



W.P.(MD).No.25054 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD).No.25054 of 2016

and

W.M.P.(MD)No.18132 of 2016

M.Sakthivel

.... Petitioner

Vs

1.The Registrar of Co-operative Societies (Housing),
No.493, Anna Salai,
Nandhanam, Chennai – 600 035.

2.The Deputy Registrar (Housing),
Virudhunagar Region,
3 D.D.Road, Maninagaram,
Virudhunagar.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent relating to Na.Ka. 4603/2013/Sa Pa2(1), quash the impugned order dated 03.10.2016, direct the respondents to drop further proceedings under Section 36 of the Tamil Nadu Co-operative Societies Act, in furtherance to the report of Mr.Thiyagaraj dated 04.07.2014, not to disturb the petitioner from holding the post of the President of VNR.HSG.18. Aruppukkottai Co-operative Housing Society Limited, Aruppukkottai.



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For Petitioner : Mr.P.Ramachandran

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

Heard Mr.P.Ramachandran, learned counsel for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader for the respondents.

2. This Writ Petition has been filed challenging the impugned order dated 03.10.2016, direct the respondents to drop further proceedings under Section 36 of the Tamil Nadu Co-operative Societies Act, in furtherance to the report of Mr.Thiyagaraj dated 04.07.2014, not to disturb the petitioner from holding the post of the President of VNR.HSG.18. Aruppukkottai Co-operative Housing Society Limited, Aruppukkottai.

3. As per order impugned, the petitioner herein had been disqualified from contesting in any further elections to any of the Co-operative Societies.



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4. The learned counsel for the petitioner would contend that the petitioner had never been proceeded against under any of the provisions of the Co-operative Societies Act. According to the Tamil Nadu Co-operative Societies Act, 1983, Section 36 deals with disqualification and removal of members from societies. In this case, the petitioner was disqualified from contesting future elections due to allegations of not taking action against erring servants of the society during his presidency. The first respondent invoked Section 36 of the Act, citing the petitioner's lack of diligence in performing his duties. He would contend that the grounds available under Section 36 of the Act do not contemplate the circumstances cited for initiating proceedings against him. Therefore, he prayed this Court to set aside the order impugned in this Writ Petition. He would further submit that the allegation against the petitioner was that he had failed to take action against Rajapirangulin for his delinquency. However, an Enquiry Officer was appointed to investigate the delinquency, and the officer submitted reports dated 13.02.2014 and 05.03.2014, exonerating Rajapirangulin from the charges. Despite this,



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the first respondent overlooked these findings and passed the impugned order on 03.10.2016.

5. On the contrary, the learned Additional Government Pleader appearing for the respondents would submit that an enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act revealed that the petitioner had failed to take action against the delinquent officer, thereby committing gross and willful negligence in managing the affairs of the society. For the said irregularities committed by him, the first respondent invoked powers under Section 36 of the Tamil Nadu Co-operative Societies Act and initiated action against the petitioner. Since the powers under Section 36 of the Act are vested with the first respondent, it cannot be said that the proceedings were initiated without any material facts. Therefore, he would submit that the present writ petition, as framed by the petitioner, is not maintainable and devoid of merits, and is thus liable to be dismissed.

6. I have considered the rival submissions made on either side and perused the materials available on record.



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7. Section 36 of the Tamil Nadu Co-operative Societies Act and its

provisions are extracted below for better appreciation:

“36. Disqualification and removal.

(1) Wherein 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 [x x x] [The expression 'or of any corrupt practice as defined in section 162' was omitted by section 4 of the Tamil Nadu Co-operative Societies (Second Amendment) Act, 2004 (Tamil Nadu Act 18 of 2004).] 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.”

8. A reading of the said provision implies that during the course of an enquiry under Sections 80 or 81, or an inspection under Section 82, or an inspection of books under Section 83, if it appears that a person who is a member of the Board has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or has been grossly or persistently negligent in connection with the conduct and management of the society's affairs or has been guilty of gross mismanagement of the society's affairs, then the Registrar, without prejudice to any other action, can issue a notice to such person, seeking to know why they should not be disqualified from holding any office in a registered society in the future. In the present case, no allegations of misappropriation, mismanagement, or fraudulent acts have been made against the petitioner. The sole allegation is that the petitioner failed to initiate disciplinary proceedings against one



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Rajapirangulin for the delinquency, which was an isolated incident.

The Act prescribes that there must be gross or persistent negligence in connection with the conduct and management of the society to invoke Section 36 of the Act. Except for the aforementioned isolated incident, no other incidents have been mentioned in the order. Furthermore, regarding the incident in question, it is evident that as early as 2014, the petitioner, in his capacity as President of the Society, had appointed an Enquiry Officer to investigate the matter. The Enquiry Officer subsequently filed a report exonerating Rajapirangulin from the charges. The respondents have neither disputed this fact in their counter affidavit nor provided any documents to establish that these proceedings are independent of the present charges against the delinquent.

9. It has also been brought on record that an enquiry under Section 81(5) of the Act was initiated to investigate the errors committed by Rajapirangulin in disposing of 4 vacant plots. The Enquiry Officer, appointed to determine whether any action should be taken against the Society's officers, submitted an enquiry report dated 04.06.2015. In this report, the Enquiry Officer categorically held, relying on a judgment of



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the Apex Court, that there was no violation, as Rajapirangulin's actions did not contravene any statutory order. The report further stated that there was no need to initiate criminal action or surcharge proceedings.

10. In such an event, I do not find any substance in the order of the first respondent to invoke the provisions of Section 36 of the Tamil Nadu Co-operative Societies Act against the petitioner. The said exercise appears to be an arbitrary and colourable exercise of power, which warrants interference from this Court.

11. In fine, the Writ Petition is allowed and the order impugned dated 03.10.2016 passed by the first respondent is set aside. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15.11.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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To:

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K.KUMARESH BABU, J.

Nsr

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