

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.8334 of 2020 and
W.M.P.Nos.9992 & 9993 of 2020

S.Anandan

... Petitioner

Vs.

- 1.The Registrar of Co-operative Society (Housing)
No.70, Ritherdon Road,
Vepery, Chennai 7.
- 2.The Managing Director,
Tamil Nadu Co-operative Society
Housing Federation,
No.70, Ritherdon Road,
Vepery, Chennai 7.
- 3.The Deputy Registrar of Co-operative
Society (Housing),
Chennai Region-Full Additional Charge,
No.17, Ramanathan Street,
T.Nagar, Chennai 17.
- 4.The Secretary,
The Adyar Co-operative Building Society Ltd.,
No.22, Pumping Station Road,
4th Main Road, Gandhi Nagar,
Adyar, Chennai 20.
- 5.R.Palanivel
Sub Registrar Co-operative Society/Liquidator,
Office of the Deputy Registrar (Housing)
Chennai Region,
No.17, Ramanathan Street,
T.Nagar,
Chennai 17.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorari, to call for the order of the third respondent in Na.Ka.No.938/2016/C, dated 06.05.2020, quash the same and pass orders.

For Petitioner : Mr.S.P.Sudalaiyandi

For Respondents : Mr.L.P.Shanmuga Sundaram,

Special Government Pleader for R1 and R3

Mr.S.Kanmani Annamalai for R2

O R D E R

This writ petition has been filed challenging the proceedings of the third respondent dated 06.05.2020 winding-up the fourth respondent Society by virtue of the power exercised under Section 137(2)(b) of the Tamil Nadu Co-operative Societies Act, 1983.

2.The case of the petitioner is that the fourth respondent Society was registered in the year 1962 and has nearly 348 members. The further case of the petitioner is that an election was conducted in the year 2018 and 12 members were elected in the Board of the fourth respondent Society. The petitioner is one of the elected member in the Board. Out of the Board members, one person was elected as the President of the fourth respondent Society.

3.An impugned order came to be passed by the third respondent on 06.05.2020, winding-up the fourth respondent Society on the ground that the fourth respondent Society failed to carry on with its primary activity for two consecutive years. According to the third respondent, the fourth respondent Society was expected to prepare layout plan for promoting house sites and to register the Sale Deed in favour of the members of the Society and this was not done for more than two years.

4.The learned counsel for the petitioner primarily raised two grounds against the impugned order passed by the third respondent. The first ground raised by the petitioner is that notice ought to have been served on all the elected members of the Board and admittedly, it was served only on the President of the Society. The second ground that has been raised is that it is only the Registrar who is vested with the power under Section 137 of the Act and in the present case, the order has been passed by the Deputy Registrar, who had no authority to pass such an order.

5.The sixth respondent has filed a counter affidavit. It is mentioned in the counter affidavit that the petitioner Society did not carry on with the primary activity for more than two years and therefore, notice came to be issued by the fourth respondent Society which was received by the President of the Society and after getting his explanation, the order came to be passed by the third respondent. It is further mentioned in the counter affidavit that the power of the Registrar has been delegated to the third respondent by virtue of G.O.Ms.No.31, dated 05.01.1990.

6.Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader appearing on behalf of the first and third respondents submitted that the third respondent has complied with the requirement of serving notice on the fourth respondent Society and only after getting an explanation, the impugned order was

passed by the third respondent. The learned counsel further submitted that the Registrar has delegated the power to the third respondent by virtue of the power conferred under Section 3 of the Tamil Nadu Co-operative Societies Act, 1983. The learned counsel submitted that Section 3 specifically confers the power to the Government to delegate the power to any other officer, all or any of the powers of the Registrar.

7. Heard Mr.S.Kanmani Annamalai, learned counsel appearing on behalf of the second respondent.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. In the considered view of this Court, the impugned order passed by the third respondent dated 06.05.2020 is liable to be interfered on the sole ground that it has been passed without issuing notice to all the elected members of the Board of Directors. Admittedly, notice was issued only to the President of the Society. It is important to bear in mind that it is through an election process, the members of the Board are elected and therefore while winding up the Society, it is necessary to issue notice to each of the elected member, which has not been done in this case.

10. In view of the above discussion, the impugned order passed by the third respondent dated 06.05.2020 is hereby quashed. It is left open to the concerned Authority to issue fresh notice to all the elected members of the fourth respondent Society and get their explanation, before passing any orders strictly in accordance with law. This writ petition is accordingly allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

vkrr

To

1. The Registrar of Co-operative Society (Housing)
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Vepery, Chennai 7.

2. The Managing Director,
Tamil Nadu Co-operative Society
Housing Federation,
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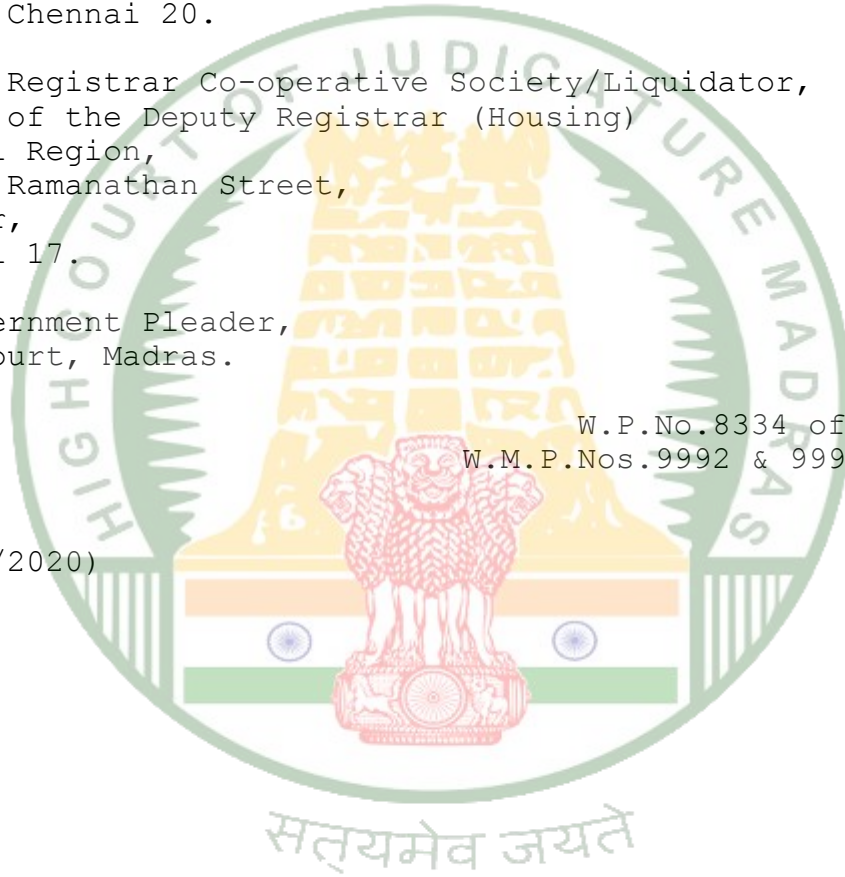
4.The Secretary,
The Adyar Co-operative Building Society Ltd.,
No.22, Pumping Station Road,
4th Main Road, Gandhi Nagar,
Adyar, Chennai 20.

5.The Sub Registrar Co-operative Society/Liquidator,
Office of the Deputy Registrar (Housing)
Chennai Region,
No.17, Ramanathan Street,
T.Nagar,
Chennai 17.

6.The Government Pleader,
High Court, Madras.

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AJS (CO)
GMV (21/09/2020)



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