

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.3201 of 2019
and
C.M.P.No.20282 of 2019

Bharathi Co-operative Housing Society Ltd.,
MSCS/CR/1284/2018,
No.87-A, Perambur High Road,
Perambur, Chennai 600 011
Represented by its Chairman, Mr.C.Govindarajulu
... Appellant

Vs

1.The Central Registrar,
Government of India,
Ministry of Agriculture & Farmers Welfare,
Department of Agriculture,
Co-operation & Farmers Welfare, Krishi Bhawan,
New Delhi - 110001

2.The Registrar of Co-operative Societies,
Chennai - 10.

3.The Registrar (Housing)
Chennai 600 007

4.The Deputy Registrar (Housing)
Chennai Region,
18, Ramanathan Street, T.Nagar,
Chennai 600 017.

5.Mr.G.Mugundhan,
45/57, Venkatesapuram,
New Colony, Main Road,
Kannikapuram,
Chennai 12.

6.Mr.D.Lingesan,
No.1, Joseph Street,
Kannikapuram, Chennai 12.

... Respondents

PRAYER : Appeal against the order passed in W.P.No.4740/2019
dated 04.09.2019.

Prayer in W.P.No.4740 of 2019:

Writ Petition is filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus to Call for the records relating to the impugned order of the first respondent in F.No.L.11016/25/2014 L and M. Vol.III dated 12/02/2019 and quash the same and direct the first respondent to restore the Certificate of Registration dated 18/05/2018 issued to the petitioner Co-operative society under the Multi State Co-operative Societies Act 2002.

For Appellant :Mr.P.Rajendran

For Respondents:Mr.P.H.Aravind Pandian (for R3 & R4)
Additional Advocate General
Assisted by L.P.Shanmugasundaram
Special Government Pleader (Co.op)

Mrs.T.Girija (for R2)
Government Advocate

Mr.R.Veeramani (for R5 & R6)

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the unsuccessful Writ Petitioner who challenged the order of cancellation passed by the 1st respondent viz., The Central Registrar, registering the society as a Multi-State Co-operative Society.

2.The facts of the case are as follows:

The appellant is a Co-operative society which was registered as a society under the Tamil Nadu Co-operative Societies Act in the year 1977. Thereafter, the society passed a resolution on 29.07.2016 to convert the society as Multi-State Co-operative society as its area of operation was extended beyond Tamil Nadu, especially in Karnataka. The bye-laws of the society were accordingly amended and the proposal for converting as Multi-State Co-operative society was forwarded to the Central Registrar, Co-operative Societies, New Delhi. As per the procedure, the views of the Registrar of both the States in which the society is to have operation had been obtained. The Registrar of Karnataka State Co-operative Societies gave his No objection, unconditionally vide letter dated 19.03.2018, whereas the Registrar of Tamil Nadu State Co-operative societies in his remarks through letter dated 28.02.2018 has made certain conditions for giving no objection.

3.Thereafter, the petitioner society sent a letter to the Central Registrar stating that the conditions imposed by the State Registrar vide letter dated 28.02.2018 have been rectified and a letter was sent to the State Registrar for

reporting compliance. On receipt of the said letter of the petitioner on 22.03.2018, the Central Registrar had replied to the petitioner through letter dated 17.04.2018, pointing out that there were deficiencies in the proposal for amending of the bye-laws of the society. It was also pointed out that the Registrar of Co-operative Society (RCS), Tamil Nadu has given NOC with some conditions. Since no documentary evidence has been furnished by the society for having complied with the conditions imposed by the Registrar of Co-operative Society (RCS), Tamil Nadu, the Central Registrar directed the Society to rectify the deficiencies pointed out in the bye-laws and also furnish documentary evidence regarding the compliance of the direction of the RCS, Tamil Nadu.

4. In response to that, the appellant Society on 15.05.2018 enclosed a copy of its letter dated 20.03.2018 which had been written in vernacular language and sent to RCS, Tamil Nadu and requested the Central Registrar to issue Registration Certificate stating that the society had already corrected the bye-laws and acted upon. The Central Registrar had issued certification of Registration on 18.05.2018 converting the petitioner society as a Multi-State Co-operative Society. Pending application for conversion, the election to the Co-operative societies in the State of Tamil Nadu was notified and Model code of conduct came into force from 05.03.2018. The election for the post of Directors in the petitioner society held as per the State Act and election notification. The election was initiated as the period of office bearers came to an end on 08.05.2018. Due to the proceedings before the Hon'ble Supreme Court in SLP.No.10051 to 10059 of 2018, the results were not declared by the Election Commission. Therefore, the Deputy Registrar (Housing) by its letter dated 06.08.2018, permitted respondents 5 and 6 to assume the office as President and Vice President of the society.

