(2014) 02 KL CK 0084

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 11195 of 2007

Abdul Khader — APPELLANT

Vs

District Collector — RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Co-operative Societies Act, 1969 — Section 32, 33, 34, 71

Citation : (2014) 4 ILR 239 : (2014) 3 KHC 863 : (2014) 4 KLJ 124 : (2014) 3 KLT 830

Hon'ble Judges : Babu Mathew P. Joseph, J

Bench : Single Bench

Advocate : T.M. Chandran, S. Sujith, V.A. Sasidharan and Joseph Albin Nedunthally, Advocate for the Appellant; K. Sajan Varghese, M.P. Lyu, A.R. Gangadas and Government Pleader, Advocate for the Respondent

Judgement

Babu Mathew P. Joseph, J.—This Writ Petition has been filed for quashing Ext. P16 order passed by the first respondent, District Collector, Palakkad, by which the petitioners were directed to produce certain documents of the second respondent Society mentioned in that order. Heard the learned counsel appearing for the petitioners, learned Government Pleader appearing for the respondents 1,3 and 4, learned counsel appearing for the second respondent and the learned counsel appearing for the respondents 5 to 10.

2. Learned counsel for the petitioners submits that the first petitioner is the former Secretary of the second respondent Society and the second petitioner is the former President of the Society. The respondents 5 to 10 are the former members of the Board of Directors of the Society. After the expiry of the term of office of the Board of Directors, the third respondent appointed an Administrator for the Society. Alleging that the first petitioner did not hand over the registers and properties of the Society even after issuing notice to him by the Administrator, the third respondent, Deputy Director, Department of Dairy Development, Palakkad, applied to the first respondent for securing the records

and properties of the Society under S. 34 of the Kerala Co-operative Societies Act (for short, the Act). Acting on the application submitted by the third respondent, the first respondent issued Ext. P1 order dated 04.09.2003 directing the fourth respondent, Sub Inspector of Police, Alathur, to enter and search the place where the records and properties of the Society were kept or believed to be kept and seize them and to hand over the records and properties so seized to the Administrator of the Society. Accordingly, the fourth respondent and his party reached the office of the Society at 11 a.m. on 23.9.2003 and broke open the lock with the help of others and entered into that office and seized 310 items of records and properties described on pages 1 to 24 of the inventory prepared and handed over them to the Administrator. The fourth respondent sent a copy of the list of the records and properties so seized to the first respondent along with his Ext. P2 letter. Thereafter, Ext. P3 letter dated 28.11.2003 had been issued by the Secretary-in-Charge of the Society to the fourth respondent stating that some other records and properties were not available in the office of the Society and requesting to seize them from the first petitioner and the former members of the Board of Directors. Subsequently, Ext. P4 letter dated 24.12.2003 also had been issued to the fourth respondent for that purpose. In Ext. P4, some more documents were also mentioned as missing from the office of the Society. Subsequently, an elected committee had assumed the administration of the Society. Thereafter, as per Ext. P6 dated 25.02.2005, the President of the Society applied to the first respondent under S. 34 of the Act for issuing direction to the fourth respondent to seize certain documents named in that application from the petitioners. Some of the documents stated to have been missing from the office of the Society in Exts. P3 and P4 were not mentioned in Ext. P6 as missing. As per Ext. P 12 judgment of this Court in W.P.(C) No. 6432 of 2006, the first respondent was directed to consider Ext. P6 etc. and pass appropriate orders. Thereafter, the first respondent passed Ext. P16 order dated 01.03.2007 holding that the petitioners were responsible for the safe custody of the missing records and directing them to produce those records. Also stated in Ext. P16 that if the petitioners fail to produce the documents, action would be taken against them under the provisions of the Co-operative Laws for destroying the records. Exts. P1 and PI 6 are illegal and unsustainable. In these circumstances, the petitioners were compelled to file this Writ Petition under Art. 226 of the Constitution of India, the learned counsel further submits.

