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W.P.Nos.29427 & 30535 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.11.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.29427 & 30535 of 2013
and MP Nos.1 of 2013 & 1 of 2015

WP.No.29427 of 2013

S.Komalavalli

... Petitioner

Vs

1.The Registrar of Co-operative Societies (Housing),
Tamilnadu Housing Board Building,
Nandanam, Anna Salai,
Chennai-600 035.

2.VSNL Employees Co-operative Housing Society Ltd.,
Represented by its President,
No.4, Swamy Sivananda Salai,
Chennai-600 002.

... Respondents

(R2 impleaded as per order dated 27.1.2014
by this Court in MP.No.1 of 2013 in WP.No.29427 of 2013)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus directing the respondent to consider and
pass orders on merits by disposing the written representation made by the
petitioner on 17.10.2013 within a stipulated time as this Court fixes.

AND



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WP.No.30535 of 2013

1.T.Meeran (Director), (Deceased)

2.M.Jothi

3.M.Raviprakash

4.M.Vijiprakash

5.M.Kannan

6.M.Murali

7.M.Mahalakshmi

... Petitioners

(P2 to P7 substituted as LR's of deceased sole petitioner
vide order dated 30.09.2022 made in WMP.27557 of 2021
in WP.No.30535 of 2013)

Vs

1.V.Joseph Manoharan (President),

Videsh Sanchar Nigam Employees Co-Op. Housing Society Ltd.,

No.4, Swami Sivananda Salai,

Chennai-600 002.

2.The Registrar of Co-operative Societies (Housing),

TNHB Office Complex,

Nandanam,

Chennai-600 035.

3.Deputy Registrar of Co-Operative Societies (Housing),

Chennai Region,

Ramanathan Street, Thiyagaraya Nagar,

Chennai-600 017.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring the impugned order passed by the 1st respondent in his Letter vide No.VSNEHS/2/2013/2014-24 dated 04.10.2013 as highly illegal, unlawful, arbitrary, malafide, without any authority or jurisdiction and ultravires to Sections 21(2)(ii) & 23(4) of Tamil



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Nadu Co-operative Societies Act, 1983 and Rule 35 of Tamil Nadu Co-operative Societies Rules, 1988.

For Petitioners : Mr.Karthikeyan (in WP.29427 of 2013)

for Mr.C.Prakasam

Mr.Prakash Adiapadam (in WP.30535 of 2013)

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader
(R1 in WP.29427/2013 and
R2 & R3 in WP.30535/2013)

Mr.Praveen Kumar
for Mr.P.Anbarasan
(R2 in WP.29427/2013 & R1 in WP.30535/2013)

COMMON ORDER

W.P.No.30535 of 2013 is not maintainable in light of a decision of the Full Bench of this Court in the case of *Marappan V. Deputy Registrar, Namakkal* (2006 (4) CTC 689) that has laid down the following propositions:

'21. From the above discussion, the following propositions emerge:-

(i) If a particular co-operative society can be characterised as a State within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be an authority within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of writ petition.

(ii) Applying the tests in Ajay Hasia it is held that the respondent society carrying on banking business cannot be termed as an



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instrumentality of the State within the meaning of Article 12 of the Constitution.

(iii) Even if a society cannot be characterised as a State within the meaning of Article 12 of the Constitution, even so a writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a person or an authority within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv) A society, which is not a State would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.

(v) Where a Special Officer is appointed in respect of a cooperative society which cannot be characterised as a State a writ would lie when the case falls under Clauses (iii) and (iv) above.

(vi) The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a State, the service conditions of its employees governed by its bye-laws cannot be enforced through a writ petition.

(vii) In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.

(viii) The decision in M.Thanikkachalam v. Madhuranthagam Agricultural Co-operative Society, 2000 (4) CTC 556 is no longer good law, in view of the decision of the seven-Judge Bench of the



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Supreme Court in Pradeep Kumar Biswas case and the other decisions referred to here before. The reference is answered accordingly. Registry is directed to place the paper before the appropriate bench for its disposal.'

2. The petitioner in this case has been disqualified and the remedy is to challenge the order of disqualification before the Registrar of Co-operative Societies in terms of Section 23(4) of the Tamil Nadu Cooperative Societies Act, 1983. This identical view has been taken by a coordinate Bench of this Court in the case of *K.Punniakotti V. V.Joseph Manoharan (President) Videsh Sanchar Nigam Employees Co-operative Housing Society Ltd. and another* (W.P.No.1830 of 2014 dated 03.11.2022) Ultimately that Writ Petition challenging a show cause notice was held to be not maintainable and was dismissed.

3. In the present case, I find no reason to interfere in light of the discussion as above and the petitioner is at liberty to approach the Registrar of Cooperative Societies.

4. The original petitioner in this case had passed away on 02.03.2017 and the legal heirs were brought on record vide order dated 30.09.2022. Though a token objection is raised by Mr.Dinesh Rajkumar, learned Additional Government Pleader as to whether legal heirs can prosecute such a cause of action at all, I am of the view that such a cause of action can be raised by the



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legal heirs, since the entitlements of the erstwhile deceased member of the cooperative society will be available to the legal heirs as well.

5. In the present case, since the petitioners' claim entitlement to a plot in a project conceived by the Society as well as return of share capital, let the claims as well as any other entitlements that the petitioners believe are due to them, be pursued before the Registrar of Cooperative Societies. Such application, if filed within a period of three (3) weeks from date of receipt of a copy of this order, shall be taken on file and decided by the Registrar after hearing the petitioners.

6. As far as W.P.No.29427 of 2013 is concerned, the prayer is only for a mandamus directing the respondents to dispose the written representation dated 17.10.2013 within a fixed time frame.

7. Mr.Dinesh would point out that based on the representation of the petitioner as well as other complaints that were received, proceedings were initiated as against the officials of the society that have culminated in surcharge orders under Section 87 of the Act.

8. In the considered view of the Court, this would suffice. If the petitioner believes that there are any other grievances that survive, the petitioner is permitted to raise the same by way of a fresh representation, within a period of four (4) weeks from date of receipt of a copy of this order,



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which shall be considered by the respondents, in accordance with law, if filed

within the time limit fixed.

9. Disposed, no costs. Connected Miscellaneous Petitions are closed.

18.11.2022

Index : Yes / No
Speaking Order
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To

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Dr.ANITA SUMANTH,J.

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