



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2020

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.18136 of 2020

and W.M.P.(MD).No.15150 of 2020

WEB COPY

Rajasekar

.. Petitioner

Vs.

1. The Joint Registrar,
Co-operative Society Joint Registrar Office,
Dindigul.

2. The Deputy Registrar,
CO-operative Society Assistant Registrar Office,
Palani, Dindigul District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining the impugned order issued by the 1st respondent vide Na.Ka.4928/2020 sapa dated 11.09.2020 and quash the same.

For Petitioner : Mr.S.A.Ajmalkhan
For Respondents : Mr.M.Rajarajan
Additional Government Pleader

ORDER

(This writ petition is heard through video conference)

This writ petition has been filed challenging the impugned show cause notice dated 11.09.2020 issued by the first respondent under Section 36 of the Tamil Nadu Co-operative Societies Act, wherein the first respondent has levelled several allegations against the petitioner, while functioning as President of Thangammappatti Primary Agricultural Co-operative Credit Society and has called upon the petitioner to give his explanation with regard to the said allegations, within a period of 15 days.

2.Heard Mr.S.A.Ajmalkhan, learned counsel for the petitioner and Mr.M.Rajarajan, learned Additional Government Pleader, who accepts notice on behalf of the respondents.

3.By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

4.The petitioner has challenged the impugned show cause notice dated 11.09.2020 on the ground that



a) as per Section 81 (4) of the Tamil Nadu Co-operative Societies Act, enquiry should have been completed within a period of six months. But, according to the petitioner, till date, the respondents have not furnished a copy of the enquiry report to the petitioner.

b) the first respondent ought to have seen that the respondents initiated attachment proceedings against the petitioner and he has filed appeal under Section 167(2) of the Tamil Nadu Co-operative Societies Act in C.M.A.(CS).No.19 of 2019, before the Principal District Judge, (Special Tribunal for Co-operative Cases) Dindigul and the same is pending.

c) The first respondent has not adhered to the principles of natural justice before issuing the impugned notice.

d) The first respondent has levelled charges against the petitioner under the impugned notice, which relates to the year 2014-15, and 2017, but the impugned notice was issued only on 11.09.2020, after lapse of six years from the alleged transactions made by the petitioner. Hence, according to the petitioner, the claim is barred by the law of limitation.

5. Admittedly, the challenge has been made by the petitioner in this writ petition only to a show cause notice issued by the first respondent under Section 36 of the Tamil Nadu Co-operative Societies Act, wherein the first respondent has sought removal of the petitioner as a President of the said society. It is settled law that a show cause notice can be challenged under Article 226 of the Constitution of India, only, when it was issued without jurisdiction or without authority under law. In the case on hand, the first respondent is having the authority to issue the show cause notice to the petitioner under Section 36 of the Tamil Nadu Co-operative Societies Act. Hence, this Court is of the considered view that without waiting for a final order, under Section 36 of the Tamil Nadu Co-operative Societies Act, the petitioner has approached this Court prematurely. The petitioner has also submitted his explanation, on 05.10.2020, to the impugned show cause notice dated 11.09.2020. The first respondent while passing the final orders under Section 36 of the Tamil Nadu Co-operative Societies Act, will have to necessarily consider all the objections raised by the petitioner in his explanation dated 05.10.2020. The objections raised by the petitioner in his reply dated 05.10.2020, have also been raised in this writ petition. The first respondent before passing any final order under Section 36 of the Tamil Nadu Co-operative Societies Act will also need to necessarily afford a fair hearing to the petitioner by giving sufficient opportunity to him to raise all objections available to him under law and also grant him, the right of personal hearing. In view of the fact that this writ petition has been filed prematurely by the petitioner, without waiting for a final order under Section 36 of the Tamil Nadu Co-operative Societies Act, this writ petition is disposed of by issuing the following directions.



a) The first respondent before passing any final order against the petitioner under Section 36 of the Tamil Nadu Co-operative Societies Act, will have to afford a fair hearing to the petitioner and the petitioner must be given sufficient opportunity to raise all objections available to him under law, with regard to the charges levelled against him by the first respondent as per the impugned notice and also afford him the right of personal hearing.

b) The first respondent should furnish all documents to the petitioner which they rely upon for the purpose of removing the petitioner from the society.

c) After affording a fair hearing to the petitioner, as observed above, the first respondent shall pass final orders within a period of twelve weeks from the date of receipt of a copy of this order.

d) Till final orders are passed, no co-ercive steps shall be taken by the respondents against the petitioner.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

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/ /2020

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Joint Registrar,
Co-operative Society Joint Registrar Office,
Dindigul.
2. The Deputy Registrar,
CO-operative Society Assistant Registrar Office,
Palani, Dindigul District.

+1 CC to M/s.S.A.AJMALKHAN, Advocate SR-25076

+1 CC to the SPL GP SR-25442.

**W.P. (MD) .No.18136 of 2020
10.12.2020**

KVN(CO)

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