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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.NO.31651 OF 2012

AND

W.M.P.NOS.2 AND 3 OF 2012

M.Ayyasamy

... Petitioner

.Vs.

1. The Deputy Milk Commissioner,
Milk Producers Cooperative Federation,
Madhavaram, Chennai - 600 051.
2. The General Manager,
Tiruchirapalli District Milk Producers
Cooperative Union,
Tiruchirapalli.
3. The Deputy Registrar,
Dairying, Perambalur,
Perambalur District.
4. The Special Officer,
TYSPL 39, Kunnam Milk
Producers Cooperative Society Ltd.,
Kunnam Post & Taluk,
Perambalur District.
5. The President,
PRD 100 Periyavenmani Women Milk
Producers Cooperative Society Limited,
Periyavenmani, Kunnam Taluk,
Perambalur District.

... Respondents

PRAYER:-

This writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, or any other appropriate Writ or Order or Direction, in the nature of Writ, calling for the records pertaining to the order passed by the 3rd respondent in his Proceedings Na.Ka.No.460/2012/E(2) dated 19.10.2012 and quash the same.



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For Petitioner : Mr.V.Sivalingham
For M/s.C.S.Associates
For R1 to R4 : Mr.L.P.Shanmugasundaram
For R5 : Mr.G.Ilamurugu

O R D E R

The petitioner herein filed this writ petition, challenging the order passed by the 3rd respondent in his proceedings Na.Ka.No.460/2012/E(2) dated 19.10.2012. Whereunder he passed order for registration of 5th respondent society under Section 9(1) of Tamil Nadu Co-Operative Societies Act. According to the petitioner that he is a member of 4th respondent society and the said society was formed by the milk producers. The same was registered and the area of operation of 4th respondent society, consist of the villages of Kunnam, Varakoor, Asoor, Ayyakudi, Othiyam, Andur, Periyammampalam, Karambiyam, Mookilpadi, Athanoor, Chinnavenmai, Periyavenmani and Kallampathur. He further averred in his petition that he came to know that the 5th respondent society was formed at Periyavenmani village and the same was registered by the impugned order passed by the 3rd respondent. It was further averred that the Periyavenmani Village falls within the portion of geographical area over which the 4th respondent society has got operational right. Since there is a overlapping of geographical area of operation of 4th and 5th respondent societies, the petitioner as a member of 4th respondent society, filed this writ petition, challenging the order passed by the 3rd respondent, seeking quashment of the same.

2. The contesting 5th respondent filed a counter and submitted that the 5th respondent society was formed as per the provisions of Tamil Nadu Co-Operative Societies Act and it was formed for the welfare of the women. It was submitted in the counter that after due enquiry, having satisfied with the fulfillment of all the requirements under the law, the 3rd respondent passed an ordered for the registration of the 5th respondent society. It was submitted that the 5th respondent society has got operational right over only two villages namely Chinnavenmani and Periyavenmani villages and the 4th respondent has got operational right over more number of villages. The 5th respondent society was established for the welfare of the women, in order to encourage them in the public administration. It was further submitted that the petitioner, if at all aggrieved by the impugned order can very well pursue the remedies available to him under Tamil Nadu Co-Operative



Societies Act and without availing the alternative remedies available under Section 153 of the Tamil Nadu Co-operative Societies Act, rushed to this Court by way of writ petition and hence the same is not maintainable. It was also averred in the counter, if the Registrar of the Co-operative society deems fit to form a fresh society, he can do so, in accordance with law and the same is not prohibited. It was also averred in the counter of the 5th respondent that the right to form a co-operative society is a fundamental right, guaranteed to the citizens of the India and the same cannot be curtailed by the petitioner.

3. Heard the arguments of the learned counsel for the petitioner Mr.V.Sivalingam for M/s.C.S.Associates, Mr.L.P.Shanmugasundaram the learned counsel for R1 to R4 and Mr.G.Ilamurugan the learned counsel for R5.

4. The learned counsel for the petitioner submitted that the 5th respondent society was formed and the area of the operation that was given to the 5th respondent society overlapped with the area of operation of the 4th respondent society and hence the order of registration passed by the 3rd respondent is vitiated and liable to be set aside. The learned counsel appearing for the contesting 5th respondent submitted that the 3rd respondent is well within his power, to order registration of new society and earmark the geographical area of operation of the new society. It was also submitted that the alternative remedies available under Tamil Nadu Co-operative Societies Act, have not been exhausted by the petitioner and hence the writ petition is not maintainable. It was further submitted that the right to form the Co-operative Society is a fundamental right and hence the writ petitioner cannot question the formation of a 5th respondents society.

