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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2019

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 33976 of 2019

and W.M.P. Nos. 34567 and 34568 of 2019

Sukumar

... Petitioner

Vs.

1. Election Officer

Karthikeyapuram Co-operative Housing Society
J.J.345, No.1/700A, Second Cross Street
Karthikeyapuram, Madipakkam, Chennai - 91.

2. The State Co-operative Election Officer

Tamil Nadu Co-operative Societies, Teynampet, Chennai.

3. Chief Election Commissioner

Tamil Nadu Co-operative Societies Election Commission
272, Anna Salai, Teynampet, Chennai - 18.

4. Registrar Housing

Tamil Nadu Co-operative Societies (Housing)
Second Floor, No.48, Ritherton Road
Vepery, Chennai - 7.

5. B.Ranjith Kumar

6. M.Dhanasekaran

7. M.Dilli Babu

8. D.Chandrasekaran

9. A.Ranganathan

10. T.Madusudanan

11. P.Vasanth Kumari

12. D.Suguna

13. S.Uma Maheswari

14. S.Sankar

15. P.Anandan

... Respondents

Petition filed under Article 226 of the Constitution of India, for issue of Writ of Certiorarified Mandamus, calling for records of the First Respondent dated 29.11.2019 and quash the same and consequently direct the First Respondent to conduct fresh elections to JJ 345, Karthikeyapuram Co-operative Housing Society, Madipakkam, Chennai - 91.

For Petitioner : Mr. N.A.Nissar Ahmed



For Respondents : Mr. M.S.Palanisamy (For R2 & R3)
Mr. L.P.Shanmugasundaram (For R1&R4)
Special Government Pleader (Co-op)

ORDER

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Mr. L.P. Shanmugasundaram, Learned Special Government Pleader (Co-operative) takes notice for the First and Fourth Respondents and Mr. M.S. Palanisamy, Learned Counsel takes notice for the Second and Third Respondents.

2. The Writ Petition has been filed challenging the order dated 29.11.2019 passed by the First Respondent and to consequently direct the First Respondent to conduct fresh elections to JJ 345, Karthikeyapuram Co-operative Housing Society, Madipakkam, Chennai - 600 091.

3. Having regard to the aforesaid relief sought, reference may, at once, be made to Section 90 of the Tamil Nadu Co-operative Societies Act, 1983, which reads as follows:-

"90. Disputes:-

(1) If any dispute touching the constitution of the board or the management or the business of a registered society (other than a dispute regarding disciplinary action taken by the competent authority constituted under sub section (3) of section 75 or the Registrar or the society, or its board against a paid servant of the society) arises

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its board or any officer, agent or servant of the society, or

(c) between the society or its board and any past board, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs of legal representative of any deceased officer, deceased agent, or deceased servant of the society, or

(d) between the society and any other registered society, such dispute shall be referred to the Registrar for decision. Explanation. — for the purposes of this section, a dispute shall include —

(e) (i) a claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of



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a deceased member whether such debt or demand be admitted or not;

- (ii) a claim by a registered society against a member, past member or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions to assignment or allotment of such land or other immovable property; and

- (iii) a decision by the board under sub-section (3) of section 34 :

Provided that no dispute relating to, or in connections with any election shall be referred under this sub - section till the date of the declaration of the result of such election.

- (2) The Registrar may, on receipt of such reference,

- (a) decide the dispute himself or transfer it for disposal to any person subordinate to and empowered by him; or

- (b) subject to such rules as may be prescribed, refer it for disposal to an arbitrator or arbitrators.

- (3) Subject to such rules as may be prescribed, the Registrar may withdraw any dispute referred under sub-section (1) to any person subordinate to him or transferred under clause (a) or referred under clause (b) of sub-section (2) by the Registrar or any person subordinate to him and

- (a) decide the dispute himself; or

- (b) transfer it for disposal to any person subordinate to, and empowered by him; or

- (c) refer it for disposal to an arbitrator or arbitrators; or

- (d) re-transfer the same for disposal to the person from whom it was withdrawn; or

- (e) refer it for disposal to the arbitrator or arbitrators from whom it was withdrawn.

- (4) If a question arises, whether for the purposes of this section any person is or was a member of a registered society, or whether the dispute referred for decision is a dispute touching the constitution of the board, or the management or the business of the society, such question shall be decided by the Registrar.

- (5) Where any dispute referred to the Registrar under sub-section (1) or withdrawn by him under sub-section (3) relates to immovable property, the Registrar or the person or the arbitrator or arbitrators to whom it



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is transferred, referred or retransferred under sub-section (2) or sub-section (3) may, on the application of a party to the dispute direct that any person who is interested in such property, whether such person be a member or not, be included as a party to the dispute and any decision that may be passed on the reference, by the Registrar, the person, the arbitrator or arbitrators afore said, as the case may be, shall be binding on the party so included, provided that he shall be liable only to the extent of such property.

(6) The Registrar may pass such interlocutory orders as he may deem fit in the interests of justice.

(7) Nothing contained in the Arbitration Act, 1940 (Central Act X of 1940) shall apply to any arbitration under this section.

(8) Nothing contained in section 34 of the Code of Civil Procedure 1908 (Central Act V of 1908) shall apply to any decision passed or award made under this section.

(9) (a) The period of limitation for referring a dispute under this section shall be regulated by the provisions of the Limitation Act, 1963 (Central Act 36 of 1963) as if the disputes were a suit and the Registrar, a Civil Court, subject to the following modifications, namely:-

(i) when the dispute relates to a society in respect of which a special officer has been appointed under section 88 or to a society which has been ordered to be wound up under section 137, the period of limitation shall be six years, from the date of the order issued under section 88 or section 137, as the case may be;

(ii) save as otherwise provided in clause (i), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) of subsection (1), the period of limitation shall be six years from the date on which the act or omission with reference to which the dispute arose, took place;

(iii) when the dispute is in respect of, or in connection with, any election, the period of limitation shall be two months from the date of declaration of the result of the election.

(b) Notwithstanding anything contained in clause (a), the Registrar may admit a dispute after the expiry of the period of limitation if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such



period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired."

On a perusal of the aforesaid provision, it is evident that the Petitioner could seek the relief claimed in this Writ Petition by making such claim before the Arbitrator.

4. It is needless here to recapitulate that the Hon'ble Supreme Court of India in CCE -vs- Dunlop India Limited [(1985) 1 SCC 260] has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction under Article 226 of the Constitution of India, as follows:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

Having regard to the aforesaid legal position, there is no explanation from the Petitioner as to why she has not approached the Arbitrator under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983, for the relief that has been sought in this Writ Petition.

5. In that view of the matter, the Writ Petition, which cannot be entertained, is dismissed. It is made clear that no view has been expressed by this Court on the correctness or entitlement on the merits of the claim made by the Petitioner. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar



To

1. The Election Officer
Karthikeyapuram Co-operative Housing Society
J.J.345, No.1/700A, Second Cross Street
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Tamil Nadu Co-operative Societies
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Tamil Nadu Co-operative Societies (Housing)
Second Floor, No.48, Ritherton Road
Vepery, Chennai - 7.

+1 cc to M/s.N.A.Nissar Ahmed, Advocate Sr.No. 102109
+1 cc to Mr.L.P.Shanmugasundaram, Advocate Sr.No.102072
+1 cc to The Special Government Pleader, Sr.No. 102195

AKM/23.01.2020/6P- 8C /

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