



W.P.Nos.25932 and 29455 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 21.07.2023

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.Nos.25932 and 29455 of 2017

and

W.M.P.Nos.27490 and 31734 of 2017 of 2023

W.P.No.25932 of 2017:-

- 1.S.Anbalagan
- 2.A.Habib Basha
- 3.R.Malaivizhi
- 4.Seval.M.Raja
- 5.R.Bhuvaneswari
- 6.D.Ramesh
- 7.S.Foirose Banu
- 8.S.Nagajothi
- 9.B.Kaliyamoorthy

... Petitioners

vs.

- 1.The Registrar of Co-operative Societies (Housing),
No.48, Ritherton Road,
Vepperi, Chennai – 600 007.



W.P.Nos.25932 and 29455 of 2017

2.R.Purushothaman

... Respondents

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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the order of permanent disqualification passed by the 1st respondent under Section 36 (1) of the Tamilnadu Co-operative Societies Act, 1983 in Na.Ka.4299/2016/Sa.Pa.2 dated 19.09.2017 quash the same.

For Petitioners : Mr.M.Aravind Subramaniam

For R1 : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader

For R2 : Mr.C.Prakasam

W.P.No.29455 of 2017:-

Thambi. Ka.Devarethinam

... Petitioner

VS.

1.The Registrar of Co-operative Societies (Housing),
Tamil Nadu Housing Board Complex,
48, Ritherton Road,
Vepperi,
Chennai – 600 007.

2.R.Purushothaman

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the Order made under Z-127 and further disqualifying him permanently from holding in



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future any office in any Registered Co-operative Society vide Proceedings in Na.Ka.4299/2016/Sa. Pa.2, dated 19.09.2017, on the file of the 1st Respondent herein and quash the same as it is illegal and arbitrary.

For Petitioner : Mr.M.Aravind Subramaniam

For R1 : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader

For R2 : Mr.C.Prakasam

COMMON ORDER

These writ petitions are filed by the petitioners challenging the order passed by the 1st respondent disqualifying the petitioners from holding any post in the Co-operative Society under Section 36(1) of the Tamil Nadu Co-operative Societies Act, 1983.

2. According to the petitioners, the impugned order disqualifying the petitioners from holding any post in any Co-operative Societies was passed without furnishing Section 81 enquiry report based on which the 1st respondent formed an opinion as if, the petitioners caused loss to the Society.



3. A perusal of the impugned order would suggest the 1st respondent formed an opinion that petitioners caused loss to the Society by committing various irregularities in allotment of plots. As seen from the impugned order, the opinion was formed by the 1st respondent based on the Section 81 enquiry report submitted by Co-operative Sub Registrar dated 07.04.2017.

4. When the enquiry report relied in the impugned order is the basis for formation of an opinion against the petitioners, it is incumbent on the 1st respondent to furnish the enquiry report and the other documents relied on in the impugned order. When the show cause notice was issued to the petitioner before passing the impugned order, calling their explanation as to why the petitioners should not be disqualified under Section 36(1) of the Tamil Nadu Co-operative Societies Act, 1983, the petitioners appeared to have submitted their explanation requesting the 1st respondent to furnish the copy of the Section 81 enquiry report and other relevant documents. However, without furnishing the documents required by the petitioner particularly the Section 81 enquiry report, the impugned order appeared to have been passed.



5. Though in the affidavit filed in support of this writ petition, it is specifically averred by the petitioner that Section 81 enquiry report has not been furnished to them. In the counter affidavit filed by the 1st respondent, it is not stated that Section 81 enquiry report was furnished to the petitioners.

6. Though the 1st respondent in their counter affidavit mentioned that the petitioners have got appeal remedy under Section 152 (2) of the Tamil Nadu Co-operative Societies Act, 1983 against the impugned order, the availability of alternative remedy will not deter this Court from exercising its power under Article 226 of the Constitution of India in cases where there is violations of principles of natural justice.

7. In the case on hand, a reading of impugned order would indicate that the 1st respondent formed opinion as if, the petitioners caused loss to the Society based on the Section 81 enquiry report. However, inspite of request by the petitioner, the said report has not been furnished to the writ petitioners. Therefore, there is a violation of principles of natural justice and consequently, this Court is inclined to entertain the writ petition and



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interfere with the impugned order passed by the 1st respondent.

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8. In view of the discussions made earlier, the impugned order passed by the 1st respondent is set aside and the matter is remitted back to the file of 1st respondent with a direction to furnish the Section 81 enquiry report and other documents as requested by the petitioners. After furnishing the documents, the 1st respondent is expected to provide opportunity of hearing to the petitioners to putforth their case and take a final decision. The entire process shall be completed within a period of twelve weeks from the date of receipt of copy of this order.

9. With the above direction, the writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

21.07.2023

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dm



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To

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The Registrar of Co-operative Societies (Housing),
No.48, Ritherton Road,
Vepperi, Chennai – 600 007.



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S.SOUNTHAR, J.

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