



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

W.P (MD) No.21059 of 2019

and

WMP (MD) No.17687 of 2019

WEB COPY

T.Christuraj

... Petitioner

Vs.

The Joint Registrar of Cooperative Societies,
Nagercoil,
Kanyakumari District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for records relating to the impugned order passed by the respondent in Na.Ka.5377/2018/Sa.Pa dated 25.02.2019 and quash the same.

For Petitioner : Mr.M.Jerin Mathew

For Respondent : Mrs.J.Padmavathi Devi

Special Government Pleader

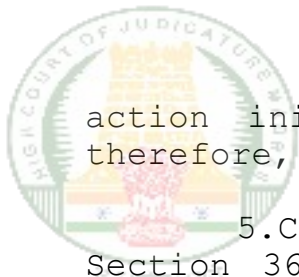
ORDER

Challenging the show cause notice dated 25.02.2019, issued under Section 36 of the Tamil Nadu Cooperative Societies Act, 1983, [hereinafter referred to as 'the Act'] the petitioner is before this Court.

2.By consent, the writ petition itself is taken up for final disposal at the stage of admission.

3.The respondent herein, after conducting enquiry under Section 82 of the Act, has furnished a report and called the petitioner to explain as to why he should not be disqualified as per Section 36 of the Act. The petitioner has submitted his explanation, but without waiting for the order, approached this Court on the question of jurisdiction. According to him, he is the elected President of the Society. The President, being an Office bearer, shall not be removed under Section 36 of the Act, rather, appropriate course of action is to be taken under Section 88 of the Act.

4.The learned counsel for the petitioner would contend that action has been taken against all the members of the Board. If the respondent wants to supersede, he has to take action only under Section 88 of the Act and not under Section 36 and therefore, the



action initiated by the respondent is without jurisdiction and therefore, it should be quashed.

5.Considering the above submission, for taking action under Section 36 of the Act, the pre condition is that the procedures contemplated under Sections 81, 82 and 83 are to be complied with. In the case on hand, as per Section 82 of the Act, inspection was conducted and enquiry report was also filed, which came out with a *prima facie* case that the board members have indulged in illegal activities. Therefore, action has been taken under Section 36 of the Act and in compliance with the procedures, a show cause notice was issued, giving opportunity to the petitioner to explain his case, which the petitioner has already done. In such circumstances, he has to wait for the orders and challenge the same in the manner known to law and he cannot approach the Court prematurely. A writ under Article 226 of the Constitution of India is not maintainable against a show cause notice, which involves disputed questions of facts.

6.Considering the facts and circumstances of the case, the petitioner is directed to appear before the authority when he is called for personal hearing and make his objections against the action taken.

7.The writ petition is disposed of with the above observation. No costs. Consequently WMP(MD)No.17687 of 2019 is closed.

Sd/-

Assistant Registrar (records)

// True Copy //

Sub Assistant Registrar(CS)

To

The Joint Registrar of Cooperative Societies,
Nagercoil,
Kanyakumari District.

+1 CC to Mr.M.E. ILANGO, Advocate (SR-90988[F] dated 03/10/2019)
+1 CC to spl.GP (SR-91179[F] dated 03/10/2019)

W.P. (MD)No.21059 of 2019
01.10.2019

mj
MK (22.10.2019) 2P 4C