
(2007) 05 KL CK 0012

In the High Court Of Kerala

Case No : Writ Petition (C) No. 4340 of 2006 (N)

Subhadramma

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 23-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 05 KL CK 0012

Hon'ble Judges : K. Padmanabhan Nair, J

Bench : Single Bench

Advocate : Varghese C. Kuriakose, for the Appellant; P. Ravindran, for the Respondent

Final Decision : Dismissed

Judgement

K. Padmanabhan Nair, J.—A bidder, who took part in a public auction for sale of immovable property of a Co-operative Society which is stated to be under liquidation is challenging Ext.P9 letter written by the Principal Secretary to Government to the Director of Industries and Commerce to take steps to stay the liquidation proceedings initiated against the Society and also Ext.P10 order dated 1-2-2006 of the Government appointing an Administrative Committee to the said society u/s 101 of the Co-operative Societies Act, 1969 (Act 21 of 1969) for short the Act. According to the petitioner, she is an unfortunate lady who happened to come across a notification dated 14.11.2005 published by the 4th respondent-liquidator in this writ petition by which he ordered public auction of 5.80 Ares(14.25 cents) of property belonging to Progressive Industrial Co-operative Society Ltd. No. S.Ind Q.329, Kollam situated near the National Highway 47 Ramankulangara- Sakthikulangara Village.

2. The following are the material averments in the writ petition. M/s. Progressive Industrial Co-operative Society Ltd. was registered on 18-08-1976. It started functioning on 24-10-1976. The Society was formed by a group of unemployed youths in the locality with a share capital of Rs. 5,31,800/- The State gave an

amount of Rs. 4,28,000/- as share participation. The Society started a foot wear manufacturing unit. Subsequently that was abandoned and the Society started manufacturing metres for the Electricity Board. The Society was managed by an administrative committee consisting of 7 members of which two were nominees of Industries Department. The Society became defunct. The General Body meeting of the Society authorised the administrative committee to initiate steps to dissolve the society and to pay off the debts due from the Society by selling the assets of the society and then to distribute balance if any on a pro rata basis to the members. The assets of the society include 16.894 cents (14.25 cents) comprised in Sy. No. 474/1 and 474/2 of Sakthikulangara Village with the building situated thereon as well as the movables, machinery, furniture etc and also standing timber. Ext.P2 memorandum was submitted by the President and members of the administrative committee members to the Hon"ble Minister for Industries as authorised by the general body on 16-4-1997. The Government examined Ext.P2 and ordered winding up. Winding up orders were passed by the General Manager, District Industries Centre, Kollam on 19-02-1999. Liquidator was appointed. Liquidation proceedings started and the movable properties were sold on 7-11-2002 and 15-2-2003. 4th respondent-Liquidator sought permission to sell the immovable property and by letter dated 6-9-2005, the General manager accorded sanction to sell the properties and based on that sale notification by public auction was published in the newspaper. Petitioner submitted her quotation and deposited an amount of Rs. 25,000/- as earnest money deposit. Quotations were opened. Petitioner was the highest offerer. She was directed to remit an amount of Rs. 3,00,000/- being the 15% of the total value quoted. Petitioner remitted Rs. 3,00,000/- by cheque No. 003551 dated 07-12-2005 drawn on Indus Ind Bank, Kollam branch. The balance amount was directed to be paid within 15 days. In between on 5-12-2005, the second respondent issued a communication to the third respondent to stay the auction and to take steps to appoint an administrative committee u/s 101 of the Kerala Co-operative Societies Act for revival of the Society. Yet another notice was issued to the second respondent on 01-02- 2006 directing constitution of an administrative committee which is marked as Ext.P10. In the meanwhile, respondents 5 and 6 filed W.P.(C) No. 35160 of 2005 and obtained an order of interim stay of auction. Petitioner got herself impleaded in that writ petition. According to the petitioner, Exts.P9 and P10 orders are passed by second respondent without jurisdiction. Winding up proceedings started in the year 1999. It is an appealable order and no appeal was preferred by anybody. If any revitalisation programmes are to be initiated, it ought to have been initiated within one year from the date of Ext.P3. But no such programme was initiated within the time limit. The movable assets as well as standing timber were already sold by the 4th respondent. So the orders passed by the respondents invoking Section 101 of the Act to get over the period of limitation and the failure to file the appeal are bad. Petitioner is having a direct subsisting and substantial right in the assets notified through Ext.P1. Hence the petition to quash Exts.P9 and P10 orders.

