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Writ Petition No.16136 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

Writ Petition No. 16136 of 2023
and W.M.P.No.15526 of 2023

A.A.Karupasamy

...Petitioner

Vs

1. The Joint Registrar of Co-operative Societies
Tirupur Region
Tirupur.

2. The Deputy Registrar of Co-operative Societies
Tirupur Circle
Tirupur.

3. The Management of
K21CC 2350, Alathur Primary cooperative Credit Society Ltd.,
Tirupur Region
Tirupur.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records of the 1st respondent impugned order dated 05.05.2023 made in Na.Ka.No.2181/2023/Pa.2 issued as against the petitioner and quash the same.



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For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents : Mrs.S.Anitha
Special Government Pleader

ORDER

This Writ Petition is filed challenging the order dated 05.05.2023, passed by the 1st respondent, suspending the petitioner from the post of President of the Alanthur Primary Cooperative Society.

2. The impugned order was passed by the 1st respondent under Section 76-A of the Tamil Nadu Co-operative Societies Act, 1983 (in short 'the Act'). The said provision reads as follows:

"76-A. Suspension of President or Vice President of a registered society under certain circumstances.-

(1) Where it is brought to the notice of the Registrar, on a complaint or otherwise, that the President or the Vice President of a registered society has committed or has been otherwise responsible for misappropriation or breach of trust or gross mismanagement of the affairs of the registered society or committed any offence involving criminal misconduct or moral turpitude and if, in the opinion of the Registrar, there is a prima facie evidence against the President or the Vice President and the suspension of the President or



the Vice President is necessary in the interest of such society or in the public interest, the Registrar may, by order, place the President or Vice-President, under suspension for a period not exceeding six months, pending inquiry under Section 81 or inspection or investigation under Section 82 or investigation into the offence involving criminal misconduct or moral turpitude.

(2) Notwithstanding anything contained in sub-section (1), where an action under section 36 has been initiated against the President or the Vice-President, the period of suspension may be extended by the Registrar, from time to time, for the reasons to be recorded in writing, for a further period of six months or till final order is passed under Section 36, whichever is earlier."

3. The above said provision was inserted to the main Act by T.N.Act 13 of 2020, published in Tamil Nadu Gazette, Extra, Part IV, S.2, dated 26.02.2020, with effect from 26.02.2020.

4. A reading of the above provision would make it very clear that under Section 76-A of the Act, only the Registrar of the Co-operative Societies is empowered to exercise the powers conferred under the Act. Unfortunately, in the case on hand, the said powers had been exercised by the Joint Registrar of Co-operative Societies. *Prima facie*, the order was passed by the 1st Respondent without jurisdiction.



5. The learned Special Government Pleader appearing for the Respondents, by drawing the attention of this Court to Section 3 of the Act and the Government Order issued in G.O.(2D) No.108 Cooperation, Food and Consumer Protection Department dated 31.08.2005, submitted that in respect of any primary or central society, the Joint Registrar has the power to exercise powers of the Registrar, under the Act.

6. Section 76-A of the Act is introduced only in the year 2020. When the aforesaid Government Order was issued on 31.08.2005, the said provision was not at all available in the statute book. Therefore, the Government Order issued on 31.08.2005 is only to enable the Joint Registrar to exercise the powers that were available to the Registrar on the date of issuance of the said Government Order. If any other provision conferring new power to Registrar, is inserted to main Act, subsequent to the Government Order, by way of amendment, unless fresh Government Order is issued enabling the Joint Registrar to exercise the power which was conferred to the Registrar by way of amendment, the same cannot be exercised by the Joint Registrar.



7. Similar view was taken by another learned Judge of this Court in

W.P.(MD) No.23902 of 2022. The observation made by this court in this regard is as follows:

"8. The question that arises for consideration in whether an order passed under Section 3 of the Act would include subsequently conferred powers on the Registrar. A learned Judge of this Court vide order dated 10.08.2021 in W.P.(MD)Nos.12476 and 12894 of 2021 had commented Section 76(A) is a drastic power which interferes with the democratic process. The Hon'ble Supreme Court in (2012) 4 SCC 407 (Ravi Yashwant Bhoir V. Collector) observed that any elected official in local self-government has to be put on a higher pedestal as against a government servant and that for the removal of the elected official, a very stringent procedure and standard of proof is required. Of course, I am conscious that the validity of this provision has been subsequently upheld by the Hon'ble Division Bench in the decision dated 07.10.2021 made in W.P.No.21652 of 2021 (D.Krishnamoorthy V. The Secretary to Government). When the aforesaid Government Orders conferring all the powers of the Registrar on the Joint-Registrar in respect of primary or central societies were issued, Section 76(A) of the Act was not in a statute book. In N.Varadarajan V. State of Tamil Nadu (2001) 4 CTC 339, the Hon'ble Division Bench held that Section 3 of the Act cannot be said to be a piece of delegated legislation. The power of Government to confer the powers of the Registrar that are found scattered all over the Act in favour of certain officers was described as "conditional legislation". The



WEB COPY



Writ Petition No.16136 of 2023

legislature has conferred such a power into the Government to distribute such powers for better working of the Act. From the above discussion found in the decision of the Hon'ble Division Bench, one can conclude that conferral of the power of the Registrar on specified officers is an exercise preceded by due application of mind. When notification is issued under Section 3 of the Act, it must be understood as encompassing and including only those powers of the Registrar that are then available and not those powers with which the Registrar may be invested in future. While it is open to the Government to confer the power of the Registrar under Section 76(A) of the Act on the Joint Registrar, a specific Government Order is required to be issued. This Court cannot mechanically assume that the G.Os issued in the year 2005 would encompass within their scope the powers subsequently conferred on the Registrar in the year 2020.

8. I concur with the above view expressed by the learned Judge. A close reading of G.O.(2D) 108, would make it clear, in some cases while conferring powers of Registrar to Joint Registrar, Deputy Registrar and Sub Registrar, certain powers under some of the sections of Co-operative Societies Act were specifically excluded and said powers were retained with Registrar. Therefore at the time of issuing G.O. Government applied its mind on case to case basis and conferred only certain powers to other officials and retained certain powers to original authority namely Registrar.



When Section 76-A of the Act was not available in the Statute in the year 2005, there was no occasion for Government to consider the impact of power available under Section 76-A and take a decision. Hence merely because all the powers available to the Registrar under the Act in respect of Primary and Central Societies were conferred on Joint Registrar, we cannot presume or assume, Government consciously conferred all powers to Joint Commissioner including those powers which will be conferred on Registrar on future date.

9. In view of the discussions made earlier, the impugned order passed by the Joint Commissioner is clearly without jurisdiction. Therefore, the same is liable to be quashed.

10. The learned Special Government Pleader further submitted that under the impugned order, the petitioner has got an alternative remedy under Section 15 (b) of the Act.

11. It is settled law that whenever an order is issued without jurisdiction, this Court is entitled to exercise powers under Article 226 of



Writ Petition No.16136 of 2023

Constitution of India. Further, in the case on hand, the 1st Respondent has exercised the powers which are conferred on Registrar, under Section 76-A of the Act. Already I have come to a conclusion, the order is passed without jurisdiction. Therefore, the submission made by the learned Special Government Pleader on the ground of availability of alternative remedy is also rejected.

Accordingly, this writ petition is allowed by quashing the impugned order dated 05.05.2023 in Na.Ka.No.2181/2023/Pa.2. Consequently, connected miscellaneous petition is closed. No costs.

07.07.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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