



W.P.(MD)No.3680 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.3680 of 2022

and

W.M.P.(MD)Nos.3199 and 3200 of 2022

N.T.Soorpparaju

... Petitioner

Vs.

1.The Registrar of Cooperative Housing Societies,
1st Floor, Tamil Nadu Co-operative Housing Federation,
No.48, Ritherdan Street,
Vepperi, Chennai – 7.

2.The Deputy Registrar of Co-operative Housing Societies,
No.1, Milk Society Campus,
T.T.Salai, Mani Nagaram,
Virudhunagar.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order in Na.Ka.577/2017/Sa.Pa.(1), dated 03.11.2021, on the file of the second respondent and quash the same as illegal.

For Petitioner

: Mr.V.Malaiyendran

For Respondents

: Mr.S.Kameswaran

Government Advocate



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ORDER

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Challenging the impugned order of liquidation of the VNR/HSG 12 Thiruppuvanam Urban Co-operative Society Ltd., by proceedings in Na.Ka.577/2017/Sa.Pa.(1), dated 03.11.2021, this Writ Petition came to be filed.

2.Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents and carefully perused the entire materials available on record.

3.The petitioner is a member of VNR/HSG 12 Thiruppuvanam Urban Co-operative Societies Ltd., from the year 2012, which caters to the needs of the urban rural poor people in terms of rendering financial assistance for constructing houses. There are as many as 191 members in this Society including the petitioner. In the year 2017, an attempt was made for winding up of the Society, even though it was functioning properly. From the year 2009, no loans were sanctioned by the Tamil nadu Co operative Housing Federation. While so, vide the impugned proceedings dated 03.11.2021, the said Society was wound up. Challenging the same, this Writ Petition came to be filed.



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4.The learned counsel appearing for the petitioner relying upon the Section 137 of Tamil Nadu Co operative Societies Act, 1983, r/w. 113 of Tamil Nadu Co operative Societies Rules, 1988, categorically submitted that, without following the procedure established by the aforesaid Sections, the second respondent has passed the order to wind up the said Society.

5.Per contra the learned Government Advocate on the basis of the counter affidavit filed by the second respondent submitted that if at all the petitioner is willing to challenge the order of liquidation, there is an appeal remedy to which he should have resorted to before the Appellate Tribunal instead of invoking the extra ordinary jurisdiction of the High Court. He submitted that an inspection report was received on 24.08.2017 under Section 82 of the Tamil Nadu Co operative Society Act, 1983, regarding the financial condition of the aforesaid Society, which revealed that the financial position of the Society was in a bad shape. The chances of revival of the financial status of the Society was helpless. The Inspecting Officer further submitted an alarming report stating that the Society had an arrears of a sum of Rs.102.39 Lakhs to the Tamil Nadu Co operative Housing Federation, whereas the outstanding balance of the members at the Society was only Rs.67.71 Lakhs. As such, there was a financial imbalance of Rs.34.67 Lakhs, which will reveal the decline in



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the financial status of the said Society. It was also reported that a sum of Rs.7.43 Lakhs has to be paid as salary to the employees of the Society from May 2016 to July 2017. It is only under such circumstances, under Section 82, the Inspection Officer had recommended for the liquidation of the Society under Section 137 of the Tamil Nadu Co operative Societies Act, 1983 and pressed for dismissal of the Writ Petition.

6.Taking cue from his own submission, I am of the considered view that the respondents have not followed the procedure mandated under Section 137 of the Tamil nadu Co operative Societies Act. For Clarity, Section 137 of the Tamil Nadu Co operative Societies Act, 1983 is extracted hereunder:-

“137. Winding-up of registered societies.__ (1) If the Registrar in the course of an audit under section 80 or after an inquiry has been held under section 81 or an inspection or investigation has been made under section 82 or an inspection of books has been made under section 83 or on receipt of an application made by not less than three-fourth of the members of a registered society or on receipt of a resolution of general body of a registered society, is of opinion that the society ought to be wound up, he may issue a notice to the society calling upon it to make its representations to the Registrar within one month from the date of receipt of such notice and the society shall follow such procedure as may be prescribed in this regard. A copy of the notice issued to the society shall be communicated to every member of the society in such manner



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as may be prescribed. The Registrar may after considering the representations, if any, received from the society or from any member and on being satisfied that the society ought to be wound up, issue an order to that effect and shall communicate such order to the society by registered post.