3. 3rd respondent filed a counter affidavit admitting the formation of the Society and also its activities. It was averred that the Society reached a standstill position during 1997 (wrongly typed as 1977). The General Manager, District Industries Centre, Kollam, posted an officer to explore the possibility of the revival of the Society. As there was no possibility for reviving the society, the General Manager, District Industries Centre, Kollam initiated liquidation proceedings on 19-02-1999. The liquidator sold the movable assets by public auction after giving sufficient publicity. On 16-11-2005 the Liquidator published the auction notice in two vernacular dailies notifying the auction sale of immovable properties having an extent of 5.80 ares. The liquidator made all arrangements to conduct the auction. In the meanwhile, Government directed to issue orders to stay the liquidation proceedings and also to appoint an administrative committee consisting of three members. Government direction was communicated to the General Manager, District Industries Centre, Kollam on 17- 11-2005 for taking urgent steps. General Manager replied that any proposal for revival of the Society ought to have been initiated within one year from the date of appointing the liquidator in view of the provisions contained in Section 71(3) of the Act. It was also contended that u/s 83 of the Act , the order appointing a liquidator is an appealable order but no appeal was filed. He took up the matter with the Government. Government by letter dated 5-12-2005 again directed to stay liquidation proceedings and also to appoint an administrative committee. The General Manager, District Industries Centre reported that there is no provision for staying the liquidation proceedings by the Registrar and it can be stayed by the Registrar only after getting Special/General Government order. The General Manager continued the liquidation proceedings and the liquidator conducted the public auction. The public auction was conducted on 7-12-2005 at 3 p.m. 8 bidders participated. Petitioner was the highest bidder. The auction was confirmed in her favour. She remitted an amount of Rs. 3,25,000/- towards 15% of the value of the bid amount. In the meanwhile, the additional 8th respondent filed W.P.(C) No. 35160 of 2005 before this Court and this Court stayed the liquidation proceedings. Subsequently, Government by order G.O.(Rt) No. 129/06/ID dated 1-2-2006 constituted an administrative committee consisting of three members. The same was communicated to the General Manager District Industries Centre, Kollam-I on 14-02-2006 for taking urgent steps to hand over the charge of the Society to the administrative committee. The Liquidator handed over charge of the society to the newly appointed administrative committee on 20-2-2006 and at present, the society is administered by the newly appointed administrative committee. It was contended that the Government has power to exempt any society in public interest from any of the provisions of the Act.

4. The 4th respondent-Liquidator filed a counter affidavit raising the following averments. Initially the Society was functioning successfully. Subsequently the Society was not able to function. So the managing committee requested the District Industries Centre , Kollam on 16-4-1997 seeking permission to sell the assets of the society to clear off the liability of the society including Government

dues. That was communicated to the Registrar (General Manager) District Industries Centre, Kollam on 1-10-1997. The General Manager informed the managing committee that there was no provision to permit them to sell the property and it would be against Sections 55 and 71 of the Act. But at the same time, General Manager, District Industries Centre, Kollam posted an officer to examine the necessity, if any, to liquidate the society. The officer recommended the possibility of revival. The General Manager convened a meeting to explore the possibility of revival. But there was no response from the part of the members.

