

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2018

CORAM

THE HONOURABLE MR.JUSTICE K. RAVICHANDRABAABU

W.P.Nos.1252 & 1253 of 2018

and

W.M.P.Nos.1560 & 1561 of 2018

Tamil Nadu Government Officials
Co-operative Housing Society Ltd.,
SAHSG -45,
Rep. By tis President A.Muruganandhan
'Prime Rose Cottage',
No.41, O.S.M.Nagar, Avayambalpuram,
Mayiladuthurai, Nagapattinam District-609 001
... Petitioner in W.P.1252/2018

278 Thiruthuraipoondi Co-operative
Housing Society Ltd.,
rep. by its President K.Ramesh,
No.3/4, P.S.T.Complex,
Mettur Street, Thiruthuraipoondi,
Thiruvarur District - 614 713
... Petitioner in W.P.1253/2018

vs.

1. The Managing Director,
Tamil Nadu Co-operative Housing Society Ltd.,
No.48, Rithardan Road,
Vepperi,
Chennai-7.

2. The Registrar of co-operative Societies (Housing)
Tamil Nadu Co-operative Housing Society Ltd.,
No.493, Anna Salai, Nandanam,
Chennai-35.

3. The Zonal Deputy Registrar (Housing)
1/3107, Daniel Thomas Nagar,
Thanjavur - 619 007

4. The Co-operative Sub-Registrar(Housing)/Liquidator
1/3107, Daniel Thomas Nagar,
Thanjavur - 619 007. ... Respondents in both the W.Ps.

Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records of the respondents contained in its impugned order passed by the 3rd respondent in Na.Ka.1413/2016 NaVeVa, dated 24.11.2017 and Na.Ka.No.1298/2016 NaVEVa dated 27.11.2017 respectively and to quash the same as arbitrary, illegal and against law.

For Petitioners: Mr.P.Dineshkumar

For Respondents: Mr.L.P.Shanmugasundaram,
Special Government Pleader

COMMON ORDER

In both these writ petitions, the petitioners are aggrieved against the order passed by the 3rd respondent dissolving the petitioner's Society under Section 137(2)(b) of the Tamil Nadu Co-operative Societies Act, 1983.

2. Heard the learned counsel for the petitioners in both the writ petitions and Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the respondents.

3. The main grievance of the petitioners in these writ petitions is that the impugned orders were passed by the 3rd respondent by relying on a report filed under Section 82 of the above said Act, however, without serving a copy of the same to the petitioner Society and providing them an opportunity of hearing based on such report. Therefore, it is contended that by not serving such report on the petitioners, the 3rd respondent has violated the principles of natural justice in passing the impugned order, especially, when he has chosen to rely on such report against the petitioners.

4. Learned counsel appearing for the respondents, based on instructions, submitted that though appellate remedy is available to these petitioners against the impugned order of the 3rd respondent, it is a fact that the report under Section 82 of the said Act was not served on the petitioners before passing the impugned order. Therefore, he fairly conceded that the matter may be remitted back to the 3rd respondent for passing a fresh order after serving a copy of the said report made under Section 82 of the said Act on the petitioners.

5. Heard both sides.

6.The Court has already considered the issue involved in this case as to whether furnishing of such report to the petitioners before passing the impugned order is mandatory or not. In a decision made in W.P.Nos.7648/2015 etc. dated 06.01.2017 (2017(1) CTC 258 (C.Kamaraj v. The Registrar of Cooperative Societies), this Court has found that furnishing of such report is mandatory. At paragraph Nos. 39 and 40 of the said judgment, it has been observed as follows:

39. Therefore, the contention of the learned counsel for the petitioner is that he was not afforded with reasonable opportunity of being heard before passing the impugned order of removal nor produced a copy of the enquiry report dated 28.04.2014. This contention carries much force in his favour, inasmuch as from the show cause notice dated 29.01.2015, it could be seen that a reference was made to a Report dated 28.04.2014 submitted by the Enquiry Officer, which is the basis for issuing show cause notice, however, at the same time, based on such report, the second respondent passed an impugned order of removal, without giving a copy of the report to the affected person. Such an approach of the second respondent is against the provisions of Section 81(3) r/w Rule 104(7). Dealing with a similar issue in W.P.No.16617 of 2015 relating to supersession, I have also held that non-furnishing of enquiry report before removing the petitioner under Section 36 of the Act is fatal.

40. Section 36 of the Act empowers the Registrar to take action against the delinquent to disqualify him permanently from holding in future any office in any registered Society, but, before taking such action, an enquiry under Section 81 or inspection under Section 82 should be undertaken to find out whether a member of a Board has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the Society. Admittedly, in the present case, enquiry was held by appointing one Mr.S.Murugesan, Cooperative Sub-Registrar, as Enquiry Officer, who, in turn, admittedly submitted his report on 28.04.2014 to the

third respondent. But, unfortunately, a copy of the said report has not been furnished to the petitioner. Admitting non-furnishing of the report to the petitioner, learned counsel for the fourth respondent stated that there is no provision under the Act to furnish a copy of the report made under Section 81 of the Act. Such an contention of the learned counsel for the fourth respondent / approach of the second respondent in superseding the Board is erroneous, in the light of sub-section 2 of Section 36, which categorically says that no person shall be disqualified or removed under sub-section (1) of Section 36 without being given an opportunity of making his representation. For, while interpreting sub-section 2 of Section 36, this Court in Vallipattu's case (cited supra) has rightly held that the Registrar is duty bound to communicate necessary details available in the report of enquiry to the delinquent before taking action against the officer or servant. Therefore, when a copy of the report filed under Section 81 of the Act was admittedly not furnished to the petitioner, it is highly impossible for anyone to give explanation to the Registrar requesting not to take action under Section 36 (1) of the Act.

7. I have also followed the above said decision in another case in W.P.No.206/2018 dated 12.01.2018.

8. Considering the above stated facts and circumstances, I am of the view that both the impugned orders are liable to be set aside only on the ground of violation of principles of natural justice. Accordingly, the writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the 3rd respondent with the following directions:

(a) The 3rd respondent will furnish a report under Section 82 of the Tamil Nadu Co-operative societies Act, 1983, to the respective petitioners within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such report, the respective petitioners shall file their reply/objection, if any, within a period of two weeks thereafter.

(c) On receipt of such reply/ objection, the 3rd respondent will conduct enquiry and pass fresh orders on merits and in accordance with law within a period of four weeks thereafter. Till such time, the status quo as on today shall be maintained in respect of the administration of the Society. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-vii)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Managing Director,
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No.48, Rithardan Road,
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1/3107, Daniel Thomas Nagar,
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+2cc to Mr.M.R.KUYILAN, Advocate, S.R.No. 5402 & 5403
+1cc to the Government Pleader, S.R.No. 6231

W.P.Nos.1252 & 1253 of 2018

KJI (CO)
TR(08/02/2018)

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