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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :02.09.2022

PRONOUNCED ON :03.11.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

W.P.No.1830 of 2014
and M.P.Nos.1 and 2 of 2014

K.Punniakotti

.. Petitioner

Vs.

1.V.Joseph Manoharan (President),
Videsh Sanchar Nigam Employees Co-operative
Housing Society Ltd.,
No.4, Swami Sivanandasalai,
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 certiorari, calling for the records relating to impugned show cause notice dated 08.01.2014 passed the 1st respondent in his letter vide No.VSNEHS/4/2014/2015-1, dated 08.01.2014 and quash the same as highly illegal, unlawful, arbitrary, malafide, ultravires and the same is



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purely based on personal Vendetta/animosity.

For Petitioner : Mr.Prakash Adiapadam

For Respondents :Mr.P.Anbarasan for R1
Ms.M.Jayanthi
Additional Government Pleader
for R2 and R3

O R D E R

The writ petition is filed challenging the notice issued by the first respondent/President of the Videsh Sanchar Nigam Employees Co-operative Housing Society Ltd., directing the petitioner to submit any exemption given to him by the Registrar/Deputy Registrar, during his absence from the area of operation of the Society during the year 2006 and 2007.

2. The petitioner is a Member/Director of Videsh Sanchar Nigam Employees Co-operative Housing Society Ltd. The contesting first respondent is the President of the said Society. It is averred in the writ petition that the first respondent involved in certain misappropriation and surcharge proceedings were initiated against the first respondent and other members under Section 87 of Tamil Nadu Co-operative Societies Act based on enquiry report submitted under Section 81 of Tamil Nadu Co-operative



Societies Act. The first respondent challenged the said proceedings in W.P.No.18398 of 2013 and obtained interim stay. It was further stated that the first respondent on 01.11.2013 issued a public notice under Article 33 (a) (c) bye-law of society in the newspaper convening General Body meeting on 16.11.2013. The same was questioned by this writ petitioner in W.P.No.30830 of 2013, praying for writ of Mandamus, directing the respondents 8 and 9 therein (Registrar/Deputy Registrar) to consider and take appropriate action on the first respondent and others on his representation dated 10.11.2013. In the said writ petition, the petitioner also obtained interim injunction restraining the first respondent and other committee members from convening the General Body Meeting on 16.11.2013. It was further averred that subsequently, the petitioner also moved Contempt Petition No.79 of 2014 against first respondent for violating interim orders and also got an interim order restraining 1st respondent from conducting any meeting pursuant to his notice dated 02.01.2014. It was further averred, in view of the filing of the Contempt Petition by the petitioner against the first respondent, in order to take revenge and wreck vengeance against the petitioner, the impugned notice has been issued by the first respondent with malafide intention directing him to submit any exemption



obtained by him during his absence in the area of operation.

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3. The learned counsel for the writ petitioner mainly challenged the impugned notice on two grounds namely:

(a) Jurisdiction;

(b) Malafide.

4. The learned counsel for the petitioner submitted as per bye-law 5(a) (1) of the registered bye-laws of the society, any individual who is over 18 years of age, competent to contract, residing within the area of operation of the society and employee of overseas communication service, Madras, having office within the area of operation of the society shall be eligible for admission as member provided, he does not own the house or house sites, either in his name or in the name of his spouse or minor children in the area of operation of the society. As per bye-law 5(c)(v) of bye-law of the Society, a member of the registered society is ceased to be a member of said society if he changes his residence from area of operation of the society. However, the Board can grant exemption, subject to approval by Registrar, in respect of the members, who are liable to be transferred. In the case on hand, the petitioner was transferred to Bhopal and re-transferred to Chennai, during



the year 2006-2007.

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5. The learned counsel for the petitioner submitted that if a member of the Society incurs any disqualification under Section 23(4) of Tamil Nadu Co-operative Societies Act, the said question shall be decided only by the Registrar not by the first respondent. The learned counsel also by taking the Court to Rule 35 of Tamil Nadu Co-operative Societies Rules, submitted that the Registrar may on his own motion or an application, by an order in writing, direct the removal of a member of the society from such membership being in the opinion of the Registrar, such member was or has become, subject to any of the disqualification mentioned in Section 23. Therefore, the learned counsel for the petitioner submitted that the impugned notice issued by the first respondent touching upon the question of disqualification of the petitioner is without jurisdiction. Secondly, the learned counsel for the petitioner submitted that this issue is raked up by the first respondent mainly to take vengeance on the petitioner as he had filed a writ petition and contempt petition against the first respondent.

6. The learned counsel for the respondent mainly contended that



the first respondent is “not a State” or “authority” within the meaning of Article 12 of the Constitution of India or “Authority within the meaning Article 226 of the Constitution of India” and hence the writ petition against the first respondent/Co-operative Society is not at all maintainable. The learned counsel in support of his contention relied on the judgment of larger Bench of this Court reported in 2006 (4) CTC 689 in Marappan vs Deputy Registrar, Namakkal.

