 : No appearance

For R5 & R6 : Mrs.T.Girija,
Government Advocate

J U D G M E N T

K.K.SASIDHARAN,J.

The Core Issue

Whether a statutory enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as "the Act") is a pre-requisite for taking action for supersession under Section 88(1) of the Act, is the core question that arises for consideration in this intra court appeal.

The Background

2. The Joint Registrar of Co-operative Societies issued a notice under Section 88(1) of the Act on 23 May 2016 calling upon the Board of Management of S1223 Chandrasekarapuram Primary Agricultural Cooperative Credit Society Ltd., to show cause as to why the Board should not be superseded on account of the failure to follow the direction given by the Registrar for constitution of committee for the construction of godowns under the Rural Infrastructural Development Fund.

3. The show cause notice was challenged before the High Court in W.P.No.19416 of 2016. The writ petition was dismissed with a direction to the petitioner therein to submit his reply. The documents sought for by the Board of Directors were given. Thereafter, with the concurrence of the Financing Bank, the Joint Registrar, by order dated 24 November 2016 superseded the Board of Management invoking Section 88 (1) of the Act.

4. The order dated 24 November 2016 was challenged by the respondents 1 to 4 before the Writ Court in W.P.No.668 of 2017. The learned single Judge quashed the order primarily on the ground that enquiry was not conducted under Section 81 of the Act before taking such a drastic action involving civil consequence. The learned single Judge opined that the supersession being an interference in the democratic management of the Society, the Registrar must have conducted a statutory enquiry under Section 81 of the Act. The order is under challenge at the instance of a member of the superseded Board of Management at whose instance the Joint Registrar initiated proceedings under Section 88(1) of the Act.

Summary of Submissions

5. The learned counsel for the appellant contended that the learned single Judge proceeded on the premise that enquiry under Section 81 of the Act is a pre-condition for taking action under Section 88(1) of the Act. The learned counsel contended that Section 88(1) of the Act is an independent provision giving

authority to the Registrar for initiating action against the Board of Management of the Co-operative Society for reasons to be recorded and after giving an opportunity. The learned counsel contended that sufficient opportunity was given to the members of the Board of Management before superseding the Committee. The learned single Judge was therefore not correct in setting aside the order passed by the Registrar.

6. The learned Government Advocate appearing for the respondents 5 and 6 contended that the Registrar was within his powers under Section 88 (1) of the Act for superseding the Committee. The learned Government Advocate contended that there was no necessity for an enquiry under Section 81 of the Act for taking action under Section 88 (1) of the Act.

Discussion

7. The respondents 1 to 4 were elected as the Board of Directors of S1223 Chandrasekarapuram Primary Agricultural Cooperative Credit Society Limited. The Board assumed office on 9 May 2013. The appellant was one among the 7 Executive Members of the Society.

8. The Registrar of Co-operative Societies vide order dated 19 May 2014 sanctioned financial assistance for the construction of 31 godowns of 100 Metric Tonnes capacity in 31 Primary Agricultural Co-operative Credit Societies functioning in the Namakkal Region under the Rural Infrastructure Development Fund during the financial year 2014-2015. The Registrar issued series of guidelines for adopting a transparent method for utilisation of the funds sanctioned under the Scheme. The Society was expected to form a Tender Finalisation Committee consisting of the President, Two Board of Directors, Secretary of the Society, Co-operative Sub-Registrar and a Chartered Engineer. The Committee was directed to follow the procedure laid down under the Tamil Nadu Tender Transparency Act, 1998.

9. The Board of Management of the Society without constituting the Tender Finalisation Committee commenced the construction work and completed it by spending the fund allotted by the Registrar of Co-operative Societies. The Joint Registrar on receipt of information with regard to the string of violations committed by the Board of Management initiated action under Section 88(1) of the Act. The Joint Registrar issued a show cause notice to the members of the Board of Management on 23 May 2016 calling for their explanation. The respondents 1 to 4 submitted a letter requesting the Registrar to furnish certain records. The records were furnished. The show cause notice issued by the Joint Registrar was challenged by Thiru.P.Loganathan, one of the Board of Directors in W.P.No.19416 of 2016. The High Court, by order dated 9 June

2016 dismissed the writ petition with a direction to the writ petitioner therein to submit his reply. Neither the petitioner in W.P.No.19416 of 2016 nor the other Directors submitted reply to the notice inspite of giving sufficient time by the Joint Registrar.

