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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2021

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.17856 of 2021
and
W.M.P.No.19060 of 2021

S.Sulochana

... Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,
Vellore Region,
Vellore.

2. The Deputy Registrar of Co-operative Society,
Vellore.

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 1st respondent impugned order dated 13/08/2021 made in Na.Ka.No.4651/2021/அ2 issued as against the petitioner and quash the same.

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents: Mr.A.Selvendiran
Government Counsel

O R D E R

On consent given by either side, the main writ petition itself is taken up for final hearing.

2.The present writ petition challenges the proceedings of the 1st respondent dated 13.08.2021 wherein the 1st respondent has passed an order under Section 76(A) of the Tamil Nadu Co-operative Societies Act (herein after called as "Act") and suspended the petitioner who is the President of the Society pending inspection and investigation initiated under Section 82 of the Act.



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

4. The petitioner is the elected President of Thiruvallam Primary Agriculture Co-operative Credit Society Ltd., and she has assumed charge in the year 2018. Based on certain irregularities that came to the notice of the 2nd respondent, an inspection/investigation was ordered under Section 82 of the Act. Pending the same, the 1st respondent has proceeded to pass the impugned order dated 13.08.2021, suspending the petitioner on the ground that the continuation of the petitioner to function as the President pending the enquiry will cause disruption to the inspection/investigation.

5. This Court has carefully gone through the impugned order passed by the 1st respondent. The order basically lists down various irregularities that have been complained against the Society. After doing so, the 1st respondent has straight away proceeded to pass the order of the suspension of the petitioner pending the inspection/investigation.

6. This Court had an occasion to deal with the scope of Section 76(A) of the Act in detail in W.P.No.12476 of 2021 and an order was passed in the writ petition on 10.08.2021. The principles that were enunciated in the said judgement will squarely apply to the facts of the present case. For proper appreciation, the relevant portions in the judgement are extracted hereunder:

24. Whether the suspension of elected officer bearers is warranted pending an inquiry, depends upon the facts and circumstances of each case. As pointed out, supra, the requirement of Section 76-A is not merely the existence of prima facie material. The Registrar must return a finding on the basis of such material that an order of suspension was necessary in public interest or in the interests of the society. In other words, the Registrar must satisfy himself that if such suspension is not made, there is scope for the office bearers to interfere with the inquiry and/or tamper with the evidence. In the absence of the any such apprehension, there will be no requirement for suspension and the inquiry can go on.

25. Section 76-A is a drastic power which interferes with the rights of the elected members who have been voted to office, and must, therefore, be exercised very sparingly and only in the clearest cases where there is objective material to show that



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the continuation of office would interfere and impede a free and fair inquiry under Section 81. Otherwise, persons who have lost the election can always take control through a back door by getting the Registrar pass an order suspending the office bearers on the basis of external influence. Such a course is expressly forbidden in the light of the judgment of the Supreme Court in *State of M.P. v. Sanjay Nagayach* reported in (2013 7 SCC 25).

26. In the present case, things have moved very swiftly from 20.05.2021 to 1.06.2021 and by the time an inquiry officer was appointed, the impugned proceedings suspending the petitioners came to be issued on 01.06.2021. The present case only involves scrutiny of documents which are already available and taking statements from the petitioners and others. There is no scope for any serious tampering of evidence since the documents are already available with the respondents. There is absolutely no material on record to conclude that the suspension was warranted in public interest or in the interests of the society. There is nothing on record to show how the Registrar had apprehended that the continuation of the petitioner's in office would impede the course of a fair and impartial inquiry. In other words, the Registrar has, quite evidently, acted on surmises and conjectures.

27. As has been pointed out, supra, a mere prima facie case will not do to invoke Section 76-A. The jurisdictional requirement of Section 76-A has, thus, not been met in this case. Ex-consequenti, the exercise of power by the first respondent to pass the impugned orders dated 01.06.2021 under Section 76-A is clearly without jurisdiction.

7. It is clear from the above that a mere prima facie case is not enough to invoke Section 76(A) and there must be specific reasoning in the order itself to show that there are sufficient materials to infer that the office bearers will interfere with the enquiry or tamper with the evidence. In the absence of any such apprehension, there will be no requirement for suspension pending the inspection/investigation.

8. In view of the above, the impugned proceedings of the 1st respondent dated 13.08.2021 is hereby quashed. However, it is made clear that the inspection/investigation under Section 82 of



the Act can go on and a report shall be submitted by the concerned Officer, within a period of eight weeks from the date of receipt of copy of this order. Needless to say that the further action on the report shall proceed strictly in accordance with law.

9. In the result, this writ petition stands allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Joint Registrar of Co-operative Societies,
Vellore Region, Vellore.
2. The Deputy Registrar of Co-operative Society,
Vellore.

+1cc to the Government Pleader, S.R.No.43385

W.P.No.17856 of 2021
and W.M.P.No.19060 of 2021

GJ(CO)
CS/20/09/2021