Hence a liquidator was appointed on 19-02-1999. The liquidator took charge and issued notice to all members and published notification in the Gazette. In response to the notice 50 members filed their claims. There were 63 members at that time. There was no proposal for revival by any of the members. Movable assets like the machinery, furniture and other fittings were sold in auction with due publicity. No objection for the sale or for the proposal for revival was made by anybody at that time also. 4th respondent published notice in two dailies for sale of the immovable property. He made all arrangements to the auction. At 1.00 p.m. on 7-12-2005, he received a Government letter directing the Director of Industries and Commerce to appoint an administrative committee for the revival of the society. As the 4th respondent had no power to exempt the society, he requested the General Manager, District Industries Centre, Kollam to communicate specific orders before 3 p.m. on that day but no orders were received till 3.00 p.m. There were 8 bidders. 4th respondent conducted the auction and the petitioner was the highest bidder. She deposited Rs. 3,25,000/- being the 15% of the value of the bid amount on that day itself. The amount was deposited in the S.B. Account of the Society and receipt issued. The auction was temporarily confirmed. Auction sale was stayed by this Court in W.P.(C) No. 35160 of 2005 filed by Sri P.P. Vijayakumar and Sri Babukuttan Pillai who are the members of the Society. Further the Government appointed an administrative committee and the General Manager, District Industries Centre, Kollam directed the 4th respondent to hand over the charge of the society to the administrative committee and accordingly, he handed over charge of the society to the administrative committee. 4th respondent had reiterated the contentions raised by the 3rd respondent that a proposal was made by the Managing Committee to the General Manager, District Industries Centre, Kollam seeking permission to sell the assets. The same was disallowed and an officer was deputed to explore the possibility of revitalisation, revival etc.

5. 5th respondent has filed a counter affidavit raising the following contentions. Petitioner has no locus standi to invoke the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. She is neither a member nor a creditor of the Society and in no manner she can claim to be interested in the appointment of an administrative committee to revitalise the society. Even assuming that petitioner has any enforceable right against the society, she will have to initiate action u/s 69 of the Act. There is an effective alternate remedy

available to her under the statute. 5th respondent is a member of the Co-operative Society. Society was functioning efficiently till late 1990. Subsequently the financial position of the society became worse and a liquidator was appointed in the year 1999. It was specifically contended that a liquidator appointed under the provisions of the Act had to complete the liquidation proceedings within a period of three years from the date of appointment and any action taken by the liquidator beyond the period of three years is without any authority of law. There was a communication to the liquidator to stay the auction on 5-12-2005. But he refused to comply with the order and went ahead with the auction. Hence respondents 5 and 6 filed Writ Petition No. 35160 of 2003 challenging the auction which was subsequently closed as infructuous since the Government had passed Ext.P10 order. It was contended that since the sale was conducted ignoring the stay orders passed by the Government and this Court, it cannot be given any legal effect. It is contended that the Government has every authority to revitalise the functions of the Society u/s 101 of the Act. Taking into consideration the request of the members of the Society, Government invoked the powers u/s 101 of the Act. The monetary interest of the petitioner cannot override the interest of the public at large. Hence he prayed for dismissal of the writ petition.

6. Learned Counsel appearing for the petitioner has argued that Exts.P9 and P10 orders were issued without any authority and in flagrant violation of all legal principles. It is argued that when a liquidator is appointed u/s 71 of the Act, the remedy provided in the Act is to take steps under Sub-section (3) of Section 71 for revitalisation of the society by the Registrar. Section 71(3) provides that if a proposal for revitalisation of a society is received by the Registrar within a period of one year from the date of appointing the liquidator, he may cancel the order appointing the liquidator and allow the society to continue to exist. It is argued that the order passed u/s 71 is an appealable order u/s 83(f) of the Act. Any person aggrieved by the order appointing the liquidator can file an appeal within sixty days to the Government. It is also argued that u/s 84 of the Act, the Tribunal may call for and examine the record of any proceedings. It is argued that no appeal or revision was filed or proposal for revitalisation was passed within the time limit prescribed.

7. Learned Counsel appearing for respondents 5 and 6 has strenuously argued before me that the petitioner has no locus standi to file such a petition and she is having an effective alternative remedy.

8. Admittedly petitioner is not a member, a past member or creditor to M/s. Progressive Industrial Co-operative Society. How far such a person can maintain an action to quash an order passed by the Government appointing an administrative committee invoking the powers conferred on it u/s 101 of the Act is the point to be considered in this case.

9. The Society was registered on 18-8-1976. In the writ petition itself it is admitted that the society started functioning on 24-10-1976. It was started by a group of unemployed youths in the locality with a share capital of Rs. 5,31,800/-.

