IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 11TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

WRIT PETITION NO.202182 OF 2023 (CS-EL/M)

BETWEEN:

SRI.SANTOSH GUTTEDAR
S/O SUBHASH GUTTEDAR,
AGED ABOUT 44 YEARS
R/O BELAMAGI VILLAGE,
ALAND TALUK,
KALABURAGI DISTRICT-585 316

…PETITIONER

(BY SRI. SHARATH S. GOGI, ADVOCATE)

AND:

1. THE ASSISTANT ADMINISTRATOR
   CO-OPERATIVE SOCIETY,
   KALABURAGI SUB-DIVISION,
   KALABURAGI DISTRICT.

2. SRI B.R.PATIL
   S/O RAMCHANDRAPPA PATIL,
   R/O SARASAMBA VILLAGE,
   ALAND TALUK
   KALABURAGI DISTRICT.

…RESPONDENTS

(BY SRI. VIJAYAKUMAR Y.H., AAG FOR
SRI. SHIVAKUMAR R. TENGLI, AGA FOR R1;
SRI. JAYAKUMAR S.PATIL, SENIOR COUNSEL FOR
SRI. VENKATESH C. MALLABADI, ADVOCATE FOR R2)

Digitally signed by
VARSHA N
RASALKAR
Location: High
Court Of Karnataka

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER BEARING NO. SA.NI.04/VI.6/NO./KALAM 17(3) RADDATI /2023-24 / 613 DATED 13.07.2023 AS PER ANNEXURE -H ISSUED BY THE FIRST RESPONDENT AND ETC.,

THIS PETITION, COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In this writ petition, the petitioner is assailing the order dated 13.07.2023 (Annexure-H) issued by the first respondent.

2. Heard Sri.Sharath S.Gogi, learned counsel appearing for the petitioner and Sri Y.H.Vijaykumar learned Additional Advocate General appearing on behalf of Sri.Shivakumar R.Tengli, learned Additional Government Advocate for respondent No.1 and Sri Jayakumar S. Patil, learned Senior Counsel appearing on behalf of Sri.Venkatesh C. Mallabadi, for respondent No.2.

3. Sri Jayakumar S. Patil, learned Senior Counsel appearing on behalf of the Sri.Venkatesh C. Mallabadi, for

respondent No.2 raised preliminary objection relating to maintainability of the writ petition on the ground that the petitioner is having efficacious remedy under section 106 (1)(c) of Karnataka Co-operative Societies Act, 1959 (for short, hereinafter referred to as 'the Act'). The said submission was also endorsed by Sri Y.H.Vijaykumar learned Additional Advocate General.

4. In response to the said submission made by the learned senior counsel for the respondent No.2, Sri Sharath S. Gogi, learned counsel for the petitioner places reliance on the judgment of the Hon'ble Apex Court in the case of ***M/s Godrej Sara Lee Limited vs. The Excise and Taxation Officer-cum-Assessing Authority and Others*** in Civil Appeal No.5393/2010 disposed of on 01.02.2023. It is the submission of Sri Sharath S.Gogi, learned counsel for the petitioner that the impugned order passed by the respondent No.1 is without extending fair opportunity to the petitioner herein and the principles of natural justice has been curtailed. Hence, learned counsel

for the petitioner submitted that the preliminary objection raised by the learned Senior Counsel cannot be accepted.

5. In the backdrop of this aspect, I have carefully examined the impugned order dated 13.07.2023, (Annexure-H) passed by the respondent No.1. The order impugned is passed under Section 17 (3) of the Act. Looking into the grounds urged in the writ petition, though the petitioner has submitted that the principles of natural justice has been curtailed, however, it is well settled principle in law that the jurisdiction under Article 226 of the Constitution of India to issue writs can be exercised not only for enforcement of fundamental rights but for any other purpose as well. It is a self-imposed restriction by the High Courts not to entertain the petition if the petitioner is having alternative and efficacious remedy under the relevant Act. The said aspect has been in detail considered by the Hon'ble Apex Court in the case of ***Radha Krishan Industries vs. State of Himachal Pradesh and Others*** reported in ***(2021) 6 SCC 771***

wherein the Hon'ble Apex Court has held that the writ petition should not be entertained when an efficacious and alternative remedy is provided under law. Hon'ble Apex Court at para-27 of ***Radha Krishan Industries'*** case (supra) held as follows:

> *"27. The principles of law which emerge are that :*
>
> *(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*
>
> *(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;*
>
> *(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;*

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

6. Following the declaration of law made by the Hon'ble Apex Court in ***Radha Krishan Industries'*** case (supra) while referring to the dictum of the Hon'ble Apex Court in the case of ***Whirlpool Corporation vs.Registrar***

of Trade Marks, Mumbai and others reported in ***(1998) 8 SCC 1*** and the said judgment has also been referred to by the Hon'ble Apex Court in ***M/S Godrej Sara Lee's*** case (supra), I am of the view that the petitioner herein be permitted to approach the competent authority for redressal of his grievance as provided under law.

7. In view of the submission made by the learned counsel appearing for the petitioner, I am of the view that interim order granted by this Court on 02.08.2023 shall enure to the benefit of the petitioner till 25.09.2023.

8. Accordingly, the writ petition is ***disposed of***. However, liberty is reserved to the petitioner to approach the competent authority. It is made clear that this court has not gone into the merits of the case and all contentions of the parties are kept open.

Sd/-
JUDGE

VNR
List No.: 1 Sl No.: 10