



W.P.(MD)No.26055 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 16.12.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.26055 of 2019

and

W.M.P.(MD)No.22541 of 2019

Jawahar

... Petitioner

Vs.

- 1.The Joint Director (Handloom),
Handloom and Textiles,
Commissionerate of Handlooms and Textiles,
Kuralagam, II Floor,
Chennai-600 108.
- 2.The Assistant Director of Handlooms and Textiles,
Trichy Range,
No.68, Pangaali Street,
First Floor, Woraiyur,
Trichy-3.
- 3.The Managing Director,
Trichy Range,
Woraiyur Devanga Cotton Cum Silk
Handloom Weavers' Co-operative Production
and Sale Society Limited,
Trichy.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the Na.Ka.No.23583/2019/H1, dated 21.08.2019 issued by the first respondent and quash the same insofar as the petitioner is concerned.



W.P.(MD)No.26055 of 2019

For Petitioner : Mr.V.R.Shanmuganathan
for M/s.Elis Chitra Devi

For Respondents : Mr.A.Sivannupandian
Government Advocate

WEB COPY

ORDER

Heard the learned counsel on either side.

2.By the impugned order, the Board of Worlur Devanga Cotton cum Silk Handloom Weavers' Co-operative Production and Sale Society Limited had been superseded. Election to the board was held on 07.08.2018. The office bearers were elected for a term of three years. Since the said period has already expired, technically the matter has become infructuous. However, the learned counsel appearing for the petitioner submits that unless the impugned order is set aside, stigma will remain on the writ petitioner. It is for that reason I propose to consider the validity of the impugned order. The only ground on which the order of supersession rest is that the board had leased out the properties of the society for a period of three years without prior permission from the Registrar of Co-operative Society.



W.P.(MD)No.26055 of 2019

3.The impugned order refers to Section 71 of the Tamil Nadu

Co-operative Societies Act 1983 and Rule 87 of the Tamil Nadu

Co-operative Societies Rules, 1988. The said provisions are as follows:

“Section 71

Properties not to be misused:

No property of a registered society, whether movable or immovable shall be used or allowed to be used except in accordance with the provisions of this Act, the rules and the by-laws.

Rule 87

Use of premises and immovable properties:

1) No society shall, except with the previous sanction of the Registrar use or allow to be used any of its immovable properties or premises wholly or partly, for any purpose other than its business or other co-operative activities.

Provided that no such sanction shall be granted to any society for using or allowing to be used any such immovable properties or premises or portion thereof for any political purposes.

2) In respect of guest houses or other places intended for the use of others also, regulation for the use and the collection of charges shall be framed by the society with the approval of the Registrar. “



W.P.(MD)No.26055 of 2019

4.A careful reading of Section 71 of the Act leads one to the conclusion that the property of a registered society must be used in consonance with the statutory provisions and the by-laws. A reading of Rule 87 does not lead one to the conclusion that the permission of the Registrar is required for leasing out the property for a short term. On the other hand, the bye-laws of the society clearly permit the board to raise funds by leasing out the properties. Clause 45 of the by-laws of the society deals with powers and duties of the board. Sub-clause (viii), (ix), (xv) and (xvi) are as follows:

“45.Powers and Duties of the Board:

A.....

(i)..

(ii)..

(iii)..

(iv)..

(v)..

(vi)..

(vii)..

(viii) Purchase or take on lease or otherwise acquire land, building, premises etc., as may be necessary for the conduct of the business of the society with the prior permission of the Registrar.

(ix) raise funds necessary for the purpose of carrying out the objects of the society subject to the provisions of the Act, the Rules and these by-laws.

(x)..

(xi)..

(xii)..

(xiii)..

(xiv)..



WEB COPY



W.P.(MD)No.26055 of 2019

(xv) to hold sell outright, or sell on hire purchase system, transfer, mortgage or otherwise dispose of society's properties;
(xvi) do such other acts and transact such other business as is consistent with the objects and the by-laws of the society, with the prior approval of the Registrar, wherever necessary."

5. On a comparative reading, one can notice that prior permission of the Registrar is required only if the society have to purchase or take on lease or otherwise acquire a property. This stipulation is not found in sub-clauses (ix) or (xv). I therefore come to the conclusion that for leasing out the property that too on short term basis, prior permission of the Registrar is not contemplated. Since the board had acted only in terms of the bye-laws, the authority ought not to have resorted to supersession. In any event, Section 88 of the Act enables the authority to supersede the board only if the circumstances set out in the provisions are present. It appears that the authority have invoked Section 88 (iii) of the Act. The said provision could have been invoked only if the petitioner had acted prejudicial to the interest of the society. It is stated that when they took over, the society was running at a loss. Only to offset the loss, they had to lease out the society's property and raise funds. It is not the case of authority that there was some underhand



W.P.(MD)No.26055 of 2019

dealing in the transaction. Since the only allegation made against the petitioner is that they had resorted to the said transactions without prior permission of the Registrar, I am of the view that the impugned order was clearly unjustified. If the authorities are of the view that the bye-laws require modification or amendment, it is open to the Registrar of Societies to do so. If any such direction is issued, the society is bound to amend the bye-laws also. When the bye-laws as they are obtaining now permit the society to lease out the property even without prior permission of the Registrar, for having done so, the petitioner could not have been faulted. In this view of the matter, eventhough the matter has become infructuous, I set aside the order impugned in this writ petition. Accordingly, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.12.2022

Index : Yes / No

Internet : Yes/ No

Rmk



W.P.(MD)No.26055 of 2019

To
WEB COPY

- 1.The Joint Director (Handloom),
Handloom and Textiles,
Commissionerate of Handlooms and Textiles,
Kuralagam, II Floor,
Chennai-600 018.
- 2.The Assistant Director of Handlooms and Textiles,
Trichy Range,
No.68, Pangaali Street,
First Floor, Woraiyur,
Trichy-3.
- 3.The Managing Director,
Trichy Range,
Woraiyur Devanga Cotton Cum Silk
Handloom Weavers' Co-operative Production
and Sale Society Limited,
Trichy.



WEB COPY



W.P.(MD)No.26055 of 2019

G.R.SWAMINATHAN,J.

rmk

W.P.(MD)No.26055 of 2019

16.12.2022