



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2021

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P. No. 17251 of 2021
and WMP No.18265 of 2021

M.Elangovan

...Petitioner

Vs.

1. The Additional Registrar of
Cooperative Societies
Chennai.
2. The Cooperative Sub Registrar/
Enquiry Officer,
North Madras Cooperative Wholesale
Stores Ltd.,
No.58 Ibrahim Salai
Chennai 600 001.
3. The Deputy Registrar of Cooperative Societies,
Non Credit
Chennai.
4. The Managing Director,
North Madras Cooperative Wholesale
Stores Ltd., Chennai.

...Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to call for the records of the first respondent dated 26.07.2021 passed by the 1st respondent in his proceedings in Na.Ka.no.2095/2021/E2 issued as against the petitioner and quash the same.

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents : Mr.A.Selvendran for R1 to R3
Government Advocate
Mr.VPR.Elamparithi for R4



O R D E R

This Writ Petition has been filed challenging the impugned proceedings of the first respondent dated 26.07.2021 issued under Section 36(1) of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter referred to as 'the Act').

2.The case of the petitioner is that he was the elected President of the 4th respondent Society. An enquiry came to be conducted under Section 81 of the Act and a report was submitted on 18.11.2020. Based on the same, the first respondent has issued the impugned notice dated 26.07.2021 to the petitioner by calling upon the petitioner to give his explanation as to why proceedings should not be initiated to remove the petitioner from the post of President of the 4th respondent Society.

3.The learned counsel for the petitioner submitted that the entire management of the 4th respondent Society is looked after only by the Managing Director, who is in the cadre of the Deputy Registrar of Cooperative Societies. The learned counsel, in order to substantiate his submission, brought to the notice of this Court Rule 146 of the Cooperative Societies Rules and submitted that powers and functions vested on the Managing Director virtually gives the ultimate power to the Managing Director to manage the affairs of the Society. Therefore, if there is any mismanagement or default, it is the Managing Director, who has to be held responsible. The learned counsel for the petitioner also circulated the relevant files and impressed upon this Court that all the documents were signed primarily only by the Managing Director and only thereafter the petitioner has put his signature.

4. The learned counsel further submitted that even if the allegations made in the notice are taken as it is, they do not fulfil the requirements of Section 36(1) of the Act. The learned counsel submitted that the impugned notice issued by the first respondent is a colourable exercise of power, which has been done only to initiate illegal proceedings against the petitioner and therefore, the same requires the interference of this Court.

5. Per contra, the learned Government counsel appearing on behalf of the respondents submitted that the petitioner has approached this Court on mere apprehensions. The learned Government counsel further submitted that a reading of the entire notice shows that there were very serious irregularities pointed out against the petitioner and these irregularities will fall within the scope of Section 36(1) of the Act. Hence, it is well within the jurisdiction of the first respondent to issue the notice and it is for the petitioner to give his explanation



and the same will be considered by the first respondent in accordance with law. The learned counsel therefore, concluded his arguments by submitting that there is no ground to interfere with the impugned notice issued by the first respondent at this stage, since it is well within the power and jurisdiction of the first respondent to issue such a notice and prima facie the allegations made in the notice also satisfy the requirements under section 36(1) of the Act. Therefore, the learned Government counsel sought for the dismissal of the writ petition.

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

7. It has to be borne in mind that the subject matter of challenge in the present writ petition is the show cause notice issued by the first respondent calling upon the petitioner to give his explanation on certain allegations made against him in the notice. A careful reading of the notice reveals the fact that there are nearly seven issues that have been put against the petitioner. Ultimately the notice is issued calling upon the petitioner to give his explanation on those allegations, failing which, proceedings will be initiated for the removal of the petitioner under Section 36(1) of the Act.

8. When it comes to challenging a show cause notice in a writ petition, the Hon'ble Supreme Court in M/s.Siemens Ltd., v. State of Maharashtra reported in 2007 (1) CTC 844 has categorically held that such a writ petition will be maintainable only when the notice is issued without jurisdiction or where the notice has been issued with premeditation and enquiry will not yield any fruitful purpose and is only illusive.

9. In the present case, the petitioner has questioned the impugned notice issued by the first respondent more on the ground that the Society is being run by a Managing Director, who is vested with all the powers and without going against the Managing Director, the petitioner is being targeted and therefore, the petitioner has an apprehension that proceedings were initiated only for his removal from the office. The learned counsel wants this Court to construe this apprehension as malafides, which vitiates the proceedings. The ground of malafide has to be pleaded and proved and insofar as malafides are concerned, a mere apprehension will not satisfy the requirements. A reading of the impugned notice shows that certain allegations have been made against the petitioner by providing the relevant facts. This notice was issued based on an enquiry report submitted under Section 81 of the Act. Therefore, it is not as if the notice was issued without any



grounds and only for the purpose of removing the petitioner from the office. Therefore, this Court is not inclined to interfere with the notice on the ground of malafides, since the allegations made in the affidavit do not fulfil the test of establishing malafides.

10. The other ground that has been raised by the learned counsel for the petitioner is that the allegations do not satisfy the requirements of Section 36(1) of the Act and if at all the same satisfies the requirements, then it is the Managing Director, who has to be held liable and no proceedings have been initiated against him. This ground that has been raised by the learned counsel for the petitioner can always be raised as a ground, while giving reply to the impugned notice issued by the first respondent. Ultimately, the first respondent has to necessarily consider the explanation given by the petitioner and satisfy himself that the requirements of the provision is satisfied and only thereafter he can take a decision as to whether the proceedings will have to be dropped or will have to be proceeded further in accordance with law. Therefore, the petitioner has an opportunity to put forth all his defence and raise all the grounds by way of reply to the show cause notice. Those grounds or defence that is going to be raised by the petitioner can never be the basis to interfere with the impugned notice issued by the first respondent in this writ petition. The impugned notice issued by the first respondent is well within his jurisdiction and therefore, there is no ground to interfere with the said notice in exercise of jurisdiction of this Court under Article 226 of the Constitution of India.

11. In view of the above discussion, this Court is not inclined to interfere with the impugned notice issued by the 1st respondent. It is left open to the petitioner to raise all the defence and to raise all the grounds and it is left open to the first respondent to consider the same on its own merits and in accordance with law and take a decision.

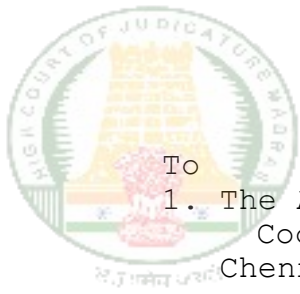
12. This writ petition is disposed of accordingly. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

RR



To

1. The Additional Registrar of Cooperative Societies
Chennai.

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Chennai.
4. The Managing Director,
North Madras Cooperative Wholesale
Stores Ltd., Chennai.

+1 CC to The Government Pleader, Sr.No. 41730.

W.P.No. 17251 of 2021

PL(CO)
LS(16/09/2021)