



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :01.11.2021

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD).No.19357 of 2021
and
W.M.P(MD).No.16085 of 2021

R.Saravanakumar

... Petitioner

Vs.

1.The Joint Registrar,
Co-operative Societies,
Madurai Region, Madurai.

2.The Sub-Registrar-cum-Enquiry Officer,
A1235, Madurai Taluk Agricultural Producers
Co-operatives Sales Sangam,
Arapalayam, Madurai.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned notice issued by the first respondent in his proceedings Na.Ka.4470/2021/Sapa, dated 17.09.2021 under Section 36(1) of the Tamil Nadu Co-operative Societies Act and quash the same as illegal, without jurisdiction and arbitrary.

For Petitioner : Mr.B.Saravanan
For Respondents : Mr.K.S.Selva Ganesan
Counsel for State

ORDER

The petitioner assails a show cause notice dated 17.09.2021, which was issued by the first respondent under Section 36(1) of the Tamil Nadu Co-operative Societies Act, 1983 (the Act of 1983).

2.The petitioner states that he is the elected President of A2969 Pollampatti Primary Agricultural Co-operative Credit Society. Pursuant to proceedings under Section 81 of the Act of 1983, it is stated that the inquiry officer submitted a report dated 18.05.2021. The said report pertained, *inter alia*, to 17 loans which were said to be granted without a resolution from the executive committee. The petitioner states that the impugned show cause notice was issued under Section 36(1) of the Act of 1983 on

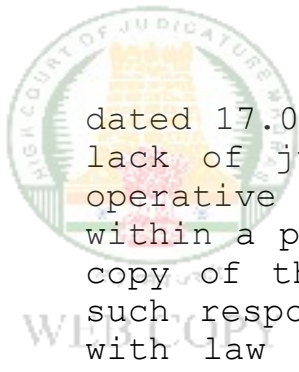


the basis of the above mentioned report of the inquiry officer. The said show cause notice is assailed on the ground that the mandatory requirements of Section 36 have not been satisfied. The petitioner points out that action can be taken under Section 36(1) of the Act of 1983 only in case of misappropriation, fraudulent retention of money or property or breach of trust or gross or persistent negligence in connection with the conduct and management of the affairs of the relevant society. By adverting to the impugned show cause notice, the petitioner asserts that the expression negligence is used therein, whereas even the allegation of gross or persistent negligence in connection with the conduct and management of the affairs of the society is not mentioned therein. In addition, the petitioner points out that bye-law 25 (10) is referred to therein. The said bye-law deals with payment of salaries and advances and is completely irrelevant. On such basis, the petitioner asserts that the impugned show cause notice also suffers from non-application of mind.

3.Mr.K.S.Selva Ganesan, learned counsel for the State, accepts notice on behalf of both the respondents. He submits that the petitioner has assailed a show cause notice. Therefore, he states that the writ petition is liable to be rejected in as much as the petitioner has the opportunity of replying to the show cause notice and raising objections in relation thereto.

4.In judicial review, ordinarily, a show cause notice is not interfered with unless the petitioner concerned is able to establish that such show cause notice was issued *ex facie* without jurisdiction. The main ground on which the petitioner assails the show cause notice is that it does not allege gross negligence or persistent negligence. Consequently, it is contended that the mandatory prerequisites to invoke Section 36 are not fulfilled. On perusal of Section 36, it appears that the said provision is attracted in cases of breach of trust, gross or persistent negligence in connection with the conduct and management of the affairs of the society or gross mismanagement of the affairs of the society. At this juncture, it cannot be said that the conduct of the petitioner definitely does not come within the scope of Section 36. This is a matter that should be considered and decided by the authority on receipt of the petitioner's reply and objections to the show cause notice. The second reason cited, namely, that an irrelevant bye-law was cited is also not a ground to interfere with a show cause notice. Therefore, the petitioner has failed to make out a case to interfere with the show cause notice. However, he should be provided a reasonable opportunity to respond thereto.

5.Accordingly, W.P. (MD) No.19357 of 2021 is disposed of by permitting the petitioner to respond to the show cause notice



dated 17.09.2021 and raise objections, including in respect to the lack of jurisdiction under Section 36(1) of the Tamil Nadu Co-operative Societies Act, 1983. If such response is submitted within a period of fifteen (15) days from the date of receipt of a copy of this order, the first respondent is directed to receive such response and consider the same on merits and in accordance with law before taking a decision. However, there will be no order as to costs. Consequently, W.M.P.(MD)No.16085 of 2021 is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

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 Societies,
Madurai Region, Madurai.
- 2.The Sub-Registrar-cum-Enquiry Officer,
A1235, Madurai Taluk Agricultural Producers
Co-operatives Sales Sangam,
Arapalayam, Madurai.

+1 CC to M/s.SPL.GP (SR-33681[F] dated 08/11/2021)

+1 CC to M/s.B.SARAVANAN, Advocate (SR-33602[F] dated 02/11/2021)

W.P (MD) .No.19357 of 2021
and

W.M.P (MD) .No.16085 of 2021
01.11.2021

RK/PM(17/11/2021) 3P 5C