3. It is the specific case of the petitioners that none of the documents directed to be produced are with them. They had explained this fact in their Exts. P8 and P9 replies to the notice issued by the Secretary of the Society. Ext. P2 shows that an inventory having pages 1 to 24 naming items 1 to 310 seized from the office of the Society had been prepared by the fourth respondent. These records and properties noted as items 1 to 310 in the inventory had been seized after searching the office of the Society. Thereafter, by Ext. P3 letter, the Secretary-in-Charge of the Society requested the fourth respondent to take steps forgetting certain documents named in that letter. Subsequently, Ext. P4 letter was also

given to the fourth respondent for the purpose in which some more documents were also mentioned. When Ext. P6 application was given to the first respondent, some of the documents that found a place in Exts. P3 and P4 did not find a place in it. How could the Society secure those documents which were noted in Exts. P3 and P4 and not noted in Ext. P6? No answer is forthcoming. This Court does not propose to elaborate on this matter. This is a matter to be considered by a competent authority in a competent proceeding.

4. Learned counsel for the petitioner submits that Ext. P1 order had been passed by the first respondent invoking S. 34 of the Act. The first respondent was moved by the third respondent for that purpose. In the case of a refusal by the outgoing president or secretary of a society to hand over charge of the records and properties to his successor, the third respondent is not competent to move the Magistrate under S. 34 of the Act The new committee or administrator or administrators or the liquidator or the president or secretary of the society alone can apply to the Magistrate for securing the records and properties. Here, at the time of applying to the Magistrate by the third respondent, the competent person to apply was the Administrator appointed for the Society. But, the Administrator did not apply to the Magistrate. On that ground alone, Ext. P1 was illegal. For applying to the Magistrate under S. 34, the previous sanction of the Registrar is a precondition as provided under that Section. No such sanction had been obtained from the Registrar before applying to the Magistrate. Therefore, on this ground also, Ext. P1 was illegal. In view of the facts that the first respondent was moved by the President of the Society by submitting Ext. P6 application without obtaining sanction of the Registrar and the first respondent had no jurisdiction to pass an order in the nature of Ext. P16 under S. 34, that order was also illegal and hence, liable to be quashed by this Court, contends the learned counsel.

5. Sub-sections (1) and (2) of S. 34 of the Act are the relevant provisions governing the matter. They read as follows:

34. Securing possession of Records, etc.- (1) If the committee of a society is reconstituted at a general meeting of the society or the committee of a society is removed by the Registrar under Section 32 or a new committee or Administrator or Administrators is or are appointed under Section 33 or if the society is ordered to be wound up under Section 71 and the outgoing members of the committee refuse to hand over charge of the records and property of the society to the new committee or Administrator or Administrators or the liquidator, as the case may be, or if an outgoing president or secretary who is the custodian of the records and property of the society refuses to hand over charge of the records and properties of the society to his successor, the new committee or administrator or administrators or the liquidator or the President or Secretary may with the previous sanction of the Registrar apply to the Magistrate within whose jurisdiction the society functions, for securing the records and properties of the society.

(2) On receipt of an application under sub-section (I), the Magistrate may, by a

warrant, authorise any Police Officer, not below the rank of Sub Inspector, to enter and search any place where the records and the property of the society are kept or are believed to be kept and to seize such records and property, and the records and property so seized shall be handed over to the new committee or Administrator or Administrators or the liquidator or the president or secretary, as the case may be.

6. Sub-section (1) of S. 34 shows that the new committee or administrator or administrators or the liquidator or the president or secretary may apply to the Magistrate under S. 34 for securing the records and properties of the Society. It further shows that the committee or official or officials so authorised can apply to the Magistrate only with the previous sanction of the Registrar. Therefore, a Magistrate gets jurisdiction to entertain an application under S. 34 only when it is submitted with the previous sanction of the Registrar by a competent committee or official or officials specified under this Section. The third respondent was not entitled to apply to the Magistrate Under this Section. In this case, at the time when the first respondent was moved by the third respondent, the Administrator of the Society alone was competent to apply to the Magistrate. But, the Administrator has not applied to the Magistrate. Since the third respondent was incompetent, the first respondent should not have entertained his application and passed Ext P1 order.

