



*W.P.No.32778 of 2022
& WMP.Nos.32179 & 32184 of 2022
in W.P.No.32778 of 2022*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2022

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THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

W.P.No.32778 of 2022
&
WMP.Nos.32179 & 32184 of 2022
in
W.P.No.32778 of 2022

The Board of Management,
Rep.by its President G.Sambandam,
Kachipuram Co-Operative Housing Societies Ltd.,
Perunthalaivar Kamarajar Maligai,
No.12-A/51, Chappani Pillaiyar Koil Street,
Kanchipuram-631 502.

... Petitioner

Vs

1. The Registrar of Co-operative Housing Societies,
Tamil Nadu Housing Federation,
Vepery, Chennai-600 007.
2. The Joint Registrar of Co-Operative Housing Societies,
No.48, Ritherdon Road,
Vepery, Chennai-7.
3. The Deputy Registrar of Co-Operative Housing Societies,
26-B, Alagesan Nagar,
Chengalpattu Regional,
Chengalpattu.

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 3rd respondent impugned order dated 8.8.2022 vide Na.Ka.346/2021/Vu served on 3.10.2022 and to quash the same.

For Petitioner : Mr.M.Selvam

For Respondents : Mr. R.Neethi Perumal
Government Advocate

ORDER

This common order will now govern the captioned main writ petition and captioned two 'Writ Miscellaneous Petitions' ['WMPs' for the sake of brevity] thereat.

2. Captioned writ petition has been filed assailing an 'order dated 08.08.2022 bearing reference Na.Ka.346/2021/Vu made by third respondent' [hereinafter 'impugned order' for the sake of brevity].

3. Mr.M.Selvam, learned counsel for writ petitioner submitted that in and by the impugned order, third respondent has appointed an Administrator to a Co-operative Society which goes by the name 'Kanchipuram Co-operative Housing Societies Limited' [hereinafter 'said Society' for the sake of convenience and clarity].



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4. A perusal of the impugned order brings to light that third respondent has appointed the Sub Registrar of Co-operative Societies, Tambaram Circle-1 as Administrator qua said Society. The impugned order says that the members have resigned, there is a vacuum and therefore, the impugned order has been made. It also refers to a letter dated 15.07.2022 from the Registrar and proceedings of Deputy Registrar dated 22.07.2022.

5. Adverting to Section 89 of 'The Tamil Nadu Co-operative Societies Act, 1983' [hereinafter 'said Act' for the sake of convenience and clarity], learned counsel for writ petitioner submitted that it is statutorily imperative for the third respondent to have put the members of the Board on notice and third respondent should have given an opportunity for making representations before appointing a Government servant as Administrator.

6. Learned counsel for writ petitioner also submits that there are no resignations.

7. Mr.R.Neethi Perumal, learned Government Advocate accepted notice on behalf of all the three respondents, with the consent of learned counsel on both sides, main writ petition was taken up and heard out.



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8. Learned State counsel, on the basis of oral instructions submitted that a notice dated 11.05.2022 had in fact been issued and that there has been a response dated 22.05.2022. By way of rejoinder, learned counsel for writ petitioner submits that this notice in reply pertains to inquiry under Section 81 of said Act.

9. Be that as it may, learned State counsel draws the attention of this Court to Section 152 of said Act [to be noted Section 152 is captioned 'Appeals'] and submits that the petitioner has a right of statutory appeal against the impugned order. Learned State counsel draws the attention of this Court to Section 152(2) (a) (v), which reads as follows:

'152. Appeals -

(1)

(2) (a) Any person aggrieved by any -

(i)

(ii)

(iii).....

(iv).....

(v) order under section 14, clause (ii) of sub-section (2) of section 21, section 36, sub-section (1) of section 88, sub-section (1) of section 89, section 137 or section 181, may appeal if such decision, refusal, registration, approval or



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refusal to approve or order is that of -

(A) the Registrar for the State, to the Government; or

(B) any other person, to the Registrar.

Explanation.- *For the purposes of this clause; “person aggrieved” means in relation to section 11 or section 12, the registered society.'*

10. In the light of the impugned order having been made by third respondent, it will fall under (B) and therefore, the appeal would lie to the Registrar [first respondent in the captioned writ petition].

11. This Court carefully considered the rival submissions.

12. The issue regarding giving the members of the Board an opportunity of making their representations before making the impugned order now turns on disputed facts. Besides this, the very substratum i.e., basis of the order 'resignation' itself is disputed and therefore, that also turns on disputed facts. In this view of the matter, this Court deems it appropriate to remind itself of a recent judgment of Hon'ble Supreme Court rendered on 20.09.2022 in ***State of Maharashtra and Others Vs. Greatship (India) Limited*** reported in ***2022 SCC OnLine SC 1262*** on alternate remedy. The point is when larger public issues and when fiscal statutes operate, the alternate remedy principle rigor is higher.



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It may not be necessary to dilate greatly on this owing to a long line of case laws including *Satyawati Tandon* [*United Bank of India Vs. Satyawati Tandon and others* reported in (2010) 8 SCC 110] which have been captured in *Greatship*. This Court is conscious of the fact that *Greatship* case arose out of Maharashtra Value Added Tax, 2002 Act but the principle applies in all fours to the case on hand owing to the factual matrix. In *Greatship* case laws starting from *Dunlop India* case [*Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and others* reported in (1985) 1 SCC 260], *Satyawati Tandon* case [*United Bank of India Vs. Satyawati Tandon and others* reported in (2010) 8 SCC 110] have been traced. Alternate remedy rule no doubt is not an absolute rule. It is a rule of discretion. It is not just a rule of discretion but it is a self-imposed restraint qua Article 226 Writ Court. However, as the principles in the aforementioned case laws and *Greatship* case law are attracted and as the matter pertains to a Co-operative Society, coupled with the fact that the matter now turns on disputed facts, this Court is of the considered view that this is a case where the petitioner has to be relegated to the alternate remedy.



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13. Before concluding, it is necessary to record that the writ petitioner has been described as 'The Board of Management represented by its President', whether such a description will pass muster and as to whether owing to petitioner not being a juristic person i.e., whether Article 226 can be invoked by such a 'Board' is a question, which is left open to be decided in a matter where a legal tussle becomes imperative for deciding the main matter. In the case on hand, suffice to say that the writ petitioner is relegated to alternate remedy of statutory appeal under Section 152 of said Act.

14. If the writ petitioner chooses to resort to alternate remedy, it is open to the Appellate Authority to consider the matter on its own merits and in accordance with law untrammelled and uninfluenced by any other observation made in this order.

15. At this juncture, learned counsel for petitioner submitted that he would resort to alternate remedy. This means that this order is being accepted by writ petitioner. If the writ petitioner chooses to avail alternate remedy, it is open to the writ petitioner to resort to Section 14 of Limitation Act and if such a course is adopted, the same shall be dealt with and decided by the Appellate Authority on its own merits and in accordance with law.



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16. In this view of the matter, learned counsel for writ petitioner sought return of original impugned order for pursuing the alternate remedy. Request is acceded to. Registry to return forthwith the original impugned order to the counsel on record for writ petitioner under due acknowledgement.

17. Captioned writ petition is dismissed albeit with the aforesaid observations. Consequently, connected WMPs are closed. There shall be no order as to costs.

06.12.2022

Index: Yes/ No

Speaking/Non-speaking Order
kmi

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M.SUNDAR, J.

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