



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.12.2021

PRONOUNCED ON : 12.01.2022

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD).Nos.26586 of 2019 and 5544 of 2021

and

W.M.P(MD)Nos.22945 and 22946 of 2019,
13396, 4394, 4395 and 4396 of 2021

W.P(MD)No.26586 of 2019

S.Sivaraman

...Petitioner

Vs.

1.The Registrar of Co-operative Societies,
N.V.Natarajan Maligai,
170, Periyar EVR High Road,
Kilpauk, Chennai - 600 010.

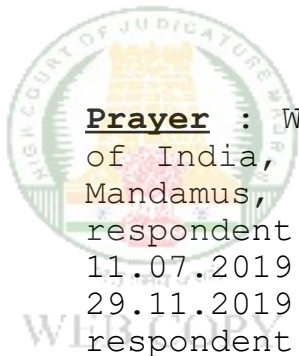
2.The Joint Registrar of Co-operative Societies,
Kanya Kumari Region,
District Collectorate,
Nagercoil, Kanya Kumari District.

3.The Deputy Registrar of Co-operative Societies,
Thuckalay-629175,
Kanya Kumari District.

4.The Kalkulam Vilavancode Taluk Co-operative
Marketing Society Limited Y-285,
Represented by it's Managing Director,
Marthandam,
Kanya Kumari District.

5.Nanchil Dominic,
President,
The Kalkulam Vilavancode Taluk Co-operative
Marketing Society Limited Y-285,
Marthandam,
Kanya Kumari District.

...Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the fourth respondent pertaining to the impugned Public Notice, dated 11.07.2019 and the impugned General Body Notice of KVTCMS, dated 29.11.2019 and to quash the same and consequently direct the first respondent to convene a Special General Body Meeting of KVTCMS with the single agenda of removing the fifth respondent from the primary membership of KVTCMS within a time frame that may be stipulated by this Court in accordance with the order passed by the Madras High Court-Madurai Bench in W.P(MD)No.4080 of 2019, dated 15.03.2019.

For Petitioners	:	Ms.L.Victoria Gowri
For R1 to R3	:	Mr.D.Ghandiraj Special Government Pleader
For R4	:	No Appearance
For R5	:	Mr.E.Mareeskumar

W.P(MD)No.5544 of 2021

R.Rajam

...Petitioner

Vs.

- 1.The Principal Secretary to Government of Tamil Nadu,
Department of Co-operatives,
St.George Fort,
Chennai-600 009.
- 2.The Registrar of Co-operative Societies,
N.V.Natarajan Maligai,
170, Periyar EVR High Road,
Kilpauk, Chennai - 600 010.
- 3.The Joint Registrar of Co-operative Societies,
Kanya Kumari Region,
District Collectorate,
Nagercoil, Kanya Kumari District.
- 4.The Deputy Registrar of Co-operative Societies,
Thuckalay,
Kanya Kumari District-629175.
- 5.The Kalkulam Vilavancode Taluk Co-operative
Marketing Society Limited Y-285,
Represented by it's Managing Director,
Marthandam,
Kanya Kumari District.
- 6.Nanchil Dominic,
President,

<https://hcservices.ecourts.gov.in/hcservices/>



The Kalkulam Vilavancode Taluk Co-operative
Marketing Society Limited Y-285,
Marthandam,
Kanya Kumari District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the sixth respondent's impugned letter, dated 21.09.2019 and 09.10.2019 served on the petitioner and the subsequent impugned Public Notice dated 11.07.2019 and the impugned General Body Notice of KVTCMS, dated 29.11.2019 as null, void and illegal and quash the same and consequently permit the petitioner continue as the Director of KVTCMS.

For Petitioners	:	Ms.L.Victoria Gowri
For R1 to R4	:	Mr.D.Ghandiraj Special Government Pleader
For R5	:	No Appearance
For R6	:	Mr.E.Mareeskumar

COMMON ORDER

W.P. (MD)No.26586 of 2019 has been been filed by S.Sivaraman claiming to be a member of the Kalkulam Vilavancode Taluk Co-operative Marketing Society Limited (the Society) in the nature of Certiorarified Mandamus, calling for the records and questioning the public notice, dated 11.07.2019, issued by the fourth respondent/the Managing Director of the Society and a General Body notice of the Society, dated 29.11.2019 and to quash both and consequently, to direct the first respondent/the Registrar of Co-operative Societies, Chennai, to convene a Special General Body Meeting with a single agenda to remove the fifth respondent/Nanchil Dominic, the President of the Society from the primary membership of the society.