Of that amount an amount of Rs. 4,28,000/- was invested by the Government by way of share participation. The balance amount alone could have been issued as shares. The Society started a foot wear manufacturing unit. Subsequently that unit was abandoned and the Society started a metre repairing unit. Materials on record show that subsequently that was also stopped. The total number of members of the society are not mentioned either in the writ petition or in the counter affidavit filed by respondents 3 or 4. In Ext.P2 it was stated that as on 16-4-1997 there were 77 members. It is admitted by respondents 3 and 4 that as on 18-7-2000, there were 63 members in the Society. An administrative committee consisting of 7 members was appointed for the management of the Society. This administrative committee wanted to sell the assets of the Society and distribute the sale proceeds so received among the members. Ext.P2 is a representation filed by the President and three members of the administrative committee before the Hon'ble Minister for Industries on 16-4-1997. In Ext.P2 it is stated that in the year 1995, the working of the society had come to a complete halt. It was further stated that on 12-2-1996, the managing committee was elected and the signatories of Ext.P2 representation were unanimously elected by the general body. It was further stated that the general body was convened and the general body took a decision to dissolve the society and to sell the immovable properties, viz. the building and machinery and to pay the debts due to the Government and others and the balance amount to be divided among the members of the society. It was also stated that if a liquidator is appointed, that will cause huge loss and hence no liquidator shall be appointed. They sought permission from the Minister to sell the assets of the Society by private negotiation and allow them to pay the dues to the Government, Kollam District Co-operative Bank and to other institutions and individuals and then divide the balance amount in accordance with the proportion to the shares held by the members. The Honourable Minister had forwarded the petition to the Director of Industries for immediate steps. Along with the petition a resolution of the Managing Committee on 6-8-1996 was also enclosed. It shows that on 6-8-1996 itself the Managing Committee took a decision to sell the properties after publishing the sale notice in Mathrubhumi and Malayala Manorama. According to the petitioner, it is in pursuance of this representation, the General Manager appointed the liquidator. But the materials on record show that that statement is not true. The 4th respondent in his counter affidavit had specifically averred that the Managing Committee presided by late R.S.Unni filed a petition before the Director of Industries and Commerce seeking permission to sell the assets of the Society by private negotiation and that was forwarded to the Registrar (General Manager) District Industries Centre, Kollam. The General Manager informed the managing committee that sale of properties is specifically prohibited under Sections 55 and 71 of the Act. At the same time, the General Manager appointed an officer to examine the necessity to initiate steps for liquidation proceedings. That officer recommended to take action for revival of the Society. So the General Manager convened a meeting of the Managing Committee to hold discussion regarding the revival of the Society, but there was no response from

the members of the Society. Hence the liquidator was appointed as per Ext. P3 order No. O.11/8336/97 dated 19-02-1999. A perusal of Ext.P3 order shows that it is not based on Ext.P2 representation submitted by the Managing Committee but based on a request made by the Board members of the Society to the General manager seeking permission to sell the immovable properties. The General Manager appointed a supervisor to conduct an enquiry and file a report who had reported that the loss for the year 1992-1993 was Rs. 4,02,256.94. But that officer recommended to take steps to revitalise the Society. In Ext.P3 it is also stated that the General Manager convened a meeting of the managing committee at 3.00 p.m. on 27-10-1998 requesting them to attend his office to discuss matters for revival of the Society. None of the committee members attended the meeting. On account of the non-co-operation of the members of the Board, the General Manager took a strange decision that the members of the Society were not interested in the activities of the Society and decided to appoint a liquidator. There is absolutely nothing on record to show that the members were given any individual notice and their views ascertained. The order shows that the same was passed u/s 71(2)(a) of the Act. The Handicrafts Supervisor, Kollam was appointed as the Liquidator of the society u/s 72 of the Act. He was directed to take charge of the assets and records of the society and proceed with the liquidation work.

