
(2016) 05 KL CK 0001
In the High Court Of Kerala
Case No : WP(C). No. 29487 of 2010 (I)

T. Sivadasan

APPELLANT

Vs

Joint Registrar (General)

RESPONDENT

Date of Decision : 23-05-2016

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 16

Citation : (2016) 3 ILRKerala 69 : (2016) 3 KHC 342 : (2016) 3 KLT 7

Hon'ble Judges : A.K. Jayasankaran Nambiar, J.

Bench : Single Bench

Advocate : Sri. Cibi Thomas, Advocate, for the Appellant; Sri. M. Sasindran, Advocate and Sri. Mohammad Savad, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner is aggrieved by Ext.P7 order dated 09.09.2010 of the 2nd respondent that allows an appeal against Ext.P3 order of the 1st respondent which dismissed a complaint preferred by the 4th respondent against the petitioner, alleging that the petitioner was not qualified as a member of the society to contest the election that was held on 25.01.2009.

2. The brief facts necessary for a disposal of the writ petition are as follows: The petitioner became a member of the 3rd respondent society on 26.12.1991. At the time of being admitted as a member of the society the petitioner was in ownership and possession of property covered by Ext.P10 document. He, therefore, satisfied the conditions prescribed under Section 16 (1) (a) (3) of the Co-operative Societies Act which, inter alia, provides that no person shall be admitted as a member of the society except an individual who is a resident within, or is in occupation of land in the area of operation of the society. Ext.P10 document shows that the property owned by the petitioner was within the area of operation of the 3rd respondent society. Rule 16 of the Co-operative Societies Rules, and in particular, Rule 16 (2)(b) also reiterated that one of the conditions

for eligibility for admission as a member of a Co-operative Society was that the person concerned was a resident of or owned or possessed land within the area of operation of the society. It is not in dispute that in the instant case, the petitioner was the owner of land, in an area which came within the area of operation of the 3rd respondent society, at the time of being admitted as a member. It would appear that at some point before the election that was held on 25.01.2009, the petitioner had alienated the property that he owned pursuant to Ext.P10 document. Thereafter, the petitioner was not the owner of any property within the area of operation of the 3rd respondent society, and hence, he ceased to have the eligibility for membership of the society vis-a-vis the criteria of ownership of property. The petitioner has a case that notwithstanding the fact that he did not own any item of property, he continued to be a resident within the area of operation of the 3rd respondent society, and therefore, he continued to be qualified as a member of the Society. It is also the case of the petitioner that, at any rate, subsequent to the date of election, and on 27.01.2009, he purchased yet another item of property as evidenced by Exts.P11 and P12 within the area of operation of the 3rd respondent society, and therefore, once again qualified to be a member of the 3rd respondent society, vis-a-vis the criterion of ownership of property, in accordance with the provisions of the Kerala Co-operative Societies Act and Rules. The 4th respondent, however, on 14.10.2009 preferred Ext.P1 complaint before the 1st respondent alleging that the petitioner had ceased to be eligible to continue as a member of the 3rd respondent society, and that, the participation of the petitioner in the election that was held on 25.01.2009 was illegal inasmuch as the petitioner was not qualified to be a member of the society on that date. Pursuant to Ext.P2 explanation that was submitted by the petitioner to the complaint preferred by the 4th respondent, the 1st respondent by Ext.P3 order dated 17.03.2010 dismissed the complaint of the 4th respondent. The 4th respondent, therefore, preferred an appeal against Ext.P3 order before the 2nd respondent. Before the said respondent, the petitioner and the 3rd respondent society submitted separate explanations in the appeal. Thereafter, by Ext.P7 order dated 09.09.2010, the 2nd respondent passed an order setting aside Ext.P3 order of the 1st respondent and allowing the appeal preferred by the 4th respondent. In the writ petition, the petitioner impugns Ext.P7 order of the 2nd respondent, inter alia, on the ground that, the 2nd respondent could not have allowed the appeal preferred by the 4th respondent by finding that the petitioner was not qualified to continue as a member of the 3rd respondent society, more so, when it is not in dispute that the petitioner had on 27.01.2009, well prior to the date on which Ext.P1 complaint was preferred by the 4th respondent, come into ownership and possession of property that was situated within the area of operation of the 3rd respondent society.