2.In the affidavit filed in support of the Writ Petition, after narrating the objects of the Society, it had been stated that the fifth respondent had, without obtaining permission from the Kuzhithurai Municipality, on 23.11.2018, demolished a sub-building of the Society at Marthandam and thereafter, he and his men had taken away the wooden materials including doors and shutters and other iron materials. They are also alleged to have unlawfully cut away wild jack fruit and sandal wood trees from the premises without obtaining permission from the District Forest Officer or from the Board. It had been stated that the petitioner had given a complaint to the fourth respondent/the Managing Director of the Society. Thereafter, 197 members of the Society had given a requisition in writing to the fourth respondent to convene a Special General Body Meeting of the Society with the single agenda to remove the fifth respondent from the primary membership of the Society.



3. Since there was no response, the petitioner filed W.P(MD) No.4080 of 2019, seeking a direction to consider the said requisition by the respondents. By an order dated 15.03.2019, a learned Single Judge of this Court in the aforementioned Writ Petition, held that the Writ Petition was maintainable and directed the Registrar of Co-operative Societies, after coming to a subjective satisfaction, to call the meeting and take such decision within a period of two weeks from the date of receipt of a copy of that particular order.

4. As against that particular order, the fifth respondent filed W.A(MD)No.496 of 2019, but however, withdrew the said Writ Appeal on 31.10.2019.

5. In the meanwhile, the fourth and fifth respondents circulated an agenda for the Board Meeting of the Society to be held on 06.07.2019 to examine the applications of new members and to examine the status of members, who had become defunct owing to non payment of the increased share value which was increased from Rs.10/- to Rs.100/-. Pursuant to that, a public notice was also published in a newspaper on 11.07.2019. Questioning this particular call for meeting and the public notice, the Writ Petition has been filed.

6. When the Writ Petition came up for admission, a learned Single Judge of this Court, on 13.12.2019, observed that the meeting had been postponed to 06.01.2020 and granted stay of the meeting, which was scheduled on 06.01.2020.

7. In the counter affidavit filed by the second respondent, it had been stated that pursuant to the order of the learned Single Judge in W.P(MD)No.4080 of 2019, wherein, a direction was given to the Registrar of Co-operative Societies to take a decision with respect to calling for a meeting with the single agenda to remove the fifth respondent, the third respondent/the Deputy Registrar of Co-operative Societies, Thuckalay, Kanyakumari District, was directed to convene the meeting. In the meanwhile, before the meeting could be so convened, the fifth respondent had filed W.A(MD) No.496 of 2019, wherein, an order of interim stay had been granted. When the Writ Appeal was pending, 841 new members were admitted by a Board resolution, dated 06.07.2019. After that, the Writ Appeal was dismissed as withdrawn. It had been stated that the said General Body Meeting can be convened only after the Court grants permission.

8. During the midst of all these events, the second Writ Petition came to be filed namely W.P(MD)No.5544 of 2021. That Writ Petition was filed by R.Rajam, who was the Director of the Society, in the nature of Certiorarified Mandamus, calling for the records of the letters of the sixth respondent/Nanchil Dominic, President of the Society, dated 21.09.2019 and 09.10.2019 and also the subsequent ~~general body meeting~~ dated 11.07.2019 and the General Body Notice, dated



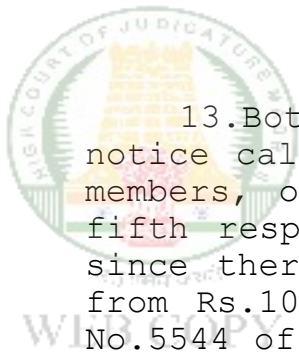
29.11.2019 and to quash them all and to permit her to continue as Director of the Society.

9. In the affidavit filed in support of the Writ Petition, it had been stated that on 06.07.2019, a resolution had been passed to increase the share subscription of A-class members from Rs.10/- to Rs.100/- and to give an opportunity to those members, who had not paid the increased subscription to pay the same on or before 11.08.2019, failing which those members shall be removed from the primary membership of the Society. Pursuant to that, a public notice was issued in a newspaper on 11.07.2019. It had been claimed that the said notice was issued without amending the bye-laws of the Society. The sixth respondent, however, proceeded to remove all those members who had not paid the enhanced shares of subscription. He also took steps to enroll 772 new members. Among others, who had been removed, the petitioner was one such member. Seeking to quash such removal, the Writ Petition had been filed.

10. In the counter affidavit filed by the official respondent/the Joint Registrar of the Co-operative Societies, it had been stated that without amending the by-laws, a member cannot be removed from the membership for not having paid the increased share capital. However, the remedy was not to file a Writ Petition, but to file an arbitration under Section 90 of the Tamil Nadu Co-operative Societies Act 1983, before the fourth respondent/the Deputy Registrar of Co-operative Societies, Thuckalay, Kanyakumari District. It had also been stated that the Writ Petitioner had not given any representation to the statutory authorities, expressing grievance that members are being removed from the primary membership. It had been stated that the Writ Petition was not maintainable, since there was an alternate remedy available.

