



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2018

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.[MD]No.15579 of 2018

and

W.M.P.[MD]No.13994 of 2018

A.Babu

: Petitioner

Vs.

1. The Registrar Co-operative Societies (Housing),
No.48, Ritherdon Road,
Vepery, Cheeni - 600 007.

2. The Deputy Registrar of Co-operative Societies (Housing),
Virudhunagar Region,
Virudhunagar.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records in pursuant to the Impugned Order passed by the first respondent in his proceeding Na.Ka.No.3645/2017/Sa Pa.2 dated 15.11.2017 and quash the same.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.C.M.Mari Chelliah Prabhu

Additional Government Pleader

O R D E R

The petitioner is aggrieved over the order passed by the respondent under Section 36 of the Tamil Nadu Co-operative Societies Act, disqualifying him from the membership of the Society. Before removing the petitioner from the membership, an enquiry was conducted under Section 81 of the Act and based on the enquiry and the report dated 31.08.2015, the petitioner was removed from the membership of the society. Challenging the same, the petitioner is before this Court.

2.When the matter is taken up for hearing, the learned Additional Government Pleader appearing for the respondents would submit that there is an effective alternative remedy available by way of appeal under Section 152(v) of the Tamil Nadu Co-operative Societies Act.

3.According to the learned Counsel appearing for the respondent, without exhausting the effective alternative remedy of appeal, the petitioner has directly approached this Court invoking its writ jurisdiction.



4. Considering the submissions made on behalf of the respondents, this Court is of the view that when effective appeal remedy is available under the Act, it is for the petitioner to exhaust such remedy before invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

5. At this, the learned Counsel appearing for the petitioner would submit that no opportunity was given to the petitioner before impugned auction and therefore, there was violation of the principles of natural justice.

6. Although, in certain circumstances it is possible to entertain the writ petition without driving the litigant to exhaust alternative remedy, as far as the case on hand is concerned, it is always open to the petitioner to urge the points in his favour before the appellate authority and the same shall be considered by the appellate authority on merits and in accordance with law. Even the contention of the petitioner that no proper opportunity was given to him can also be raised before the appellate authority.

7. In such view of the matter, this Court is of the considered opinion that the petitioner has to avail the effective alternative appeal remedy available under Section 152 (v) of the Co-operative Societies Act.

8. For the above reasons, the writ petition is dismissed on the ground of availability of alternative remedy alone without expressing any views on the merits of the claim of the petitioner. It is also made clear that the petitioner can raise all the contentions in his favour before the appellate authority by filing an appeal under Section 152 (v) of the Act, if he is so advised. The time spent by the petitioner in the litigation before this Court shall be excluded for the purpose of calculation of limitation period as prescribed under the Tamil Nadu Co-operative Societies Act.

9. The Writ Petition stands dismissed, accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-I)



To

1. The Registrar Co-operative Societies (Housing),
No.48, Ritherdon Road,
Vepery, Cheeni - 600 007.

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2. The Deputy Registrar of Co-operative Societies (Housing),
Virudhunagar Region,
Virudhunagar.

+1cc to The Spl. Government Pleader Sr.No.87166

MR

NM/RP/SAR1/28.11.2018/3P/4C

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