7. The learned counsel further submitted that the impugned notice is only a show cause notice and the petitioner without submitting his explanation to the notice rushed to this Court by challenging the same. He further submitted that it is settled law, no writ petition will lie against the show cause notice and hence the writ petition is liable to be dismissed.

8. The learned counsel further submitted that against the impugned notice, the petitioner has got alternative remedy by way of an appeal before the 3rd respondent/Deputy Registrar of Co-operative Society and without exploring the alternative remedy, the petitioner is not entitled to invoke the writ jurisdiction.

9. Heard the arguments of the learned counsel for the petitioner



and the learned counsel for the respondent.

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10. The main issue, which has to be decided in this matter, without going into the merits of the case, is the maintainability of the writ petition. The learned counsel for the respondent contended that the first respondent is only a employee of Co-operative Housing Society with object of promoting the economic well being of its members and it has no sovereign or statutory duties to exercise. Therefore, the same cannot be treated as a State within the meaning of Article 12 of Constitution of India or authority within the meaning of Article 226 of Constitution of India.

11. The Larger Bench of this Hon'ble Court in the decision reported in 2006 (4) CTC 689 in Marappan vs Deputy Registrar, Namakkal, laid down following the 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 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 co-operative 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 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.

12. A reading of the above judgment would suggest the writ petition will lie against the Co-operative Society only in case the particular Co-operative Society can be treated as a State within the meaning of Article 12 of the Constitution of India or an authority within the meaning of Article 227 of the Constitution of India or otherwise, the writ petition can be maintained for enforcement of public duty or statutory duty. It was also held that the bye-laws of Co-operative Society will not have the force of law and therefore in cases where the Society cannot be categorized as State or authority, the bye-laws of the society cannot be enforced through writ petition.

13. It would be appropriate to refer to the observations of this Court in a subsequent decision reported in 2009 (5) CTC 237, in Mahendrarvarman Vs Government of Tamil Nadu and other, wherein, this Court following Marappan's case (cited supra) held that the writ petition would not lie to enforce the bye-laws of the society and especially when the



petitioner therein got alternative remedy under the Act to approach the Registrar of Co-operative Society. Relevant observations of this Court read as follows:

29. In the cases on hand, it is crystal clear that the petitioners have been rejected from being considered for appointment in violation of the bye-law. As I have already concluded, as per the unamended bye-law which was in force on the crucial date, they were very well within the upper age limit of 40 years for being considered for the posts. At the same time, in view of the law laid down in K.Marappan's case (vide proposition No.vi), this Court cannot enforce the said bye-law by invoking its writ jurisdiction so as to direct the 4th respondent to consider the petitioners for appointment. The petitioners have got alternative remedy under the Act to approach the Registrar of Co-operative Societies or the Government for redressal of their grievances.

14. In Marappan case, the larger Bench of this Court by applying six tests pointed out in *Ajay Hasia Etc vs Khalid Mujib Sehravardi & Others* reported in 1981(1) SCC 722 held that a Co-operative Agricultural bank cannot be termed as an instrumentality of a State. In the case on hand, the first respondent/Co-operative Society is an Employees Co-operatives



Housing Society with the object of taking care of the economic well being of its members. It is not exercising any sovereign, statutory function or a public duty. Therefore, this Court has no hesitation in holding that it is neither a State withing the meaning of Article 12 of the Constitution of India or authority under Article 226 of the Constitution of India. The impugned notice only calls for certain information from the petitioner concerning the fact of the petitioner incurring disqualification under relevant bye-laws of the society. In Marappan case, it has been held that bye-law of a Co-operative Society, will not have a statutory force. Therefore, by applying the ratio in Marappan case, I have no hesitation to hold that the writ petition filed by the petitioner is not maintainable.

15. Even, otherwise by way of impugned notice, the first respondent only called upon the petitioner to furnish the certain information or facts pertaining to his transfer. From the impugned notice, it is not seen, as if, the first respondent himself is going to take any action against the petitioner. The perusal of the impugned notice would suggest the copy of the notice was marked to Registrar and Deputy Registrar of Co-operative Societies to consider the violation and necessary action under bye-law No.5.



Therefore, the contention made by the learned counsel with regard to the question of jurisdiction also does not merit acceptance.

16. In view of the fact, I have already held that the writ petition is not maintainable, there is no necessity to go into the other questions raised by the respective counsel. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.11.2022

Index :Yes/No
Internet:Yes/No
Speaking/Non speaking order
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S.SOUNTHAR. J,



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To

1.V.Joseph Manoharan (President),
Videsh Sanchar Nigam Employees Co-operative
Housing Society Ltd.,
No.4, Swami Sivanandasalai,
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.

PRE-DELIVERY ORDER MADE IN

W.P.No.1830 of 2014

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