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Writ Petition No.19687 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

Writ Petition No.19687 of 2023
and W.M.P.Nos.18965 and 18966 of 2023

- 1.R.Veeramani
- 2.G.N.Kamalanaban
- 3.V.R.Prakash
- 4.R.Tamilselvi
- 5.A.Abdulwahaf
- 6.M.P.Paramaguru
- 7.B.Asaimani
- 8.M.Krishnan
- 9.M.Devi
- 10.S.Arivalazhagan
- 11.A.Ilayakrishnan

...Petitioners

Vs

The Registrar of Co-operative Societies (Housing),
No.49, Ritherton Road,
Chennai – 600 007.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorari, praying to call for the records of the notice issued by the respondent under Section 36 of the Tamil Nadu Co-operative Societies Act in Na.Ka.No.193/2023/sa.pa2, dated 10.01.2023 quash the same.



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For Petitioners : Mr.M.S.Palaniswamy

For Respondent : Mr.J.Ravindran
Additional Advocate General
Assisted by Mrs.S.Anitha
Special Government Pleader

ORDER

The present writ petition has been filed challenging the show cause notice issued by the respondent under Section 36 of the Tamil Nadu Co-operative Societies Act, calling for explanation from the petitioners for taking action against them as contemplated under Section 36 of the Co-operative Societies Act.

2. The learned counsel for the petitioners submitted that the impugned notice is defective since it is not clear whether the respondent is contemplating permanent disqualification of the petitioners from holding any post in any society in future or contemplating removal of petitioners from present post.



3. Section 36 (i) and (ii) of Co-operative Societies Act, reads as follows:

36. Disqualification and removal.---

(1) Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 it appears that a person who is, or was, a member of a board has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or of gross or persistent negligence in connection with the conduct and management of, or of gross mismanagement of the affairs of the society, the Registrar may, without prejudice to any other action that may be taken against such member by order in writing, disqualify him permanently from holding in future any office in any registered society. The Registrar shall, if such person holds office of member of the board, also by the same order remove him from that office.

(2) No person shall be disqualified or removed, under sub-section (1) without being given an



opportunity of making his representations. A copy of the order disqualifying or removing him shall be communicated to him.

4. A reading of above provision would make it clear that under Section 36 (i) of Co-operative Societies Act, two actions are contemplated and they are as follows:

- (a) Permanent disqualification from holding any office in any registered society in future;
- (b) Removal from the present post.

5. It is the specific contention of the petitioners that the show cause notice does not specify whether the notice is in respect of the first action or it also includes the second action also.

6. The show cause notice issued by the respondent clearly calls for an explanation from the petitioners as to why they should not be permanently disqualified as contemplated under Section 36 of the Co-operative Societies Act. When the petitioners are directed to show cause in respect of the contemplated action for permanent disqualification it



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includes action for removal from the present post. Therefore, the submission made by the learned counsel for the petitioners are not acceptable to this Court.

7. It is also brought to the notice of this Court, earlier the writ petitioners challenged the very same show cause notice in W.P.No.5349 of 2023 on the ground that the respondent had proceeded with the enquiry without furnishing copies of the documents requested by the petitioners. The said writ petition was disposed of with a direction to the respondent to furnish copies of the documents mentioned in the disqualification notice within a period of two weeks.

8. The point raised by the petitioners with regard to the defect in the show cause notice was very well available to the petitioners when they filed the writ petition earlier. Consciously, they failed to raise that point in earlier writ petition. In these circumstances, it is not open to the writ petitioners to challenge the show cause notice in instalments by filing a petition after petition.



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9. Therefore, I am not inclined to accept the submissions made by the learned counsel for the petitioners and consequently, the writ petition is dismissed. The petitioners are given 15 days time from today to file their explanation to the impugned show cause notice.

10. With these observations, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

04.07.2023

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

The Registrar of Co-operative Societies (Housing),
No.49, Ritherton Road,
Chennai – 600 007.



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S.SOUNTHAR, J.

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