

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.13722 OF 2022

AND

W.M.P.NOS.13006 & 13008 OF 2022

1.Sathya Devendran

2.Selvaraj

3.K.Baskar

4.R.Panjalai ... Petitioners

Vs

1. The Registrar of Co-operative
Society (Housing),
No.48, Rithdren Road,
Vepery, Chennai - 600 007.

2. The Deputy Registrar of Co-operative
Society (Housing),
No.18, Ramanathan Street,
T.Nagar, Chennai - 600 017.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the first respondent dated 08.03.2022 made in Na.Ka.No.7469/2021/Sa.Pa.2 issued as against the petitioners and quash the same.

For Petitioners : Mr.L.P.Shanmugasundaram

For Respondents : Mr.M.Shahjahan
Special Government Pleader

ORDER

Mr.M.Shahjahan, learned Special Government Pleader takes notice on behalf of the respondents.

2. The petitioners have challenged the impugned order dated 08.03.2022, passed by the first respondent under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983. The impugned order precedes a notice issued under Section 36 of the aforesaid Act which called upon the petitioners to show cause as to why they should not be disqualified for lease of property of the co-operative society for Rs.25,000/- contrary to Chartered Engineer Certificate.

3. The learned counsel for the petitioners submitted that under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983, expression used is "A Person" and therefore a common order cannot be passed in respect of the petitioners who are elected as Members of the Board. It is submitted that the petitioners have passed resolution for period of one year more and therefore the disqualification order passed by the first respondent on 08.03.2022 in his proceedings bearing Na.Ka.No.7469/2021/Sa.Pa.2 cannot be sustained and is therefore liable to be quashed. The arguments articulated by the learned counsel for the petitioners is in terms of ground (B) of the present writ petition, which reads as under:-

"B. Since, Section 36 of the Tamil Nadu Co-operative Societies Act, 1983, did not provide for taking action of disqualification and removal of the President, Vice President and other Members of the Board, as a whole in a single order, the impugned order of the respondent is illegal and abinitio void. Therefore the impugned order passed by the 1st respondent is liable to be quashed."

4. The learned Special Government Pleader for the respondents on the other hand submits that the impugned order is well-reasoned and requires no interference. It is further submitted that there are statutory remedy against the order passed by the first respondent under Section 36 of the aforesaid Act, and therefore this writ petition is devoid of merits. Therefore, on this count also, this writ petition is liable to be dismissed.

5. I have considered the arguments advanced by the learned counsel for the petitioners and the learned Special Government Pleader for the respondents.

6. The point for consideration is whether the first respondent can disqualify the petitioners by a common order under Section 36 of the aforesaid Act. The expression used under Section 36 of the Act is "A Person" and "such Person". There is no definition for the expression defined in the aforesaid Act. However, the expression has been defined under

Section 3(42) of the General Clauses Act, 1897, which reads as under:-

"3(42). "person" shall include any company or association or body of individuals, whether incorporated or not."

7. Prima facie, it appears that "A Person" will include any company or association or body of individuals, whether incorporated or not. The petitioners are elected as Members of the Co-operative Societies and are expected to act in unison and their decisions are the decision of the Co-operative Societies. They do not take individual decisions.

8. I am of the view that the Board acted unison and therefore the expression "A person" used in Section 36 of the Tamil Nadu Co-operative Societies Act will include the Members of the Board and the petitioners being Members of the Board can be jointly and severally held liable for the loss occurred to the Co-operative Society. Therefore, it appears there is no impediment under the Act for passing a common order against all the elected Members of the Board who have acted in unison and take a decision.

9. The petitioners were issued with a notice on 18.11.2021 followed by another notice dated 09.12.2021. It appears that the petitioners as Members of the Board have leased out certain premises of the Co-operative Society without obtaining any permission from the first respondent.

10. The petitioners were called upon to respond to the notice and also come for an enquiry. At request of the petitioners, the case was adjourned on several occasions and the documents were also furnished on 08.02.2022. However, the petitioners failed to take advantage on the time given by the first respondent.

11. The last extension was given on 24.02.2022 and the case was thereafter adjourned to 07.03.2022. Again on 07.03.2022, the petitioner failed to appear before the respondents. Thus, the impugned order has been passed.

12. Considering the fact that the petitioners failed appear the enquiry, despite repeated adjournments, I do not find any merits in the present writ petition. Therefore, this writ petition is liable to be dismissed and is accordingly dismissed. However, liberty is given to the petitioners to file a statutory appeal, to workout the remedy under the Tamil Nadu Co-operative Societies Act in accordance with law, as all the documents have now been furnished to the petitioners. Such appeal shall be

filed within a period of thirty days from the date of receipt of a copy of this order.

13. This Writ Petition is dismissed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb

To

1. The Registrar of Co-operative
Society (Housing),
No.48, Rithdren Road,
Vepery, Chennai - 600 007.
2. The Deputy Registrar of Co-operative
Society (Housing),
No.18, Ramanathan Street,
T.Nagar, Chennai - 600 017.

Copy To

The Section Officer,
ER Section, High Court,
Madras.

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.39959
+1cc to the Government Pleader, S.R.No.40724

W.P.No.13722 of 2022
and
W.M.P.Nos.13006 & 13008 of 2022

PA(CO)
PM/19/07/2022