5. After the conversion as Multi-State Co-operative Society, General Body meeting was held. Election for the society as per the Multi-State Co-operative Societies Act, 2002 was conducted. The Returning Officer declared one Mr.C.Govindarajulu as Chairman and Mrs.B.Sangeetha Bhaskar as Vice Chairman on 27.07.2018 to hold the office for a term of five years from 25.07.2018 to 24.07.2023.

6. As a result, two bodies came into existence to manage one single society. There was one set of office bearers who were elected as per the State Act and another set of office bearers who were elected as per the Central Act, after conversion.

7. The Registrar of Co-operative societies, Tamil Nadu, after knowing about the conversion of the society as a Multi-State Co-operative society has informed that the appellant society has not fulfilled the conditions imposed, as per the

letter dated 28.02.2018 sent by RCS Tamil Nadu to the 1st respondent and therefore, requested to cancel the conversion of the appellant as Multi-State Co-operative Society. Challenging the said order, Writ Petitions were filed in W.P.No.20916 and 21802 of 2018. W.P.No.20916 of 2018 filed by the office bearers who were elected after conversion as Multi-State Co-operative society challenged the order passed by the Deputy Registrar, permitting 5th and 6th respondents to assume the office as President and Vice President of the society. The said Writ Petition was allowed by the learned single Judge. Another W.P.No.21802 of 2018 had been filed challenging the order of conversion granted by the 1st respondent through order dated 18.05.2018 and the said Writ Petition was disposed of with a direction to the first respondent.

8.The order has been passed in both the Writ Petitions as a common order. In consequence of the common order, the appointment of 5th & 6th respondents as office bearers has been quashed and the Central Registrar was directed to conduct an enquiry after giving an opportunity to both the parties. Thereafter the first respondent has given opportunity to both the parties and passed an order dated 12.02.2019, cancelling the registration. The said order has been challenged before the learned single judge. The learned single Judge upheld the said order passed by the first respondent. The learned single Judge's order is being challenged before this Court.

9.Mr.P.Rajendran, learned counsel appearing on behalf of the appellant would make the following the contentions:

(a) Once the conversion has been made and the society has been registered as Multi-State Co-operative society, the registration could be cancelled only as per Sections 21 and 93 of Multi State Co-operative Societies Act and no other ground could be invoked for cancelling it.

(b) No such action has arisen to invoke Sections 21 and 93 of the Act, whereas for the reasons best known to the first respondent, the first respondent has passed the order and that has been erroneously confirmed by the learned single Judge.

(c) Deficiencies which have been pointed out by RCS Tamil Nadu have been complied with and that has been admitted by the first respondent in the counter affidavit filed in W.P.No.21802 of 2018 in paragraph 4 of the counter affidavit.

(d) Once after obtaining the views of the RCS Tamil Nadu, the State Co-operative society has been converted as Multi-State Co-operative Society, the provisions of Multi-State Co-operative Societies Act would alone be applicable. The view of the Registrar Co-operative Society, Tamil Nadu cannot be acted upon after conversion.

(e)The irregularity found in the administration of the society was before the conversion. Therefore, the erstwhile office bearers should be made liable to answer and the new office bearers who are allocated as per Section 45 of MSCS Act cannot be held responsible.

(f)The reasoning given by the learned single Judge is beyond the reasoning given in the impugned order which is contrary to the judgment of the Hon'ble Supreme Court in Mohinder Singh Gill & another Vs.The Chief Election Commissioner, New Delhi, reported in 1978 (1) SCC 405, Hindustan Petroleum Corpn. Ltd., Vs. Darius Shapur Chennai & Ors. reported in 2005 (7) SCC 627 and State of Punjab Vs. Bandheep Singh and other reported in 2016 (1) SCC 724

10.This Court heard Mr.P.Rajendran, leaned counsel appearing on behalf of the appellant and Mr.R.Veeramani, learned counsel appearing on behalf of the 5th and 6th respondents and has given consideration to the points raised by both parties before the learned single Judge and the contentions now made before this Court and it is categorically found that

(a)the office bearers whose period had expired as early as on 08.05.2018 have got no power to interact with or communicate with the Central Registrar under the Multi-State Co-operative Societies Act.

(b) The erstwhile office bearers continued to correspond with the first respondent without any intimation or knowledge of the third respondent who is the controlling authority of the petitioner society.

(c) Misleading informations were furnished to the Central Registrar, Multi State Co-operative Societies and act of conversion has been obtained fraudulently on 18.05.2018.

(d) Decisions were taken by the erstwhile office bearers regarding finance and other policy matters and they had unauthorisedly sold plots to the members of Simpson Employees Co-operative Society on 16.05.2018, after the expiry of their term. Selling and registration of plots to the newly admitted members between 28.02.2018 and 18.05.2018 in violation of conditions imposed while granting conditional NOC prompted respondents 2 to 4 to seek for cancellation of registration.

