

BENSON ERIC FERNANDO
v.
MERVYN ANTHONY FERNANDO AND OTHERS

COURT OF APPEAL.

ISMAIL, J.

C.A. APPLICATION NO. 648/94

NOVEMBER 21, 1994.

Co-operative Societies Law, S. 60(2) – Removal of Chairman on a no confidence motion not placed on the Agenda and passed in the absence of the Chairman – Can aggrieved Chairman invoke writ jurisdiction of the Court of Appeal ?

The Chairman of a Board of Directors of a Co-operative Society was removed on a vote of no confidence motion which had not been on the Agenda and in his absence.

Held:

His remedy is under Section 60(2) of the Co-operative Societies Law which empowers the Registrar to make a final decision. He is not entitled to invoke the writ jurisdiction of the Court of Appeal.

APPLICATION for writ of certiorari to quash removal from the office of Chairman.

S. Mahenthiran for petitioner.

T. M. S. Nanayakkara for 1 to 5 respondents.

Cur. adv. vult.

January 10, 1995.

ISMAIL, J.

The petitioner functioned as the Chairman of the Board of Directors of the Moratuwa Multi-Purpose Co-operative Society with six other elected members since 15.08.93. Three additional directors were nominated to the Board on 21.6.94.

A Board meeting was convened to be held on 26.8.84 at 10.00 a.m. The petitioner was unable to be present at the said meeting as he had been arrested by the Mount Lavinia Police the previous night for alleged criminal trespass and intimidation. He was produced before the Magistrate's Court, Mount Lavinia the next day and was released on bail. He reached his residence in the afternoon.

The 6th to 9th respondents who are members of the Board informed him that the Board meeting was held in his absence and that a vote of no confidence was passed against him. The petitioner has not been furnished with a copy of the minutes of the meeting held on 26.8.94 at which he was removed from his post as Chairman.

The petitioner has stated that no prior notice or intimidation of the no confidence motion was given to him and that such motion was not on the agenda for the said meeting which was only a regular monthly meeting of the Board. The petitioner claims that the Chairman and Vice Chairman can only be removed in a situation covered by Law 65(1) of the By-Laws of the Society and that the correct procedure was not followed. The petitioner claims that the resolution passed at the meeting in his absence is an interference with his rights to the status and office of Chairman and is illegal and void.

The present application is for the grant and issue of a *writ of certiorari* to quash the decision of the Board taken in his absence to remove him from the post of Chairman.

The 1st to 5th respondents have not in their objections stated as to what transpired at the Board meeting held on 26.8.94, nor has the 1st respondent in his affidavit divulged the circumstances in which the petitioner was removed from his office as Chairman. The other respondents have not filed objections or affidavits in these proceedings. The petitioner appears to have accepted the position that he has been removed from his position as the Chairman.

Learned Counsel for the 1st to 5th respondents has taken up a preliminary objection to this application on the ground that the petitioner cannot seek to have the decision of the Board of Directors, presumably that concerning the removal of the petitioner from the office of Chairman, quashed by an application for a writ and that he should seek relief under Section 60 of the Co-operative Societies Law, No. 5 of 1972.

Section 60(2) of the Co-operative Societies Law, No. 5 of 1972 provides as follows:

“(2) Where any question arises as to whether a member of a registered Society has been duly elected to any office in the Society or whether a member has ceased to be a member or officer of the Society, or whether any general meeting of the Society had been validly held that question shall be decided by the Registrar whose decision shall be final.”

Learned Counsel for the petitioner submitted that the provisions contained in Section 60(2) of the Co-operative Societies Law do not oust the jurisdiction of this Court to decide the question of the legality of said meeting and to pronounce upon void acts which affect the rights of parties.

The question has now arisen, in the words of Section 60(2), as to whether the petitioner who was a member has ceased to hold the office of Chairman of the Society and this section provides for that question to be decided by the Registrar and it is further provided that his decision shall be final. The petitioner is seeking a decision in this application on the identical question which has been provided for by the statute to vest exclusively in the Registrar. It is not the case of the non-exhaustion of an alternative statutory remedy which exists for a different purpose. The petitioner is seeking relief in respect of the legality of a matter for which an identical and overlapping procedure has been prescribed by statute. I am of the view that the language of the provisions of Section 60(2) of the Co-operative Societies Law No. 5 of 1972 and the statutory scheme of the Act itself impliedly excludes an application by way of writ to question the validity of the removal of an officer or registered Society.

The preliminary objection to this application therefore is entitled to succeed.

The application is dismissed with costs.

Application dismissed.