3. A counter affidavit has been filed on behalf of the 4th respondent. Therein it is stated that, at the time of election on 25.01.2009, the petitioner did not own any property within the area of operation of the 3rd respondent society and was only

occasionally living in his brother's house which was within the area of operation of the 3rd respondent society. It is pointed out that the occasional residence of the petitioner in his brother's property would not qualify him to continue as a member of the 3rd respondent society, and therefore, the participation by the petitioner in the election that was held on 25.01.2009 was also illegal. It is further pointed out that the property in Ext.P11 was purchased only on 27.01.2009, and therefore, would not regularise the irregularity that existed on the date of election. It is further pointed out that the petitioner was also a voter in a constituency that was outside the area of operation of the 3rd respondent society and these facts are brought out to indicate that the petitioner was not ordinarily resident within the area of operation of the 3rd respondent society.

4. I have heard the learned counsel appearing for the petitioner and also the learned Government Pleader appearing for the official respondents.

5. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that it is not in dispute that as on the date when the petitioner was admitted as a member of the 3rd respondent society namely, 26.12.1991, he was in ownership of an item of property, evidenced in Ext.P10 document, which was situated within the area of operation of the 3rd respondent society. At the time of admission as a member of the society, therefore, the petitioner satisfied the eligibility conditions as prescribed in Section 16 of the Co-operative Societies Act read with Rule 16 of the Co-operative Societies Rules with regard to the criteria of ownership of property within the area of operation of the 3rd respondent society. While it may be a fact that subsequently the petitioner sold the said item of property, and thereafter, purchased another item of property within the area of operation of the 3rd respondent society only on 27.01.2009, there was no action initiated either by the 3rd respondent society or by the 1st respondent questioning the eligibility of the petitioner to continue as a member of the society during the said period. Ext.P1 complaint, which resulted eventually in Ext.P7 order of the 2nd respondent, was filed only on 14.10.2009 by which time the petitioner had once again satisfied the eligibility requirement for continuing as a member of the 3rd respondent society by owning an item of property within the area of operation of the 3rd respondent society. It is trite that for any action for disqualification of a member that is taken pursuant to Rules 16(3) and (4) of the Co-operative Societies Rules, the disqualification should be one that continues till the date of initiation of action for removal of a member on the ground of the said disqualification. This position is settled through the decision of this Court in *Porinchu v. Joint Registrar of Co-operative Societies* [2009 (4) KLT 105], following the decisions of this Court in *Thommen Itticherianthu v. State of Kerala* [1978 KLT 887] and *Abdul Rasheed v. State of Kerala* [1998 (1) KLT 190]. In *Porinchu v. Joint Registrar of Co-operative Societies* [2009 (4) KLT 105]. It was found that once a person was granted membership in a society, even if it is illegal for some reason, unless he is removed following the procedure laid down in Rule 16 (3) or (4) of the Rules, the membership will continue. It was also

found that under Rule 16 (4) the Registrar's power is confined to cases where a member of a society becomes ineligible to continue as such and on the Registrar finding so there can be a declaration that such member has ceased to be a member of the society from the date of the order of the Registrar. The phraseology used in Rule 16 (4) clearly indicates that the ineligibility should be a continuing one continuing till the time when the Registrar initiates action for declaring that the member concerned has ceased to be a member of the society. In other words, the ineligibility should be one that was suffered by the member subsequent to his acquisition of membership and should be one that continues till the date of initiation of proceedings under Rule 16 (4) against the member. In the instant case, Ext.P1 complaint dated 14.10.2009 was preferred at a point in time when the petitioner had ceased to be disqualified vis-a-vis the criteria of ownership of property within the area of operation of the society. Under such circumstances, I am of the view that, Ext.P7 order passed by the 2nd respondent, which proceeds solely on the basis that the petitioner was not ordinarily resident within the area of operation of the 3rd respondent society during the period in question, and ignores the other criteria namely the ownership of property by the petitioner within the area of operation of the 3rd respondent society, cannot be legally sustained. I, accordingly, quash Ext.P7 order and allow this writ petition with consequential reliefs.