



W.A.No.39 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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The Board of Management,
rep. by its President G.Sambandam,
Kanchipuram Co-operative Housing Societies Ltd.,
Perunthalaivar Kamarajar Maligai,
No.12-A/51, Chappani Pillaiyar Koil Street,
Kanchipuram-631 502.

.. Appellant

Vs

- 1.The Registrar of Co-operative Housing Societies,
Tamil Nadu Housing Federation,
Vepery, Chennai-600 007.
- 2.The Joint Registrar of Co-operative Housing Societies,
No.48, Ritherdon Road,
Vepery, Chennai-7.
- 3.The Deputy Registrar of Co-operative
Housing Societies,
26-B, Alagesan Nagar,
Chengalpattu Regional,
Chengalpattu.



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4.The Secretary/Administrator,
Kanchipuram Co-operative Housing Societies Ltd.,
Perunthalaivar Kamarajar Maligai,
No.12-A/51, Chappani Pillaiyar Koil Street,
Kanchipuram-631 502.

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 15.12.2022 passed in W.P.No.33683 of 2022.

For the Appellants : Mr.C.Umashankar
for M/s.M.Selvam

JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

This writ appeal is directed against the order dated 15.12.2022 passed by the learned Single Judge in W.P.No.33683 of 2022, whereby the learned Single Judge directed the appellant to avail the alternate remedy of appeal under Section 152 of the Tamil Nadu Cooperative Societies Act, 1983 (for brevity, "*the Act of 1983*").



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2. Learned counsel appearing for the appellant submitted that the learned Single Judge has failed to see that the order passed by the first respondent is illegal and in violation of the procedure in taking up the enquiry after passing the order without evidence. He would submit that the first respondent has not properly considered the appellant's explanation dated 18.8.2022.

3. Learned counsel further submitted that the learned Single Judge has failed to see that the first respondent has no power to pass a final order under Section 88 of the Act of 1983, as the first respondent is the appellate authority under Section 152 of the Act of 1983. Therefore, the learned Single Judge ought to have entertained the writ petition.

4. We cannot appreciate the arguments made by learned counsel for the appellant. The order passed under Section 88 of the Act of 1983 also speaks that an opportunity was already given to the appellant, inasmuch as notice dated 11.5.2022 bearing reference Na.Ka.No.1600/2022 was sent and all the members have



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submitted a common reply dated 11.6.2022, followed by a further reply dated 6.6.2022 and the President has also sent one more further reply dated 15.6.2022. Therefore, after affording a reasonable opportunity, the impugned order has been passed by the first respondent.

5. Section 152 of the Act of 1983 provides:

"S.152. Appeals. - (1) Any person aggrieved by -

(a) any decision or award passed or order made or proceedings taken under sub-section (1) of section 87, sub-section (2), sub-section (3) or sub-section (4) of section 90, section 118, section 119, section 143, section 144 or section 167; or

(b) any award of an arbitrator or arbitrators under sub-section (2) or sub-section (3) of section 90;

(c) any award of an arbitrator under section 100,
May appeal shall to the Tribunal;

Provided that nothing contained in clause (a) or clause (b) of this sub-section shall apply to_

(i) any decision, order or award under sub-section (2), sub-section (3), or sub-section (4) of section 90 in respect of any matter relating to, or in connection with,



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the constitution of a board including any election thereto; or

(ii) any decision, order or award under sub-section (2), sub-section (3) or sub-section (4) of section 90 in respect of any matter relating to, or in connection, with, any matter not being a money claim;

(iii) any order of transfer, reference, withdrawal or re-transfer of a dispute under sub-section (2) or sub-section (3) of section 90.

(2) (a) Any person aggrieved by any-

(i) decision under section 7, sub-section (4) of section 23, sub-section (6) of section 34; or

(ii) refusal to register the society under section 9 or the amendment of the by-laws under section 11; or

(iii) registration of amendment of the by-laws under sub-section (2) of section 12; or

(iv) approval of or refusal to approve the expulsion of a member under sub-section (2) of section 25, the proposal to take loan under clause (c) of sub-section (1) of section 105, the decision of the board under clause (ii) of sub-section (i) of section 106, the regulations under section 108 or the removal of a member under the proviso to section 109; or

(v) order under section 14, clause (ii) of sub-section (2) of section 21, section 36, sub-section (1) of section



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88, sub-section (1) of section 89, section 137 or section 181,

May appeal if such decision, refusal, registration, approval or refusal to approve or order is that of-

- (A) the Registrar for the State, to the Government; or*
- (B) any other person, to the Registrar.*

Explanation._

For the purposes of this clause, "person aggrieved" means in relation to section 11 or section 12, the registered society.

(b) Any person, who is refused admission to a registered society under sub-section (2) of section 21 or who is aggrieved by any order of the liquidator under section 139, may appeal to the Registrar.

(3) Any appeal under sub-section (1) or sub-section (2) shall, subject to the other provisions of the Act, be preferred within sixty days from the date of communication of the decision, order, award, refusal, registration or approval complained of, but the appellate authority may admit an appeal preferred after the said period of sixty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.



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(4) In disposing of an appeal under this section, the appellate authority may, after giving the parties an opportunity of making their representations, pass such order thereon as the appellate authority may deem fit.

(5) Subject to the provisions of section 153 and 154, the decision or order of the appellate authority on appeal shall be final.

(6) The appellate authority may pass such interlocutory order pending the decision on the appeal as the appellate authority may deem fit,

(7) The appellate authority may award costs in any proceedings before the appellate authority to be paid either out of the funds of the registered society or by such party to the appeal as the appellate authority may deem fit."

6. The provision aforesaid clearly shows that any order passed under Section 88 of the Act of 1983 by the Registrar is appellable before the Government. As the appellant has got an effective, alternative and statutory remedy of appeal against the order of the first respondent, as rightly observed by the learned Single Judge,



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invocation of the extraordinary jurisdiction under Article 226 of the Constitution of India is a bar. Therefore, finding no infirmity in the order of the learned Single Judge, we dismiss the writ appeal.

7. At this stage, learned counsel for the appellant submitted that there are two orders – one passed by the Deputy Registrar dated 8.8.2022 and the other passed by the Registrar dated 22.11.2022. He would submit that as against the order passed by the Deputy Registrar, the appellant has to workout the appellate remedy before the Registrar. Similarly, as against the order passed by the Registrar, appeal will lie before the Government. If the appellant files two appeals before the two authorities, the same would cause a delay and also defeat the purpose. Therefore, he pleaded that liberty may be given to the appellant to file joint appeal before the Government. It is also the submission of learned counsel for the appellant that the Deputy Registrar has no authority to pass an order.



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8. In view of the submission made by learned counsel for the appellant, liberty is granted to the appellant to file a consolidated appeal before the Government. If any appeal is filed by the appellant, the same shall be considered by the Government/appellate authority on merits and in accordance with law, as expeditiously as possible.

There will be no order as to costs. Consequently,
C.M.P.No.404 of 2023 is closed.

(T.R., ACJ.) (D.B.C., J.)
10.01.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

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- 2.The Joint Registrar of Co-operative Housing Societies,
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