11. In the counter affidavit filed by the sixth respondent/Nanchil Dominic, the procedure adopted had been justified. It had been stated that the General Body of the Society resolved to increase the value of A-class shares to Rs.100/- by a resolution, dated 08.11.2013. Thereafter, members were granted time to pay the difference amount. Since the petitioner had not paid the amount, she was removed from the primary membership. It had also been stated that an alternate remedy was available. It had also been stated that though the learned Single Judge had granted stay of the meeting to be held on 06.01.2020, the notice, dated 11.07.2019, had not been stayed. It had been stated that the Writ Petition is not maintainable and should be dismissed.

12. Heard arguments advanced by Ms.L.Victoria Gowri, learned Counsel who appears for the petitioners in both the Writ Petitions, Mr.D.Ghandiraj, learned Special Government Pleader who appears for the first to third/fourth respondents and Mr.E.Marees Kumar, learned Counsel for the fifth/sixth respondents in both the Writ Petitions.



13.Both these Writ Petitions have been filed questioning a notice calling for a General Body Meeting relating to admission of members, overlooking an earlier requisition seeking removal of the fifth respondent/the President of the Society. In the meanwhile, since there was an earlier resolution to increase the share value from Rs.10/- to Rs.100/- and since the writ petitioner in W.P(MD) No.5544 of 2021, had not paid the increased amount, she was removed from the primary membership.

14.Let me now analyze the facts.

(i)The President of the Society/Nanchil Dominic was alleged to have removed wooden and iron materials from a building which was said to have been unauthorizedly demolished. He is also alleged to have removed wild jack fruit and teak wood trees.

(ii)Questioning that particular act, the petitioner in W.P(MD) No.26586 of 2019 gave a requisition to convene a Special General Body Meeting with a single agenda to remove the said President/Nanchil Dominic.

(iii)There was no response to the said requisition.

(iv)The petitioner therefore filed W.P(MD)No.4080 of 2019 and a learned Single Judge had directed the Registrar of Co-operative Societies to take a decision with respect to convening such a meeting. That order was dated 15.03.2019.

(v)Questioning that particular order, Nanchil Dominic filed W.A.(MD)No.496 of 2019 and stay was granted.

(vi)In the meanwhile, it is claimed that he had enrolled nearly about 700 additional members.

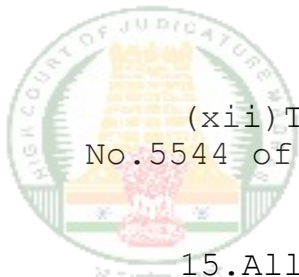
(vii)He then, withdrew W.A.(MD)496 of 2019 on 31.10.2019.

(viii)He then, called for a meeting to recognise the newly inducted members.

(ix)That notice for meeting and the public notice were challenged in W.P(MD)No.26586 of 2019.

(x)A learned Single Judge granted stay of convening the meeting.

(xi)In the meanwhile, taking advantage of an earlier resolution to increase the share capital from Rs.10/- to Rs.100/- and finding out that several members have not paid the said difference amount, the Board passed a resolution to remove them, including the Director of the Society.



(xii)The Director of the Society/R.Rajam, then, filed W.P(MD) No.5544 of 2021.

15.All these facts reflect, what can be termed as a determined effort to find a loophole in a crooked manner to achieve an unlawful object.

16.The fact that the fifth respondent was alleged to have misappropriated wooden and iron material and had cut jack fruit and teak wood trees, had simply disappeared and screened away from being examined. That is the issue, which has to be first examined by the Registrar of Co-operative Societies either by himself or through his officers. A General Body Meeting has to be called and the members will have to discuss about the allegations levelled against the fifth respondent.

17.A learned Single Judge of this Court had also directed the Registrar of Co-operative Societies to convene a meeting. That order was stayed in a Writ Appeal. Taking advantage of the stay 841 new members were inducted by the fifth respondent. Then, the Writ Appeal was withdrawn.

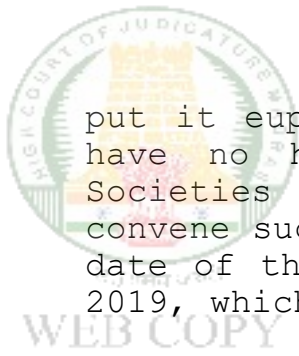
18.The direction of the learned Single Judge to convene a Special General Body Meeting had not been set aside. By withdrawal of the Writ Appeal, the said direction stands revived. I am not prepared to examine any of the other fact. The following directions are therefore given:

(i)The Registrar of Co-operative Societies either by himself or through any of his officers are directed to convene a Special General Body Meeting with a single agenda to either remove or not the President of the Society/Nanchil Dominic.

