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W.P.No.33164 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.33164 of 2022
and
W.M.P.No.32570 of 2022
in
W.P.No.33164 of 2022

1.Kishorekumar, M/40
S/o.Subramani Raja

2.S.M.Prabakaran, M/51
S/o.Manuvel

3.Subramani, M/56
S/o.Chengalvarayan

4.Ravichandran, M/53
S/o.Kesavan

5.Punitha, F/52
W/o.Dilli

6.Benjamin, M/51
S/o.Viswanathan.

... Petitioners

-Vs.-

1.The Joint Registrar of Cooperative Societies
Tiruvallur Region, Tiruvallur,
Tiruvallur District.



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2.The Deputy Registrar of Cooperative Societies
Ponneri Circle, Ponneri,
Tiruvallur District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the entire records relating to the impugned order passed by the 1st respondent in her proceedings Na.Ka.2484/2018/A3, dated 08.11.2022 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.R.Neethiperumal,
Government Advocate

ORDER

In the captioned Writ Petition what has been called in question is notice issued by the first respondent being notice dated 08.11.2022 bearing reference Na.Ka.2484/2018/A3.

2.This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 09.12.2022. A scanned reproduction of the same is as follows:



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M.SUNDAR, J.,

In the captioned writ petition 'a notice dated 08.11.2022 bearing reference ந.க.2484/2018/அ3' [hereinafter 'impugned notice' for the sake of brevity] has been assailed.

2. Mr.C.Prakasam, learned counsel for writ petitioners who is advertng to impugned notice submits that it pertains to disqualification of office bearers of 'a Co-operative Society which goes by the name ஜெ.ஜெ.709சூவார்பாளையம் தொ.கக வேளாண்மை கூட்டுறவு கடன் சங்கம் in Thiruvallur District' [hereinafter 'said Society' for the sake of convenience and clarity]. Learned counsel submits that the matter pertains to appointment of office assistants and the question is whether the power to make such appointments vests with the Board of Co-operative Societies or with the Government.



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3. Learned counsel for the writ petitioners submits that surcharge proceedings under Section 87 of 'the Tamil Nadu Co-operative Societies Act, 1983' [hereinafter 'said Act' for the sake of convenience and clarity] was initiated, the same was assailed by way of 11 writ petitions namely W.P.Nos.19970, 19976, 19983, 19988, 19991, 19995, 20003, 20011, 20015, 20024 and 20030 of 2022. An interim order of *Status quo* was granted by this Court and the same is operating. It is the further case of learned counsel that the impugned notice is predicated on the same issue and therefore the impugned notice ought not to have been issued.

4. Mr.R.Neethipercumal, learned Government Advocate accepted notice on behalf of both the respondents. In the Admission Board, learned State counsel pointed out that the issue qua surcharge proceedings and the issue qua impugned notice are not identical as the impugned notice turns on other issues also. Learned State counsel also points out that the impugned notice is for all practical purposes a 'Show Cause Notice' ['SCN'] within the meaning of sub-section 2 of Section 36 of said Act and there is no dispute that the Joint Registrar of Cooperative Societies is the



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authority vested with the power to issue such a Section 36 notice.
Therefore there is no infirmity in the SCN is learned State counsel's say.

5. In the light of the narrative thus far, list the captioned writ petition and the captioned Writ Miscellaneous Petition along with the aforementioned 11 writ petitions and writ miscellaneous petitions thereat in the Admission Board on Thursday i.e., 15.12.2022.

09.12.2022
(1/2)

nsa

3. Adverting to the aforesaid proceedings, Mr.R.Neethiperumal, learned State Counsel submits that impugned proceedings erroneously refers to Section 36(1) whereas it is Section 36(2) as it is a notice. A perusal of Section 36(2) of 'The Tamil Nadu Co-operative Societies Act, 1983' ['said Act' for the sake of convenience and clarity] makes it clear that it is in nature of a show cause notice.



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4.Faced with the above situation, learned counsel Mr.C.Prakasam for the writ petitioners made submissions which turned on merits of the matter. These aspects have to be reserved qua writ petitioners response to the impugned notice which is effectively a show cause notice under Section 36(2) of the said Act.

5.The grounds on which a writ Court will interfere with show cause notice have been well settled by the Hon'ble Supreme Court in the case of *Union of India and Another vs. Kunisetty Satyanarayana* reported in (2006) 12 SCC 28 and *Siemens Ltd., vs. State of Maharashtra and Others* reported in (2006) 12 SCC 33. To be noted, there is no jurisdictional error as the impugned show cause notice has been issued by the first respondent (Joint Registrar) and there is no disputation or contestation that the Registrar has delegated powers to Joint Registrar in this regard vide *G.O.(2D).No.109, Co-operation, Food and Consumer Protection Department, dated 31.08.2005* within the bounds of the said Act.



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6.If the writ petitioner chooses to respond to the impugned show cause notice, the first respondent shall consider the same on its own merits, in accordance with law and this order shall neither impede nor serve as an impetus qua such proceedings.

7.Captioned writ petition is disposed of as closed with the above observations. Consequently, connected WMP is also disposed of as closed. There shall be no order as to costs.

21.12.2022

Index: yes/no

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To

1.The Joint Registrar of Cooperative Societies
Tiruvallur Region, Tiruvallur,
Tiruvallur District.

2.The Deputy Registrar of Cooperative Societies
Ponneri Circle, Ponneri,
Tiruvallur District.



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