7. Section 34 of the Act prescribes sanction of the Registrar as a prerequisite for applying to the Magistrate. It is the specific case pleaded by the petitioners that no sanction of the Registrar was obtained before moving the Magistrate under S. 34. The third respondent has filed a counter affidavit in this case. (It is stated in this counter affidavit that the third respondent had been authorised to swear to the same on behalf of the first respondent). The contention raised by the petitioners regarding the absence of previous sanction of the Registrar stands not denied in the counter affidavit. It is not disputed, during the hearing of the case, that the third respondent or the President of the Society has not obtained sanction of the Registrar before applying to the Magistrate. Therefore, this Court finds that their applications were submitted without obtaining sanction from the Registrar.

8. In a situation contemplated under S. 34, the Registrar of the Co-operative Societies, being the Head of the Department, has to play a pivotal role before the matter is being agitated before the Magistrate under S. 34. Misuse of this provision can be averted by the sanction of the Registrar prescribed as a prerequisite for applying to the Magistrate. This enables the Registrar to consider the relevant facts and circumstances of the case before granting sanction. In appropriate cases he can grant the sanction and in other cases he can reject it. In that way the frivolous, ill-advised or baseless applications under S. 34 of the Act can practically be checked and prevented. The honest and responsible persons closely associated with the affairs of the cooperatives societies, the democratic institutions of the common people, can be protected, by the previous

sanction prescribed, from the possible ordeal or harassment at the hands of unscrupulous persons misusing this provision. Therefore, for an effective and proper implementation of the provisions under sub-sections (1) and (2) of S. 34 of the Act, certainly, the previous sanction of the Registrar prescribed will be useful and necessary. The previous sanction so prescribed is not at all directory, but mandatory in nature. Absence of such a sanction will vitiate the proceedings before the Magistrate. Therefore, both the ways, the application submitted by the third respondent could not have been entertained by the first respondent as it was hit by sub-section 1 of S. 34 of the Act. Even then the question of quashing Ext. PI order does not arise in this case. It was issued by the first respondent as early as on 04.09.2003. The fourth respondent has executed that order by entering and searching the office of the Society and seizing the records and properties and handing over them to the Administrator of the Society. In view of these facts, by quashing Ext. P 1, no purpose will be served even though that order was illegal. Moreover, the petitioners do not have a prayer for quashing Ext. P1.

9. The first respondent, after entertaining and considering Ext. P6 application submitted by the President of the Society, issued Ext. P16 order. Holding that the petitioners were responsible for the safe custody of the missing records, the first respondent directed them to produce the documents. It is further ordered in Ext. P 16 that if the petitioners fail to produce the documents, action would be taken against them under the provisions of the Co-operative Laws for destroying the records. By issuing such directions in Ext. P16, the first respondent exceeded the limits of his jurisdiction under S. 34 of the Act. He is not empowered by that Section to issue such directions. After considering an application submitted under S. 34, the Magistrate may, by issuing a warrant, authorise a competent police officer to enter and search any place where the records and property of the society are kept or are believed to be kept and to seize them and the records and properties so seized should be handed over to the new committee or administrator or administrators or the liquidator or the president or secretary as the case may be. The Magistrate is empowered to pass only such an order after considering an application submitted under S. 34. Here, the first respondent issued directions, as already noted, for which no power is conferred on the first respondent as the Magistrate exercising jurisdiction under S. 34. The first respondent, if he was satisfied with the application, could have issued a warrant authorising a competent police officer to enter and search any place where the records and properties of the Society were kept or were believed to be kept and to seize them. Instead, he has exceeded his limits of powers and issued the directions contained in Ext. P 16. Therefore, Ext. P 16 is illegal and unsustainable and hence, liable to be quashed.

10. I have already found that, before applying to the Magistrate, sanction of the Registrar is necessary. Here, Ext. P6 application submitted by the president of the Society before the first respondent was without obtaining sanction of the Registrar. The first respondent could not have entertained and considered that

application. Such an application would not give jurisdiction to the first respondent to exercise his power under S. 34 of the Act. Therefore, Ext. P16 is liable to be quashed for this reason as well. In the result, Ext. P16 is quashed. The competent committee or official or officials of the second respondent Society is/are entitled to move the Magistrate as provided under S. 34 of the Act with the previous sanction of the Registrar for the purpose of getting the records and properties of the Society allegedly missing. If the Registrar is moved by the competent committee or official or officials by an application for sanction as contemplated under S. 34, which shall be considered and disposed of within two months from the date of receipt of such application.

This Writ Petition is allowed as above.

