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W.P.No.18670 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12..09..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.18670 of 2023

and

W.M.P.No.17914 of 2023

R.Arivazhagan

..... Petitioner

-Versus-

The Joint Registrar of Co-operative Societies,
Nagapattinam Zone,
Nagapattinam.

..... Respondent

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the records from the file of the respondent relating to the impugned order of suspension dated 09.06.2023 issued vide Na.Ka.No.1871/2023/A3 against the petitioner under Section 76-A of the Tamil Nadu Co-operative Societies Act, 1983 and to quash the same.

For Petitioner : Mr.K.M.Arun

*For Respondent (s) : Mr.S.Prabhakaran,
Government Advocate*



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ORDER

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This writ petition challenges the order dated 09.06.2023 passed by the respondent suspending the petitioner for a period of three months w.e.f. Afternoon of 09.06.2023.

2. The petitioner is the President of Aymoor PACCS Limited. He was elected as such on 05.08.2019. He was placed under suspension by the respondent for a period of three months from 09.06.2023 a.n. He was issued with a charge memo for the alleged misappropriation of funds by the employees of the society in issuing jewel loans and it was the petitioner he who interfered in enquiring the borrowers of agricultural general loans and therefore, on the recommendation of the Field Officer, the petitioner was placed under suspension Section 76-A of the Tamil Nadu Cooperative Societies Act, 1983 so as to conduct fair enquiry under Section 82 of the said Act.

3. Heard both sides.

4. The impugned order of suspension is challenged mainly on the ground that the respondent-Joint Registrar of the Cooperative Societies had no power or authority to place the petitioner under suspension.



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5. It is the contention of the respondent in the counter that the power of the Registrar has been delegated to the Joint Registrar. Therefore, the order of suspension which is impugned in the writ petition is valid in the eye of law.

6. A plain reading of the provision in Section 76-A of the Act makes it clear that only the Registrar of the Cooperative Societies is empowered to exercise the power to place the President or the 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.

7. When the statute prescribes certain acts to be done by a particular person, in the absence any power for delegation by the Registrar to the Joint Registrar, the contention of the respondent that the Joint Registrar has exercised the power of the Registrar cannot be countenanced.

8. A learned single judge of this court in the case of **A.A.Karupasamy v. The joint Registrar of Cooperative Societies, Tirupur Region, Tirupur and 2 others** [W.P.No.16136 of 2023 dated 07.07.2023] in an identical situation in para 6 & 7 has held as follows:-

“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



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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



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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 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



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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



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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. Considering the above legal position and the facts and circumstances of the case, this court is of the view that the impugned order of suspension is unsustainable in law as the respondent lacks jurisdiction and the same therefore requires interference at the hands of this court.

In the result, the writ petition is allowed. The impugned order of suspension passed by the respondent dated 09.06.2023 is set aside. No costs. Consequently, connected WMP is closed.

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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1.The Joint Registrar of Co-operative Societies,
Nagapattinam Zone, Nagapattinam.



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N.SATHISH KUMAR.J.,

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