10. Section 71 of the Act deals with the winding up and dissolution of Co-operative Societies. Section 71 reads thus:

Winding up of Societies.- (1) If the Registrar, after an enquiry has been held u/s 65 or an inspection has been made under S.66 or on receipt of an application made by not less than three-fourths of the members of a society, is opinion that the society ought to be wound up, he may, after giving the society an opportunity of making its representation and in consultation with the financing bank to which the society is affiliated and the Circle Co- operative Union, by order in writing direct it to be wound up.

(2) The Registrar may of his own motion by order in writing, direct the winding up of a 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 six months of registration, unless extension of time is granted by the Registrar, or has ceased to work; or

(c) Where the number of actual workers falls below the prescribed limit in the case of a society formed exclusively for the benefit of persons engaged in a particular industry or occupation.

(3) If a proposal for revitalisation of a society, in respect of which an order under

Sub-section (2) has been passed , is received by the Registrar within a period of one year from the date of such order, the Registrar may cancel the same and allow the society to continue to exist: Provided that this sub-section shall not apply in the case of a society which does not commence functioning within a period of six months from the date of registration.

A reading of Section 71(1) of the Act shows that the order of winding up u/s 71 can be ordered on three contingencies. (i) after an enquiry has been held u/s 65(ii) an inspection has been made u/s 66 and (iii) on receipt of an application made by not less than three-fourth of the members of the society.

11. In the case at hand, no enquiry or inspection was conducted. Though Ext.P2 mentions about a resolution of the general body, there was no resolution to appoint a liquidator. A reading of Ext.P3 also shows that the General Body did not make any request to appoint a liquidator. On the other hand, it shows that the specific request made was not to appoint a liquidator but permit them to sell the property by private negotiations. So no action could have been initiated u/s 71 of the Act. In fact, the stand taken by respondents 3 and 4 in their counter affidavits was also to the effect that no action could be taken on account of the prohibition contained in Sections 71 and 55 of the Act. Ext.P3 is one purporting to be one u/s 71(2)(a) of the Act. Section 71(2)(a) of the Act confers power on the Registrar to initiate suo motu action for winding up the society. But in the order u/s 71(2)(a) of the Act the pre-requisite condition is that there must be a condition of registration of the society that the society shall consist of atleast 25 members and the number of members has been reduced less than 25. In Ext.P2 it is specifically stated that on the date of resolution there were 77 members as on 16-07-1977. In the counter affidavit filed by respondents 3 and 4 it is specifically admitted that even after appointing the liquidator, there were 63 members and among the 63 members, only 50 members lodged their claims before the liquidator. Respondents 3 and 4 have no case that one of the conditions of the registration of the Society was that there must be atleast 25 members. So Ext.P3 order purporting to be one passed u/s 71(2)(a) of the Act is illegal and without jurisdiction. The Registrar could not have passed an order winding up the society u/s 71(2)(a) of the Act. The materials on record show that the Society commenced functioning within six months from the date of registration. There is absolutely nothing on record to show that the Society had prescribed minimum number of workers and the number of actual workers had fallen beyond that number. So no winding up proceedings u/s 71 could have been issued in this case. That is an order passed without any jurisdiction.

12. There is yet another aspect. Section 73 of the Act deals with the powers of the liquidator. Section 73(2A) reads as follows:

73. Powers of liquidator:-(1) ...

(2) ...

(2A) The liquidator shall complete the winding up proceedings within a period of

three years from the date of his appointment under Sub-section (1) of Section 72.

This sub-section was incorporated with effect from 1-1-2000. Chapter X of the Kerala Co-operative Societies Rules, for short, the Rules which consists of Rules 69 and 70 is also very relevant. Sub-rule (12) of Rule 69 deals with the duration of the office of the liquidator. It reads as follows:

69. Procedure to be adopted by liquidator:

...

(12) The liquidator shall complete the winding up proceedings within a period of three years from the date of his appointment. If the liquidation proceedings could not be completed within the stipulated time, for the reasons beyond the control of the liquidator, he may apply to the Registrar with sufficient reasons for extending the period of liquidation. In the case of existing liquidation cases pending for more than 3 years shall be completed within one year from the date of commencement of the Kerala Co-operative Societies (Amendment) Act, 1999.