(ii)This direction is pursuant to an order, which has been revived by the act of the very same Nanchil Dominic by withdrawing the Writ Appeal and is still in force. The Writ Appeal had been withdrawn voluntarily by the said Nanchil Dominic. The direction of the learned Single Judge in W.P(MD)No.4080 of 2019 should therefore be put into effect.

(iii)The question which now arises is whether the newly inducted members in the interregnum period between the stay granted with respect to that particular order and the withdrawal of the Writ Appeal can be permitted to participate. The answer is a big 'No'. The members who were actually available when the learned Single Judge directed to convene a General Body Meeting, alone can participate in that particular meeting.

19.The fifth respondent had very cunningly filed a Writ Appeal and in the meanwhile, inducted new members. To



put it euphemistically, this "is just not cricket". Therefore, I have no hesitation in directing the Registrar of Co-operative Societies to abide by the order in W.P(MD)No.4080 of 2019 and convene such a meeting with the members, who were existing as on the date of the order of the learned Single Judge in W.P(MD)No.4080 of 2019, which was 15.03.2019.

20. With respect to the issues raised in W.P(MD)No.5544 of 2021, since there is an alternate remedy available under Section 90 of the Co-operative Societies Act, the Writ Petitioner must be directed to approach the said authority in manner known to law. Section 14 of the Limitation Act, 1963 may be invoked to overcome any issue of limitation, since the petitioner had filed W.P(MD)No.5544 of 2021 and can take advantage of the period from the date of filing till the date of the order as a period in having prosecuted her case bonafide, but in a wrong forum.

21. The difference amount towards the increase in share capital payable by the petitioner may be undertaken to be paid by her and the Registrar of Co-operative Societies while examining the issue under Section 90 of the Co-operative Societies Act may also render a decision regarding acceptance of that amount or not.

22. The issue therefore lies only in the hands of the Registrar of Co-operative Societies. The petitioners and the sixth respondent being members of the Society are bound by the directions of the Registrar of Co-operative Societies. If they commit unlawful activities in the garb of office bearers of the Society, the Registrar of Co-operative Societies may even take drastic action with respect to the same in the intent of proper administration of the said Society.

23. The issue of maintainability of the Writ Petitions had also been addressed. In **K.Marappan vs Deputy Registrar of Cooperative Societies and others**, reported in **2006 SCC Online Mad 413**. The Honourable Full Bench of this Court had examined the maintainability of a Writ Petition against a Cooperative Society. In the instant case, the first direction I have given is to enforce an earlier direction given by a learned Single Judge of this Court in W.P.(MD) No.4080 of 2019, by order, dated 15.03.2019 and the second direction is to refer the Writ Petitioner to file an arbitration application under Section 90 of the Act. I have not issued any direction against the Society and therefore, I would hold that the Writ Petition is maintainable.

24. Therefore, issuing (i) a direction to the Registrar of Co-operative Societies to convene a Special General Body Meeting with specific agenda to remove the Nanchil Dominic/the President of the Society with the existing members as on 15.03.2019; and (ii) a direction to the writ petitioner in W.P(MD)No.5544 of 2021 to file



necessary arbitration application under Section 90 of the Co-operative Societies Act and permitting to take advantage of the period of pendency of the Writ Petition if at all limitation is put against her, both the Writ Petitions are disposed of. No costs. Consequently, the connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

lr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Principal Secretary to Government of Tamil Nadu,
Department of Co-operatives,
St.George Fort,Chennai-600 009.
- 2.The Registrar of Co-operative Societies,
N.V.Natarajan Maligai,
170, Periyar EVR High Road,Kilpauk, Chennai - 600 010.
- 3.The Joint Registrar of Co-operative Societies,
Kanya Kumari Region,
District Collectorate, Nagercoil, Kanya Kumari District.
- 4.The Deputy Registrar of Co-operative Societies,
Thuckalay, Kanya Kumari District-629175.
- 5.The Managing Director,
The Kalkulam Vilavancode Taluk Co-operative
Marketing Society Limited Y-285,
Marthandam, Kanya Kumari District.

+1 CC to M/s.E.MAREESKUMAR, Advocate (SR-1755[F] dated 19/01/2022)
+1CC to M/s,SPL GP,SR.No. 1717 dated 19/01/2022

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12.01.2022

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