10. The Joint Registrar on a perusal of the materials available on record arrived at a satisfaction that the Society was not functioning properly. The Salem District Central Co-operative Bank in its capacity as the Financial Bank, in its communication dated 13 November 2016 supported the views formed by the Joint Registrar. The Joint Registrar on the basis of the available materials passed an order dated 24 November 2016 superseding the Board of Management of the Society.

11. The respondents 1 to 4 filed a writ petition in W.P.No.668 of 2017 challenging the order passed by the Joint Registrar on the ground that mandatory procedure was not complied with, while superseding the Committee of Management.

12. The learned single Judge while allowing the writ petition observed that no enquiry has been initiated by the Registrar under Section 81 of the Act and there was no inspection conducted under Section 82(1) of the Act, meaning thereby, such enquiry was necessary for taking action against the Management under Section 88(1) of the Act. The learned single Judge was of the view that opportunity to make a representation was not given to the members of the Board of Management. The learned single Judge therefore directed the Joint Registrar to re-consider the matter and take a decision afresh.

13. Section 88(1) of the Act empowers the Registrar to make an order for supersession of the Board of Management if he considers that the Board committed persistent default in managing the affairs of the Society in accordance with the provisions of the Act, Rules and Bylaws. There are three other contingencies enabling the Registrar to take action for supersession under Section 88 (1) of the Act. The Registrar was expected to issue notice to the Board of Management and an opportunity to make representation before passing orders for supersession.

14. There is no provision under the Tamil Nadu Co-operative Societies Act or the Rules made thereunder that before taking action under Section 88 (1) of the Act, a statutory enquiry should be conducted by the Registrar under Section 81 or inspection and investigation under Section 82 of the Act.

15. Section 88 of the Act viz., Tamil Nadu Co-operative

Societies Act, 1983 is in pari materia with Section 72 of the Tamil Nadu Co-operative Societies Act, 1961.

The Precedent

16. The issue as to whether the Registrar of Co-operative Societies before taking action under Section 72 of the Tamil Nadu Co-operative Societies Act, 1961 is obliged to conduct an audit made under Section 64 or inquiry held under Section 65 or inspection under Section 66 of the Tamil Nadu Co-operative Societies Act,1961, came up for consideration before the Supreme Court in Joint Registrar of Co-operative Societies, Madras v. P.S.Rajagopal Naidu and others [1970 (1) SCC 753]. The Supreme Court while rejecting the contention that action under Section 72 is possible only after conducting enquiry under Sections 64, 65 and 66 made the legal position clear in the following words:-

> "8. It is significant that Section 72(1) does not contain any mention of Sections 64 to 67 which appear in Section 70(1) and of Sections 65, 66 and 67 which are expressly mentioned in Section 85(1). If the intention of the Legislature was that the supersession of the Committee under Section 72 can be ordered by the Registrar only after recourse to Sections 64, 65, 66 and 67, there is no reason why language analogous to Section 70(1) or Section 85 (1) containing an express mention of the aforesaid sections, should not have been employed. An audit under Section 64 has to be done every year in view of the mandatory form of the language of that Section 64. But as regards Sections 65 and 66 the Registrar has been given the discretionary powers to make an inquiry or an inspection in accordance with those sections, there is no duty or obligation cast on him for doing so before he proceeds to take action under Section 72. All that is required by Section 72(1)(a) is that the Registrar should form an opinion that the Committee of any Registered society is not functioning properly or has wilfully disobeyed or failed to comply with any lawful order or direction issued by him. So far as the question of the society not functioning properly is concerned, that may depend on what the Registrar discovers after a proper audit, enquiry and inspection. But he can form that opinion even on material aliunde and the language of the section does not warrant by necessary implication the taking of the view that he is bound to form that opinion after following the entire procedure prescribed by the other sections under discussion. At any rate it is not possible to read a requirement while taking