This sub-rule was introduced with effect from 2-5-2000. A reading of Rule 69(12) shows that if the winding up has already been ordered prior to three years from the date of appointment, a grace period of one year was given to complete the proceedings. In this case, the order appointing the liquidator was passed on 19-2-1999. So the three year period was over by 19-2-2002. A reading of Section 73(2A) of the Act makes it clear that the liquidator shall complete the winding up proceedings within a period of three years. In fact, the section does not provide for extension of the period. In this proceedings, I need not consider the validity of Rule 69(12) because there is absolutely nothing on record to show that either before the expiry of the three year period or even after the expiry of the period, the liquidator ever made any request to the Registrar for extension of the period. So all actions taken by the liquidator after the expiry of three year period from 19-2- 1999 were without jurisdiction. It is true that on 1-9-2005, he wrote a letter to the General Manager seeking permission to sell the immovable properties and by Ext.P6 dated 6-9-2005, the General Manager granted permission to sell the property. Granting permission to sell the property is not an order extending the term of the liquidator. There must be a specific request for extension of time. The liquidator must show convincing reasons why he was not able to complete the proceedings within the time limit. Extension of time can be granted only if it is established that the Liquidator was prevented from completing the proceedings for reasons beyond his control. There is absolutely no averment or material to show that the liquidator was unable to complete the proceedings within the stipulated period for reasons beyond his control. So the sale was without any authority of law.

13. According to the petitioner, she was directed to remit an amount of Rs. Three Lakhs and she remitted that amount by way of cheque No. 003551 dated 7-12-2005 drawn on the Indus Ind Bank, Kollam Branch. But in the counter affidavit filed by respondents 3 and 4 it is stated that the petitioner remitted an

amount of Rs. 3,25,000/- by way of 15% of the value of the bid amount. Section 73(1) of the Act only provides that the liquidator shall have power to realise such assets by sale or otherwise. The only provision which deals with the sale of immovable property is Rules 71 to 94 contained in Chapter XI of the Rules. It deals with execution for decisions, awards and order. Though I have made repeated requests to the Government Pleader, he was not able to show any provision as to how the liquidator shall sell the assets of the society. Rule 81 of the Rules provides for sale of immovable property. Rule 81(g) reads as follows:

(g) A sum of money equal to 15% of the price of the immovable property shall be deposited by the purchaser with the sale officer at the time of purchase and in default of such deposit, the property shall forthwith be resold:

Provided that where the decree-holder is the purchaser and is entitled to set off the purchase money under Clause (k) the sale officer shall dispense with the requirements of this clause.

According to the petitioner and also as per the records, the petitioner deposited an amount of 25,000/- on 7-12-2005 as earnest money deposit at the time of submitting a tender, the receipt of which is issued as Ext.P7 shows that on that day she issued a cheque to the liquidator for an amount of Rs. 3 lakhs and the liquidator had issued a receipt. It is admitted by respondents 3 and 4 that the bid amount quoted by the petitioner was Rs. 21,35,000/-. According to the petitioner, she gave a cheque for Rs. 3 lakhs only. Respondents 3 and 4 appear to be more loyal than the king. According to them, petitioner gave an amount of Rs. 3,25,000/-. Unless the earnest money deposited is also treated as part of 15% of the sale consideration, there was no compliance of Rule 81(g) of the Rules. The earnest money deposit can be adjusted only towards final payment. So there was no deposit of 15% of the price and there was no deposit of money. Rule 81(g) of the Rules does not provide for deposit of bid amount by way of cheque. What the rule provides is that "a sum of money equal to 15% of the price of the immovable property shall be deposited by the purchaser with the sale officer". The petitioner ought to have deposited 15% of Rs. 21,35,000/- in cash. Though cheque may be a valuable security it is not cash. So there is failure to comply with the condition enjoined under Rule 81(g) of the Rules. Rule 81(g) provides that in such contingency, the property shall be forth with resold. The liquidator ought not have accepted the cheque. He should have resold the property forthwith. So even the sale conducted by the liquidator is against the provisions of the Act and Rules.