(2) The Registrar may of his own motion and after giving a registered society an opportunity of making its representation by order in writing direct the winding-up of a registered society__

(a) Where it is a condition of the registration of the society that the society shall consist of at least twenty-five members and the number of members has been reduced to less than twenty-five; or

(b) Where the society has not commenced working within the prescribed period or has ceased to work.

Explanation.__ For the purposes of this sub-section the expression "ceased to work" means the cessation of the primary activities by the society for at least two consecutive years.

(3) A copy of an order made under sub-section (1) or under sub-section (2) shall be communicated by registered post to the society and to the financing bank, if any, of which the society is a member."

7. That apart, the procedure of conduct of special meeting with 7 clear days notice before liquidation as mandated under Rule 113 of the Tamil Nadu Tamil Nadu Co operative Societies Rules, 1983 is not followed and the said Rule is extracted as follows:-



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"113. Procedure to be followed before ordering the winding up of a society under section 137. (1) Within ten days of receipt of the notice issued by the Registrar under sub-section (1) of section 137, the society concerned shall call a special meeting of the general body for consideration of the notice. Seven clear days' notice shall be given for such special meeting which shall be held within twenty five days from the date of receipt of the notice under sub-section (1) of section 137. A copy of the notice issued by the Registrar under sub-section (1) of section 137 shall be communicated to the members along with the notice issued for the special meeting, indicating therein that the members may also send their representations, if any, direct to the Registrar. The society shall send a copy of the resolution of the special meeting together with the representations, if any, on the matter to the Registrar within one month from the date of receipt of the notice from the Registrar.

(2) Where the society fails or refuses to call a special meeting or communicate a copy of the notice under sub-section (1) of section 137 issued by the Registrar to its members, the Registrar himself communicate or authorise the financing bank or the federal society or any person subordinate to him or an employee of the society concerned to communicate a copy of the said notice to the members of the society calling upon such members to send their representations, if any, direct to the Registrar with in a period of fifteen days from the date of receipt or publication of communication.

(3) The communication of a copy of the notice issued by the Registrar referred to in sub-rule (1) or (2) shall be,-



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(a) where the address of members are available, by, -

(i) giving or tendering it to every such member or in his absence to some adult member of his family under acknowledgement ; or

(ii) sending it by post under certificate of posting to every such member, or

(b) Where the address of any member of the society is not available by affixing it on the notice board or any other conspicuous place in the premises of the society; or

(c) Where the address of the society is not available, by publishing it in one or more of the local newspapers having circulation in the area of operations of the society and approved by the Government for issue of Government advertisement and by displaying it in one or more prominent public places within the area of operations of the society.

(4) Where the Registrar or the person authorised by the Registrar under sub- rule (2) has sent communication under sub-rule (2), the Registrar, may by order determine the cost to be paid to the Government or to the society or person authorised by the Registrar and direct its recovery from the society concerned."

8.Though the learned Government Advocate appearing for the respondents submitted that the notice has been issued to the President and the Secretary of the Society, it is found that the procedure for the conduct of special general body was not followed. For which, explanation was also submitted by the President and Secretary on 25.05.2021.



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However, without conducting special general body, the second respondent has proceeded to pass the impugned order without application of mind.

9.This Court has dealt with a similar case in W.P.(MD)No.8941 of 2021 and this Court by order dated 30.04.2021, has quashed the liquidation order in the aforesaid case and the relevant portion of the same is extracted as follows:-

“8. A careful reading of Section 137 of the Act along with Section 113 of the Tamil Nadu Co-operative Societies Rules, 1988 shows that it mandates convening a special meeting after giving seven clear days' notice to the members along with a copy of the notice under Sub Section 1 of Section 137. In the event of failure of the Society to convene the special meeting, the Registrar may himself communicate or authorize the communication of a copy of the said notice to the members of the Society calling upon such members to submit their representations, if any. This mandatory requirement was not followed by the second respondent and straight away, the impugned order came to be passed by the second respondent.”

10.Fully fortified by the aforesaid order, this Court is of the considered view that, in the absence of seven days clear notice, the impugned proceedings should necessary be interfered and the impugned order in Na.Ka.577/2017/Sa.Pa.(1), dated 03.11.2021, is quashed. The matter is remanded back to the second respondent and the second



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respondent is directed to continue with the process, after complying with all the mandatory requirements provided under the Tamil Nadu Co operative Societies Act and Rules thereunder and to proceed to pass orders strictly in accordance with law.

11.Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

28.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

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L.VICTORIA GOWRI, J.

Mrn

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