action under Section 72 of satisfying the provisions in the aforesaid sections by making a direction in the first instance to remedy the defects disclosed as a result of the audit, inquiry or inspection. The functioning of the society may be so irregular and the defects disclosed so blatant and prejudicial to the society that no question can arise of any direction being made in the first instance for their being remedied by the persons or officers concerned. It may be that when the Registrar acts under the second limb of Section 72(1)(a) and proposes to supersede the committee for wilful disobedience or wilful failure to comply with any lawful order or direction issued by the Registrar under the Act or the rule that the provisions contained in Sections 64, 65 and 66 may become relevant. But that does not and cannot mean that the Registrar must as a condition precedent give a direction under those sections for the defects or the irregularities to be remedied and should take action only under the second limb i.e. when there is a wilful disobedience or wilful failure to comply with those orders or directions. It may be that the opinion which the Registrar has to form must be based on some objective facts but those objective facts in the absence of any clear indication under Section 72 cannot be confined to what may be disclosed after the Registrar has exercised powers in the matter of audit, inquiry and inspection under the provisions of Sections 64, 65 and 66. Thus even though the opinion may be a purely subjective process, there must be cogent material on which the Registrar has to form his opinion that the society is not functioning properly in order to sustain the issuance of a notice under Section 72(1)(a) and subsequent supersession of the Committee after considering its representation. The requisite opinion has indisputably to be formed honestly and after applying his mind by the Registrar to the relevant materials before him the only condition precedent for taking action under Section 72(1) is that the Registrar must consult the financing bank to which the society is indebted (vide sub-section 6). There is no other requirement or condition precedent laid down by the Legislature which the Registrar must fulfil before he acts in the matter of supersession of the Committee. We are unable to concur in the view of the High Court that an action taken under Section 72 without giving an opportunity to the member, officer or the society to rectify the defects found after an audit, inquiry or inspection held under Sections 64, 65 and 66 would constitute an exercise of power without jurisdiction."

17. The learned single Judge while quashing the order passed by the Joint Registrar observed that power under Section 88(1) of the Act is an extra-ordinary power which could be resorted to only when an extra-ordinary situation has arisen and that in case the elected body feels that certain acts taken are in the best interest of the Society, the authority will have to consider such explanation very seriously. The contentions taken by the respondents 1 to 4 were the basis which made the learned single Judge to make such an observation. The judgment in P.S.Rajagopal Naidu (cited supra) contains the answer to the said observation. The Hon'ble Supreme Court made it clear that if the operation of Section 72 in certain circumstances is likely to operate harshly so far as certain members of the committee are concerned, it is not possible to read into other provisions of the Act, which are not incorporated in the section expressly or by necessary implication.

18. There is no dispute that supersession of the Board of Management is a serious matter and it must be for valid reasons.

19. The Hon'ble Supreme Court in State of Madhya Pradesh and others v. Sanjay Nagayach and others [(2013) 7 SCC 25] indicated that the Registrar while exercising the power of supersession must act in the best interest of the Society and its members and the action should be bonafide and it must be within the four corners of the statute. The Supreme Court said:

> "37. The Registrar/Joint Registrar, while exercising powers of supersession has to form an opinion and that opinion must be based on some objective criteria, which has nexus with the final decision. A statutory authority shall not act with pre-conceived notion and shall not speak his masters' voice, because the formation of opinion must be his own, not somebody else in power, to achieve some ulterior motive. There may be situations where the Registrar/Joint Registrar are expected to act in the best interest of the society and its members, but in such situations, they have to act bona fide and within the four corners of the Statute. In our view, the impugned order will not fall in that category. "

20. Section 88 (1) of the Act is an independent provision

giving authority to the Registrar to supersede the Board of Management for reasons to be recorded in writing. It is true that there must be materials before the Registrar for superseding the Society under Section 88(1) of the Act. Though the order passed by the Registrar must contain reasons for taking such an extra-ordinary action, there is no requirement that statutory enquiry or inspection or investigation must be conducted under the provisions of the Tamil Nadu Co-operative Societies Act,1983, before initiating proceedings under Section 88(1) of the Act.

21. We therefore make the position very clear that proceedings under Sections 88(1) of the Act is independent of audit under Section 80, inquiry under Section 81 or inspection and investigation under Section 82 of the Tamil Nadu Co-operative Societies Act,1983. To put it otherwise, there is no requirement that there should be an audit under Section 80, enquiry under Section 81 or inspection under Section 82 of the Act for taking action for supersession of the Management of the Society under Section 88(1) of the Act.

22. Section 88 of the Act is a complete and comprehensive code unrelated to the provisions relating to audit/inquiry/inspection under Sections 80 to 82 of the Tamil Nadu Co-operative Societies Act,1983. The learned single Judge was not legally correct in the observation that provisions relating to audit, enquiry or inspection must be resorted to before superseding the Board of Management. We are therefore of the view that the appellant must succeed.

23. The order dated 20 February 2017 is set aside. The writ petition in W.P.No.668 of 2017 is dismissed.

24. In the upshot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Audit)

//True copy//

Sub Assistant Registrar

svki

To

1.The Joint Registrar of Cooperative Societies
Collectorate, Namakkal.

+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.16497
+1cc to Mr.J.Srinivasa Mohan, Advocate SR.No.15612

W.A No. 404 of 2017

BR(CO)
GN(19/03/2018)