11.The above reasonings have been given pursuant to the letter dated 28.02.2018 sent by the Registrar of Tamil Nadu Co-operative Societies in response to the request of the Central Registrar. Remarks given by The RCS Tamil Nadu read as follows:

"2.On perusal of the request of the society, and the recommendation of the Deputy Registrar (Housing) Chennai a "No objection" is issued to the Bharathi Co-operative Building Society for conversion into a "Multi State Co-operative Society" with its headquarters at Tamil Nadu with the following conditions.

i.Permission accorded to the Society to sell out plots comprising 76,954 sq.ft. in total in Survey No.85/1, 86/1, 86/2 in "Lyon Grant" Village, Madhavaram Taluk, Thiruvallur District, Chennai - 52, after fixation of upset price in the "Pricing Committee" constituted for this purpose with certain

terms and conditions. As per the report of the Bharathi Co-operative Building Society in the reference 5th cited, the society should sell the unsold 17 regular plots within a month's time. The balance 11 irregular shaped plots should be sold following due procedures laid down in the order of Registrar of Co-operative Societies (Housing) (copy enclosed).

The area of operation of the society with regard to Tamil Nadu shall be as existing mentioned in para (i) subpara (III)

ii. In order to have the existence of the: "Multi State Co-operative Society" with Chennai (Tamil Nadu) as headquarters, the Sale proceeds of these plots should be invested with the Tamil Nadu Co-operative Housing Federation. Initially it should be invested for a minimum period of two years.

iii. The society should invest the amount due to Rs.65,723/- (General Fund Contribution to its employess) for the year 2016-2017 with the Tamil Nadu Cooperative Housing Federation.

iv. With regard to payment of salary, gratuity etc., to the former employees, the dues as on 31.03.2018 should be remitted to the Tamil Nadu Co-operative Housing Federation immediately.

v. Society should not transact or carry out any business or transaction during the transit period i.e; from the date of issue of this letter till the receipt of order for conversion Multit-State Co-operative Societies Act except for salary and other contingencies.

vi. Audit defects pointed out for the year 2015-2016 should be rectified.

Vii. Audit should be carried out by Assistant Director of Co-operative Audit (North) till the issue of Order/Commencement of Society under Multi State Co-operative Societies Act and copy to be communicated to Deputy Registrar (Housing) Chennai Office."

Therefore, NOC given by RCS Tamil Nadu is a conditional one and with certain conditions only the NOC has been given. From the above, certain obligations have been imposed viz., for selling of plots comprised in survey Nos.85/1, 86/1, 86/2 in "Lyon Grant" Village, Madhavaram Taluk, Thiruvallur District, Chennai - 52, the Society should invest the amount due of Rs.65,723/-. The most important condition is that the society should not transact or carry out any business or transaction during the transit period viz., from the date of issue of letter dated 28.02.2018 till the receipt of order for conversion under Multi-State Co-operative Societies Act except for salary and other contingencies.

12.It has been rightly pointed out by the learned single Judge that the petitioner has transacted business and took policy decisions including financial decisions and that is also proved by the unauthorized sale of plots to the members of the Simpson Employees Co-operative Society on 16.05.2018, after the letter dated 28.02.2018 issued by RCS Tamil Nadu. Therefore, the learned single Judge also found sale and registration of plots to the newly admitted members between 28.02.2018 and 18.05.2018 is in violation of conditions imposed while granting the conditional NOC. The learned single Judge found that the first respondent exercised inherent power to cancel the registration granted to the appellant after conducting enquiry about the suppression of facts and financial irregularities committed by the appellant during the pendency of the conversion. It is evident from the order of the first respondent as well as the order of the learned single Judge that the petitioner lacks locus standi to pursue the resolution for conversion after expiry of their tenure and financial irregularities committed by the appellant during the pendency of the conversion. The important ground on which the order of cancellation was made is that the compliance report sent by the appellant to the third respondent was not legal. In fact they have not intimated the office of the first respondent in a good manner. Subsequently, they have fulfilled all the terms and conditions of RCS Housing Chennai Co-operative of Tamil Nadu.

13.Regarding cancellation of registration, the learned single Judge relied upon the Full Bench judgment of the Gauhati High Court Atowar Rahman Vs. State of Assam and others reported in AIR 2019 GAU 3 (FB). The full bench held that even in the absence of specific provision to nullify the registration, inherent power is available to the respondent who granted the certification converting the State Co-operative Society as Multi-State Co-operative society to cancel the same relying upon the principles under clause 21 of the General Clauses Act. It goes without saying that the authority who has got power to grant registration has got the power to cancel, modify, even though it is not expressly expressed or provided under the Act. There was suppression of facts while obtaining the registration under the Multi State Co-operative Societies Act and there is illegality committed by the appellant during the pendency of the conversion.