14. There is yet another aspect. It is admitted by the petitioner as well as by respondents 3 and 4 that as on 17-11-2005, Government had directed the General Manager to take steps for revival of the Society. On 5-12-2005, he was again told to stay the liquidation proceedings. The stand taken by the General Manager was that there is no provision for staying the liquidation proceedings. The counter affidavit filed by the 4th respondent also shows that he was fully aware of the steps take by the Government for revival of the Society. It is to be

noted that of the total share capital of Rs. 5,31,000/- the Government gave Rs. 4,28,000/- as share participation. Respondents 3 and 4 acted with undue haste ignoring the orders passed by the Government. The only inference possible from the facts of this case is that some member of the Society or Administrative Committee wanted to misappropriate the valuable property of the Society with the connivance of respondents 3 and 4.

15. Though the petitioner claims to be an unfortunate lady, who happened to part with more than Rs. Three Lakhs, the materials on record show that she is not so innocent. She was aware of all developments. Ext.P2 is the copy of the representation filed by the Managing Committee before the Hon'ble Minister for Industries on 16-04-2006. Along with it , the resolution of the Committee is also appended. Ext.P2 contains the order passed by the Honourable Minister. Ext.P3 is the order passed in 1999. Exts.P4 and P5 are the copies of the orders issued by the General Manager for sale of two immovable properties. The conduct of the petitioner shows that she was fully aware of the exact dates of the correspondence between the various departments from 1997 onwards. If as a matter of fact, a bona fide purchaser who happened to attend the public auction only because of Ext.P1 sale notice, how she got the knowledge of all these correspondence is a mystery. The only irresistible conclusion possible is that she is only a name lender and some member of the Society is trying to appropriate this property using her name. It is also to be noted that the consistent stand taken by the Managing Committee from 1997 onwards is that they must be allowed to sell the assets of the Society by private negotiations.

16. Now I shall consider how far the action of the Government appointing an administrative committee is correct. Ext.P2 shows that a committee was appointed on 12-2-1996. As per Section 28 of the Act, the period of the committee was five years. Section 28 was amended with effect from 1-1-2000 and the period of 5 years was reduced to three years. So the term of the Committee was over on 12-2-1999. Ext.P3 winding up and order appointing the liquidator was passed on 19-2-1999. There is absolutely nothing on record to show that any election was conducted and new Board was elected. So from 12-2-1999 the Board members had no authority to take any vital decision. I have already found that the liquidator has no jurisdiction to proceed with the liquidation proceedings. So the term of the committee was over and the Liquidator became functus officio. In such circumstances, Government have every authority to appoint an administrative committee invoking the powers u/s 101 of the Act.

17. Learned Counsel appearing for the petitioner has relied on a decision reported in Quilon Taluk L.C.& T.Co-Op. Society v. State of Kerala 1989(1) KLT 350. That was a case in which in order to help the Society, the Government passed orders u/s 101 exempting the area of the Society. Certainly that is a private interest of the society and not a public interest. In Sundaram Pillai v. Joint Registrar (1995) 1 KLT 44 Case No. 54) a learned Single Judge of this Court

had taken a view that the powers u/s 101 of the Act cannot be invoked to do an act which is impermissible or prohibited by the direct statutory provision. The facts narrated above show that the principles laid down in that decision can have no application to the facts of this case. As rightly pointed out by counsel appearing for respondents 5 and 6, petitioner is only a person who took part in an illegal public auction conducted by the 4th respondent without any jurisdiction. She is neither a past member, member or creditor of the society. She had no locus standi to challenge Exts.P9 and P210 orders.

18. There is yet another aspect. The remedy provided under Article 226 of the Constitution of India is an extra ordinary remedy and a discretionary one which has to be exercised with due care and caution. If the prayer of the petitioner in the writ petition is allowed, that will amount to granting sanction to perpetuate a mala fide action, which was initiated in violation of statutory provisions. In such circumstances, this Court shall refuse to invoke the remedy provided under Article 226 of the Constitution of India. So on that count also, the prayer of the petitioner cannot be allowed. So the writ petition is only to be dismissed.

In the result, writ petition is dismissed.