5. The 3rd respondent has got power for ordering registration of a new society under Section 9 of Tamil Nadu Co-Operative Societies Act. The Section 9 of the Tamil Nadu Co-Operative Societies Act reads as follows:-

"9.Registration.-(1) If the Registrar is satisfied that-

(a) the application for registration of the proposed society complies with the provisions of this Act and the rules;

(b) the objects of the proposed society are in accordance with the provisions of Section 4;



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(c) the proposed society complies with the requirements of sound business and has reasonable chances of success;

(d) the area of operation of the proposed society does not overlap the area of operation of another registered society of the same class or category save as permitted by the Registrar; and

(e) the proposed bye-laws of the society are not contrary to the provisions of this Act or the rules or to the co-operative principles or to any other law applicable to the society;
he may, within a period of one hundred and twenty days from the date of receipt by him of the application for registration, register the society and its bye-laws.

(2) If the Registrar refuses to register a society and its bye-laws, he shall communicate within the period of one hundred and twenty days specified in sub-section (1), the order of refusal together with the reasons for the refusal to the chief promoter.

(3) Where no order of refusal is communicated under sub-section (2) within the said period of one hundred and twenty days, it shall be deemed that the Registrar has registered the society and its bye-laws on the one hundred and twentieth day from the date of receipt by the Registrar of the application for registration.

(4) Notwithstanding anything contained in sub-section (3), the Registrar shall, review within such period as may be prescribed, the case of every society which is deemed to have been registered under sub-section (3), and satisfy himself whether such society complies with the provisions of sub-section (1) and in case such society does not comply with any of the provisions of the said sub-section (1), the Registrar shall, notwithstanding anything contained in section 137, by an order in writing direct the winding-up of such society and the provisions of sections 138 to 142 shall apply to such society which has been ordered to be wound-up under this section."

Reading of the above section make it clear that the Registrar/
the 3rd respondent has got power to pass order for registration



of a new society, if the conditions laid therein are complied with. The main grievance of the petitioner is that the operational area allotted to the 5th respondent society overlaps with the area of operation of the 4th respondent society. It is pertinent to point out that if at all there is overlapping of the areas, the really aggrieved person is 4th respondent, but not the individual member of the 4th respondent society. The 4th respondent society has not filed any writ petition. The individual member of the 4th respondent society is not entitled to question the formation of the 5th respondent society as he is not a party aggrieved by it. Further reading of Section 9 (1)(d) make it clear that it is well within power of the 3rd respondent to order registration of the society, even if there is overlapping of territorial areas and he can always earmark separate territorial area for the newly formed society. In the case on hand, the 4th respondent society has got operational right over nearly 13 villages, even as per admitted case of the petitioner. The 5th respondent has got operational right over only one village namely Periyavenmani. Section 9(1)(d) of Tamil Nadu Cooperative Societies Act extracted above uses the expression "save as permitted by the Registrar". It implies power of Registrar to permit operational right to a newly registered society even in respect of geographical area originally allotted to existing society. When the 3rd respondent passed an order for registration of the 5th respondent society, in respect of Periyavenmani Village, it is implied that he exercised his power under Section 9(1)(d) and therefore the impugned order cannot be questioned by the petitioner as it affects its rights.

6. It is pertinent to point out that the right to form co-operative societies is not a mere statutory right now. It has been elevated as a fundamental right by 103rd Amendment to the Constitution of India which came into force on 14.01.2019. Though the right to form a co-operative society was a mere statutory right when the writ petition was filed, now by virtue of 103rd Amendment to the Constitution of India, the right to form co-operative society has become a fundamental right. While considering the validity of the order passed by the 3rd respondent, the Court can also take into consideration, the subsequent change in law. If an individual member of co-operative society is allowed to question the formation of new co-operative society by other citizens, certainly it will affect the right to form co-operative society available to the members of the 5th respondent society under Article 19(1)(c) of Constitution of India. When the 3rd respondent passed an order for registration of the 5th respondent society, on being satisfied with the compliance of statutory formalities, the petitioner cannot challenge the formation of co-operative societies by other individuals, especially when right to form



Co-Operative Society is elevated to the status of the fundamental right.

7. Under the scheme of Co-Operative Societies Act, as submitted by the learned counsel for the 5th respondent, the petitioner has got alternative remedy of filing a Revision petition under Section 153 of the Tamil Nadu Co-Operative Societies Act, challenging the order passed by the 3rd respondent. For the reasons best known to the petitioner, he has not availed the alternative remedy available under Section 153 of Tamil Nadu Co-Operative Societies Act, challenging the order of registration and hence the writ petition is bound to fail on that ground also.

8. In view of the discussion made earlier, the writ petitioner is devoid of any merits and consequently the same is dismissed, however in the facts and circumstances of the case, there is no order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

jai

To

1. The Deputy Milk Commissioner,
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Madhavaram, Chennai - 600 051.
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Cooperative Union,
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5. The President,
PRD 100 Periyavenmani Women Milk
Producers Cooperative Society Limited,
Periyavenmani, Kunnam Taluk,
Perambalur District.

+1cc to Mr.G.Ilamurugu, Advocate, S.R.No.34017
+1cc to M/s.C.S.Associates, Advocate, S.R.No.34711

W.P.NO.31651 OF 2012

RLD(CO)
PBS/30/06/2022