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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.14700 of 2021
and W.M.P Nos.15598 & 15600 of 2021

R.Pachaiappan

...Petitioner

Vs.

1.The Registrar of Co-operative Societies,
No.170, NV Natarajan Maaligai,
EVR High Road,
Poonamallee High Road, Kilpauk,
Chennai - 600 010.

2.The Joint Registrar of Co-operative Societies,
Thiruvallur.

3.The Deputy Registrar of Co-operative Societies,
Thiruvallur.

4.The Co-operative Sub-Registrar/Section 82 Inspection Officer
Office of the Deputy Registrar of Co-operative Society,
Thiruvallur.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order dated 22.06.2021 made in Na.Ka.No.1118/2021/E2 on the file of the 3rd respondent and quash the same the consequential order passed by the 4th respondent dated 30.06.2021.

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents : Mr.A.Selvendiran
Government Advocate

ORDER

The proceedings of the 3rd respondent dated 22.06.2021 and the consequential order passed by the 4th respondent dated 30.06.2021 has been made a subject matter of challenge in the present writ petition.



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2.The petitioner is the elected President of the Kuthambakkam Primary Agriculture Co-operative Credit Society. The petitioner is serving as a President of the Society from 11.08.2018 onwards.

3.An inspection and investigation was ordered by the 3rd respondent through proceedings dated 22.06.2021 under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 (herein after called as "Act"). An Enquiry Officer was appointed and he has been directed to submit a report. Pursuant to the same, the Enquiry Officer has issued a notice to the petitioner on 30.06.2021 seeking for certain information, in the course of enquiry. According to the petitioner, it is a malafide exercise of power by the 3rd and 4th respondents and it is done only to cause harassment to the petitioner and to substantiate this allegation, the petitioner has stated the following in the affidavit filed in support of the writ petition:

4.I respectfully submit I was constrained to file writ petition in W.P.No.13016 of 2021 seeking for a direction forbearing the respondents from dissolving or prematurely terminating the tenure of the petitioner as President/office bearers of the respective Cooperative Credit Societies, elected in the year 2018, in the elections conducted in accordance with the Tamil Nadu Cooperative Societies Act, 1983 wherein this Hon'ble Court passed order on 05.07.2021 whereby this Hon'ble Court observed in Para 14 as follows:

"14.Though the petitioners made allegations against the officials of the respondents with regard to interfering and harassing the petitioners without following due process of law, at this stage, the same cannot be gone into by this Court without placing any supporting materials to substantiate these allegations."

5.I respectfully submit that after filing the above writ petition on 16.06.2021, the respondents threatened me like anything in order wreck vengeance upon me and forced me to withdraw the above writ petition in W.P.No.13016/2021. However, I did not yield their threatening and illegal attitude of the respondents. Since I did not withdraw the writ petition, the respondents have issued all sorts of coercive steps to malign name reputation in the administration of society as well as in the locality



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as I am having considerable respect and reputation in the vicinity. Thus the respondents have issued the present impugned order with malafide intention on 30.06.2021 since I did not withdraw the writ petition which was filed on 16.06.2021.

4. In view of the above, the petitioner has challenged the proceedings initiated by the 3rd respondent and the notice issued by the 4th respondent.

5. The 3rd respondent has filed a counter affidavit and denied the allegations made by the petitioner and the relevant portions in the counter affidavit are extracted hereunder:

3. I state that the 4th respondent herein was appointed as an inspection officer under Section 82 of the Tamil Nadu Cooperative Act by an order dated 22.06.2021. I state that pursuant to the order of this respondent, 4th respondent issued a notice of enquiry to the writ petitioner seeking to explain the following irregularities:

- a) Loss of Rs.6,04,445/- by auctioning jewel
- b) One Mrs. Gunasundari was retained in her post even after retirement and causing loss
- c) The planting machinery was not repaired and there by caused loss to the society.
- d) Paying daily wages to one Mrs. Nithya who was taking care of E-Sevai Centre on daily wages.

4. I states that the 4th respondent had conducted the enquiry and the writ petitioner has given his deposition on 14.07.2021 and also gave his written statement before the 4th respondent on 14.07.2021. I state that in the said written deposition, the writ petitioner did not allege that he was pressurized to withdraw the Writ Petition in W.P.No.13016/2021, seeking for direction forbearing the respondents from dissolving or prematurely terminating the tenure of the petitioner. While this been so, the writ petitioner in the para 5 of the writ petition in W.P.No.13016/2021. I state that neither this respondent or any of the respondents had threatened the writ petitioner to withdraw the above said petition.



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5.I state that the impugned order of the 4th respondent was not issued pursuant to the writ petition filed by the writ petitioner, the impugned order was passed based on the report of the Sub Registrar, Cooperative dated 21.06.2021. This respondent further submits that it has nothing to do with the filing of the writ petition by the Writ Petitioner in W.P.No.13016/2021. I crave leave of the Hon'ble to file additional counter affidavit.

6.Heard Mr.L.P.Shanmugasundaram, learned counsel appearing on behalf of the petitioner and Mr.A.Selvendiran, learned Government Advocate appearing on behalf of the respondents.

7.The 3rd respondent has initiated an inspection and investigation under Section 82 of the Act based on the report of the Sub-Registrar, dated 21.06.2021. The 3rd respondent has taken a very specific stand in the counter that the proceedings has nothing to do with the writ petition filed by the petitioner in W.P.No.13016 of 2021. The 4th respondent has issued a notice to the petitioner and has sought for certain details that have been specifically listed in the notice itself.

8.The learned counsel for the petitioner by pointing out to Paragraph No.6 of the affidavit filed in support of the writ petition made an attempt to answer each and every query that was raised by the 4th respondent in the impugned notice, dated 30.06.2021. The learned counsel for the petitioner further submitted that the Society is being run on a profit till date and there is absolutely no ground to order for an inspection and investigation under Section 82 of the Act. The purpose for conducting inspection and investigation is more in the nature of a fact finding enquiry. For this purpose, certain details have been sought for from the petitioner, who is the President of the Society. The petitioner has not established the ground of malafides and there is no sufficient material to sustain the allegation of malafides. Whatever explanation is sought to be given by the petitioner before this Court, can very well be given to the 4th respondent who has been appointed as an Enquiry Officer. This Court cannot adorn the role of an Enquiry Officer and assess the explanation given by the petitioner. That is beyond the purview of the jurisdiction exercised under Article 226 of the Constitution of India.

9.In view of the above discussion, this Court does not find any ground to interfere with the impugned proceedings of the 3rd respondent and the notice issued by the 4th respondent and it is left open to the petitioner to submit his explanation to the 4th respondent, within a period of two weeks from the date of receipt of copy of this order along with all relevant materials.



It goes without saying that the 3rd and 4th respondents will proceed further strictly in accordance with law and act fairly and take a decision based on the explanation and materials collected during the inspection. Except giving this clarity, no further orders can be passed in this writ petition.

10. This writ petition is disposed of accordingly. No Costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssr

To

1. The Registrar of Co-operative Societies,
No.170, NV Natarajan Maaligai,
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Office of the Deputy Registrar of Co-operative Society,
Thiruvallur.

+1cc to the Government Pleader, Sr.38084

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SSI[co]
NSK 26/08/2021