14.The learned single Judge also found that even though the appellant claimed that they have rectified deficiencies as pointed by the RCS Tamil Nadu, the appellant did not produce any document to support the said claim. Even though on 17.04.2018 the first respondent sought production of documentary evidence, the appellant sent the copy of compliance report in local language to the 3rd respondent as

documentary proof. The learned single Judge therefore, found that the appellant has not complied with the deficiencies but sought time to comply with the conditions noted in the letter dated 28.02.2018.

15.The learned single Judge also found that without any authority or power the appellant unauthorisedly indulged in selling and registering the plots to the new members pending conversion which also has to be employed against the appellant.

16.Therefore, the learned single Judge in paragraph 25 rightly found that the appellant committed gross violation of restrictions imposed by the 3rd respondent during the pendency of conversion application. The first respondent believing the representation of the appellant that the appellant complied with all the conditions imposed by the third respondent granted registration certificate on 18.05.2018. The alleged compliance report dated 20.03.2018 is not a legal one. The learned single Judge went into the details of the letter dated 15.05.2018 and found that it is not a compliance report and the appellant had sought for time to comply with the conditions carrying an assurance that within one month's time they will sell away the plots.

17.The contention of the learned senior counsel appearing on behalf of the appellant the the impugned order is silent about the allegations of the 3rd respondent and the explanation of the petitioner regarding financial and other irregularities are not so relevant when the impugned order clearly indicates that the State RCS has not given unconditional NOC and the conditions mentioned in NOC had not been rectified. Therefore, misleading statements have been made by the appellant before the 1st respondent and order of registration has been obtained by suppression of the material facts and therefore, after giving notice to the appellant, the first respondent as per the order of this Court passed the order of cancellation rightly. The learned single Judge has given reasons to uphold the order passed by the first respondent and the relevant portion of paragraph 26 of the order of the learned Single Judge is extracted as follows:

"26.The petitioner contention that impugned order is silent about the allegations of the 3rd respondent and the explanation of the petitioner regarding financial and other irregularities are not so relevant when the impugned order clearly indicates that the state RCS has not given unconditional NOC and the condition mentioned in NOC not rectified. But then, the petitioner has mislead saying they

have complied. When the same come to the knowledge of the first respondent, after affording opportunity to explain, the registration was declared void ab initio. The order is perfectly legal and sustainable since, the order has been obtained by suppression of several facts. To list few:-

1).The petitioner term expired on 08.05.2018. Thereafter, they should not have communicated to the first respondent on behalf of the Society.

2).The letter dated 15.05.2018 was after the election to the Society conducted as per the State Act and the petitioner was not the Office bearers on that date. At least, the petitioner should have informed the first respondent about this fact so that, the first respondent would have taken a conscious decision.

3).The letter of the petitioner addressed to the 3rd respondent on 20.03.2018 is not a compliance report, it is only a letter intimating about the progress in the Society towards compliance of conditions"

18. In a nutshell the learned single Judge found that

(a) The appellant has not acted properly on the conditional NOC given by the 3rd respondent.

(b) Pending compliance, unauthorisdelly the appellant took decision touching upon the policy decisions, including financial decisions by admitting new members and also selling plots to the new members unauthorisedly.

(c) Restrictions imposed on the appellant by the 3rd respondent in his letter dated 28.02.2018 have been violated. Once conditions imposed on the appellant, while giving NOC through letter dated 28.02.2018 have been violated, which is a very basic requirement for converting State Co-operative society into a Multi-State Co-operative society, it goes to the root of the matter and therefore, the 1st respondent can cancel the registration granted to the appellant.

19.The appellant without any authority after expiry of the term took decisions which is contrary to law. Therefore, the 1st respondent rightly found that without disclosing the correct facts, the appellant obtained the registration on 18.05.2018 and therefore, the authority had rightly cancelled

it. With reasoning, the learned single Judge confirmed it and therefore, there is no reason for this Court to interfere with the well written order of the learned single Judge. Therefore, Writ Appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Central Registrar, Government of India,
Ministry of Agriculture & Farmers Welfare,
Department of Agriculture,
Co-operation & Farmers Welfare, Krishi Bhawan,
New Delhi - 110001
- 2.The Registrar of Co-operative Societies,
Chennai - 10.
- 3.The Registrar (Housing)
Chennai 600 007
- 4.The Deputy Registrar (Housing)
Chennai Region,
18, Ramanathan Street, T.Nagar,
Chennai 600 017.

+1cc to Mr.P.Rajendran, Advocate sr.81125
+1cc to Mr.R.Veeramani, Advocate Sr.80012
+1cc to the Special Government Pleader sr.81136

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