

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.4702 of 2007

S.1565, Palace Nagar Co-operative
Housing Society Ltd.,
Rep.by its Special Officer,
Palace Towers, Cherry Road,
Salem - 636 001. ... Petitioner

Vs

1.The Deputy Registrar
of Co-operative Societies (Housing),
Salem - 636 016.

2.G.A.Thangamani ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking issuance of a writ of certiorari to call for the records of the first respondent relating to his notices Na.Ka.No.43/2007/E dated 03.01.2007 and 10.01.2007 issued in pursuance of the dispute raised by the 2nd respondent dated 18.12.2006 under Section 90(1)(b) of the Tamil Nadu Cooperative Societies Act, 1983 and quash the same as contrary to law.

For Petitioner : No appearance

For Respondents : Mr.L.P.Shanmuga Sundaram
Special Government Pleader for R1
No appearance for R2

O R D E R

The petitioner has come forward with the present writ petition seeking for a issuance of writ of certiorari to quash the notices dated 03.01.2007 and 10.01.2007, respectively issued by the first respondent in pursuance of the dispute raised by

the second respondent dated 18.12.2006 under Section 90(1) (b) of the Tamil Nadu Co-operative Societies Act, 1983.

2. There is no representation for the petitioner and the second respondent. Heard the learned Special Government Pleader for the first respondent and perused the materials available on record.

3. According to the petitioner Co-operative Society, while the second respondent was working as a Secretary in charge with the petitioner Co-operative Society, he was suspended from service on 06.07.2006. Subsequently, on 04.08.2006, a charge memo was issued against him. Thereafter, an explanation was called for from the second respondent. The second respondent also given his explanation and not being satisfied with the same, an enquiry officer was appointed. Since the second respondent failed to attend the enquiry in spite of three consecutive notices, the enquiry officer completed the enquiry and given a finding that the charges levelled against the second respondent were proved. The petitioner passed an order of dismissal from service against the second respondent. Aggrieved over the same, the second respondent filed a petition under Section 90 (1) (b) of the Tamil Nadu Co-operative Societies Act, 1983 (herein after referred to as 'the Act') before the first respondent. Subsequently, the first respondent issued the show cause notices dated 03.01.2007 and 10.01.2007 to the petitioner Society. Challenging the same, the petitioner filed the present writ petition before this Court.

4. The learned Special Government Pleader for the first respondent submitted that any aggrieved person can file a statutory appeal or revision before the Co-operative Society Tribunal as per Section 153 of the Act. However, in this case, the second respondent without filing any revision invoking Section 153 of the Act filed a petition before the first respondent under Section 90 (1) (b) of the Act, which is not maintainable. The statute itself provides that the petitioner/aggrieved party has to challenge the order of the disciplinary authority by way of statutory appeal or revision.

5. Section 153 of the Tamil Nadu Co-operative Societies Act, 1983, reads as follows :

"153. Revision. (1) The Registrar may of his own motion or on application, call for and examine the record of any officer subordinate to him or of the board or any officer of a registered society or of the competent authority constituted under sub-section (3) of section 75 and the Government may, of their own motion or on application, call for and examine the record of the Registrar, in respect of any

proceedings under this Act or the rules or the bye laws not being a proceeding in respect of which an appeal to the Tribunal is provided by subsection (1) of section 152 to satisfy himself or themselves as to the regularity of such proceedings, or the correctness, legality or propriety of any decision passed or order made therein; and, if, in any case, it appears to the Registrar or the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, he or they may pass orders accordingly: Provided that every application to the Registrar or the Government for the exercise of the powers under this section shall be preferred within ninety days from the date on which the proceedings, decision or order to which the application relates was communicated to the applicant.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representations.

(3) The Registrar or the Government, as the case may be, may suspend the execution of the decision or order pending the exercise of his or their power under sub-section (1) in respect thereof. 95

(4) The Registrar or the Government may award costs in any proceedings under this section to be paid either out of the funds of the society or by such party to the application for revision as the Registrar or the Government may deem fit."

6. As per Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 any aggrieved party challenging the order of the punishment passed by the disciplinary authority has to file revision before the Co-Operative Tribunal namely the District Judge. Therefore, in this case, the second respondent without filing revision before the Tamil Nadu Co-operative Society Tribunal, filed a petition under Section 90(1) (b) of the Act, which is not maintainable. Therefore, it is mandatory to the second respondent to approach the competent forum to challenge the order of the disciplinary authority.

7. Under these circumstances, the show cause notices dated 03.01.2007 and 10.01.2007, respectively issued by the first respondent is hereby quashed. However, liberty is given to the second respondent to approach the Co-operative Tribunal for appropriate remedy.

8.With the above direction, the writ petition is disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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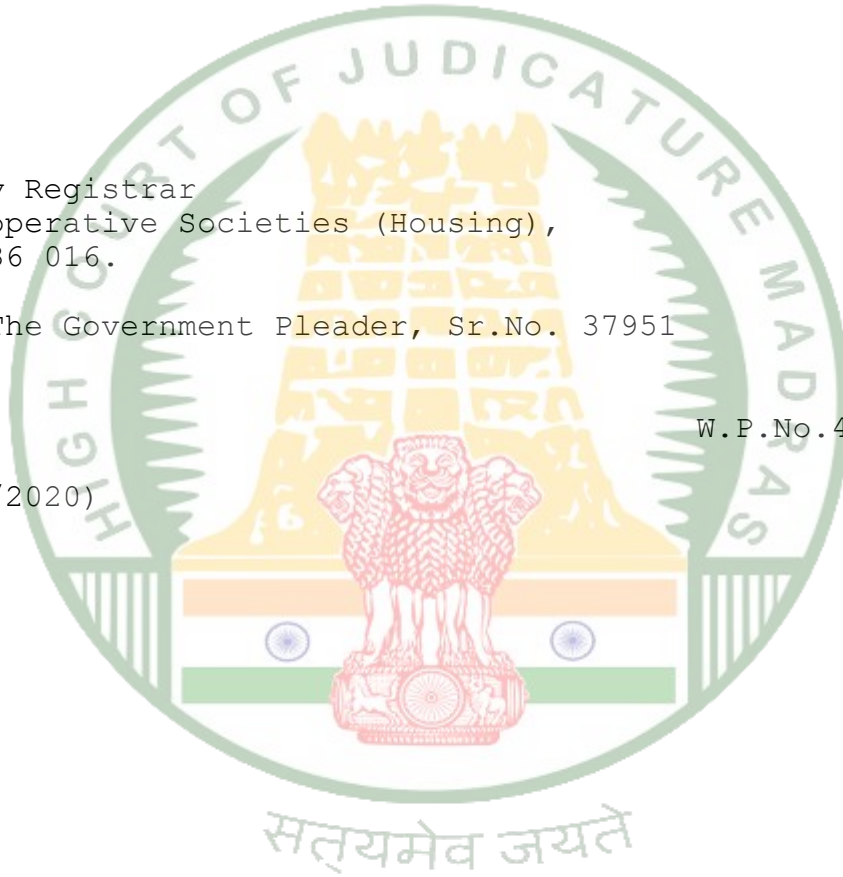
To

The Deputy Registrar
of Co-operative Societies (Housing),
Salem - 636 016.

+1 cc to The Government Pleader, Sr.No. 37951

W.P.No.4702 of 2007

RSV(CO)
RMP(15/12/2020)



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