

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.Nos.26354 & 26358 of 2019
& W.M.P.Nos.25707 & 25709 of 2019

1. S.Arun,
2. L.Venkatakrishnan,
3. M.Karthikeyan,
4. V.Rajasekar,
5. A.Vigneshvar,

... Petitioners
in both cases

/Versus/

1. The Registrar of Co-operative Society (Housing),
48, Ritherdon Road,
Vepery, Chennai - 600 007.
2. Deputy Registrar of Co-operative Society (Housing),
Chennai Division,
Office of the Deputy Registrar of Co-operative Society
(Housing), Chennai.
3. The Madras Secretariat Co-Operative Building Society Ltd.,
(X-370),
No.144, Third Street, Secretariat Colony,
Kellys, Chennai - 600 010.
4. Tamil Nadu State Co-operative Societies Election Commission,
Kamadenu Super Market Building,
No.273, Scheme Road, Subbarayan Nagar,
Teynampet, Chennai - 600 018.

... Respondents
in both cases.

Prayer in W.P.No.26354 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, to call for the records from the 1st respondent relating to the order dated 05.08.2019 bearing reference Na.Ka.No.2753/2019/Sapal rejecting the appeal filed by the petitioners against the order of the 2nd respondent dated 08.05.2019 and quash the same as illegal, arbitrary, without jurisdiction enabling the petitioners to discharge their duties as the elected office bearers of the 3rd respondent Society and to pass orders.

Prayer in W.P.No.26358 of 2019:- Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus, directing the 4th respondent election Commission to conduct election to the vacancies arisen on account of death of V.SivaKumar on 08.08.2018 and resignation five directors vide letter dated 12.12.2018, 24.01.2019 & 25.01.2019 and 11.02.2019 as requested by the 2nd respondent on 06.06.2019 referred to in order of the 1st respondent dated 05.08.2019, within a time frame fixed by this Hon'ble Court.

For Petitioner : Mr.NGR.Prasad, Senior Counsel
in both cases

For R4 : Mr.S.Palanichamy, Standing Counsel
in both cases

For R1 to R3 : Mr.L.P.Shanmugasundaram,
in both cases Special Government Pleader

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The elected Board of the Madras Secretariat Co-operative Building Society Ltd., was superseded on 08.05.2019 for the reason that the Board has lost the required quorum in view of vacancy of 6 posts out of 11 posts therefore, fresh election should be conducted for all the 11 members, till then, administrator should take charge of the Society.

3. Challenging the order of supersession dated 08.05.2019 passed by the 2nd respondent, the petitioner preferred before 1st respondent and same was dismissed in Na.Ka.No.2753/2019/Sa1, dated 05.08.2019, hence the present Writ Petition is filed by 5 members of the Board.

4. The point for decision is whether the entire board can be superseded since majority of the seats fell vacant due to death or resignation of members.

5. The brief facts of the case is that, the election for the Board of Directors for the said Society was conducted on 03.04.2018, for 11 post, 10 were elected. For 1 reserved seat (SC), there was no contestant. Hence, that seat was de-reserved and on 29.12.2018 one member was elected. Meanwhile, one of the Director Mr.V.Sivakumar died on 08.08.2018. Later another member by name Tmt.R.G.Sabitha resigned on 15.12.2018. For those two

vacancies, the Board requested the Election Commission to conducted election. While the Election commission was processing the request to notify election for those two vacant post, four more directors tendered their resignations between 24.01.2019 to 11.02.2019. Thus, the board has lost the requisite quorum to carry on the day to day activities. The 2nd respondent/Deputy Registrar of Co-operative Societies (Housing) therefore had thought fit to dissolved the board vide proceedings dated 08.05.2019 on the ground that the Board has lost the quorum.

6. Against the said order, the petitioners herein had preferred appeal before the Registrar of Co-operative Society (Housing) who affirmed the order of the Registrar of Co-operative. Hence, the present Writ Petition.

7. According to the respondent, since the Board has lost the quorum, it is bound to be superseded and election should be conducted afresh. In support of the said submission, the Learned Special Government Pleader for the respondents would submit that under Rule 60 of the Co-operative Society Rules, 1989, the manner in which the resignation of the members to be tendered and accepted is prescribed. The resignation should be accepted by the Board, as per that Rules and same has to be intimated to the Chief Executive. If the Board fails to intimate within 60 days, the resignation has to be deemed to be accepted, after expiry of 60 days. In this case, the resignation of the four members of the Board were not placed before the Board but by default on expiry of 60th day the resignation letters were deemed to be accepted. Thereafter, decision was taken to supersede the Board for want of quorum and conduct fresh election.

8. Neither under Section 89 of the Tamil Nadu Co-operative Societies Act nor Rule 60 of the Tamil Nadu Co-operative Societies Rules, such action is contemplated. If any elected Director resigns from the Directorship, the only option is to conduct election to fill up that vacancy, for vacancy of one or more seat supersession of entire Board is unwarranted. Such situation will arise if all the members of the Board of Directors tender resignation and not otherwise.

9. Here is the case where out of 11 post of Directors, 1 died and 5 resigned. Still 5 duly elected members were holding Office. They cannot be forced to face another Election by supersession.

10. Under Section 89 of the Tamil Nadu Co-operative Societies Act, the circumstances under which the Society can be superseded is enlisted. Want of quorum is not one such

circumstances. Looking from any angle, the impugned order is not sustainable and against the Democracy ethics. Hence, the Writ Petition No.26354 of 2019 is allowed. The order of the 1st respondent dated 05.08.2019 confirming the order of supersession passed by 2nd respondent on 08.05.2019 is hereby quashed.

11. The 1st respondent/Registrar of Co-operative Societies (Housing), shall make fresh request to the 4th respondent/Tamil Nadu State Co-operative Societies Election Commission, to notify the election for the six (6) vacant post. As far as the petitioners are concerned, their status as Directors of the Society shall remain.

12. Writ Petition No.26358 of 2019 is disposed of. In view of the above order passed in the W.P.No.26354 of 2019, this Court is of the opinion that no separate order required, except to direct the 1st respondent to communicate the Tamil Nadu State Co-operative Societies Election Commission/4th respondent to notify the election for the 6 vacant post, within a period of three weeks, from the date of receipt of a copy of this order. Thereafter, the 4th respondent shall notify the schedule for the election, within a period of two weeks. No costs. Consequently, connected Miscellaneous Petitions are closed.

bsm

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To,

1. The Registrar of Co-operative Society (Housing),
48, Ritherdon Road,
Vepery, Chennai - 600 007.
2. Deputy Registrar of Co-operative Society (Housing),
Chennai Division,
Office of the Deputy Registrar of Co-operative Society
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No.273, Scheme Road, Subbarayan Nagar,
Teynampet, Chennai - 600 018.

+2cc to M/s.Row & Reddy, Advocate, SR.No.80041 & 80042

W.P.Nos.26354 & 26358 of 2019

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