



WEB COPY



W.P.No.27972 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.27972 of 2022

and

WMP.Nos.27271 & 27273 of 2022

C.Murukesan

...Petitioner

Vs.

1.The District Registrar

District Co-operative Societies
Tiruvarur Zone, Tiruvarur.

2.The Joint Registrar

District Co-operative Societies
Tiruvarur Zone, Tiruvarur.

3.The Deputy Registrar

Co-operative Societies, Mannargudi
Tiruvarur District.

4.The Sub-Registrar/Field Officer (Enquiry Officer)

Co-operative Societies
Z.C.71 Manali Primary Agricultural Co-operative Society
Ltd., Thiruthuraipundi Taluk
Tiruvarur District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to

issue a Writ of Certiorarified Mandamus, calling for the records of the



W.P.No.27972 of 2022

impugned proceedings in Na.Ka.No.2842/2022/SP dated 16.08.2022 and quash the same and consequently direct the second respondent to pass afresh order in the reply dated 06.08.2022.

For Petitioner : Mr.G.Murugendran
for Mr.R.Selvakkodi

For Respondents : Mr.R.U.Dinesh Rajkumar for R1 to R3
Additional Government Pleader

Mr.T.Sampath for R4
Government Advocate

ORDER

This Writ Petition is filed by the petitioner, who is the President of the Co-operative Society, challenging the order passed by the second respondent suspending the petitioner from the post of President of Manali Primary Agricultural Co-operative Society Ltd., Manali, Thiruthuraipundi, Thiruvarur Distric, by exercising power under Section 76 A (1) of the Tamil Nadu Co-operative Societies Act, 1983. As per Section 76 A (1) of the Tamil Nadu Co-operative Societies Act, 1983, only the Registrar of the Co-operative Society is empowered to exercise power of suspension.

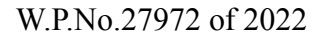


W.P.No.27972 of 2022

2. In the case on hand, the power has been exercised by the second respondent who is the Joint Registrar. Section 76 A (1) of the Tamil Nadu Co-operative Societies Act, 1983, was introduced in the Co-operative Societies Act, by way of amendment. The amending Act TN 13 of 2020 came into force only on 26.02.2020. The earlier order passed by the Government under Section 3 enabling the Joint Registrar to exercise all powers available to the Registrar in respect of primary Co-operative Society will not enure to actions taken under Section 76-A of the Tamil Nadu Co-operative Societies Act, which came into existence subsequently.

3. The issue has been covered by the order passed by this Court in W.P.No.16136 of 2023 on 07.07.2023. The relevant observation in this regard reads 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 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



"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



W.P.No.27972 of 2022

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 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



W.P.No.27972 of 2022

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.”

4. Since the second respondent has no jurisdiction to exercise the power under Section 76-A of the Tamil Nadu Co-operative Societies Act, the impugned order is the one passed without jurisdiction. Accordingly the same is set aside.

5. With the above observations, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

11.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
dna



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S.SOUNTHAR, J.
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