

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.22260 of 2013

ORDER:

In this Writ Petition, the petitioner-Society assails the order dt.04-12-2012 in Memo No.3459/Coop.VII(1)/2012-7 of the

1st respondent.

2. The petitioner-Society was registered in 1982 exclusively to cater to the needs of Hindustan Machine Tool Officers. Bylaw Nos.5 to 7 of the said Society state as follows:

"MEMBERSHIP ELIGIBILITY

5. Any individual who has attained majority and who is competent to contract and of sound mind and who does not have any house in city in his name or in the name of his wife or minor children and who is not a member in any other house building society in the same area shall be eligible for admission of member. Minor may be admitted as associate member through their legal guardians, but they shall not be eligible to vote or have any interest in profit.

APPLICATION FOR MEMBERSHIP

6. a) Application for admission as member and for allotment of share shall be made to the Secretary in the form, if any prescribed by the Society for the purpose. Such applicant should disclose in writing the information regarding the society or societies in which he is already a member with dates of admission and share capital etc., held by him. He should also declare the details and extent

of services already availed of by him in such other society or societies as on the date of his application.

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ELIGIBILITY FOR SERVICES BY THE SOCIETY

7. A person who is already a member of any other society with the same or similar objects of this society and who avails himself of the services of such other society shall not be entitled to similar services by this society except with the permission in writing of the Registrar.”

3. The said Society had inducted about 250 members and allotted plots to them in 1990. Due to pendency of proceedings before the competent authority under Urban Land Ceiling and Regulation Act, Ac.25.00 of land purchased under agreements of sale in the year 1982 entered into by the Society with their original owners did not fructify into a sale deed, and in the meantime, there was an allotment made to the members after obtaining a layout.

4. The application of the Society seeking exemption under the provisions of said Act had earlier been rejected in the year 1998. A scheme for regularization of land in possession of persons, which is excess of ceiling limit under the said Act, was introduced in G.O.Ms.No.455 dt.29-07-2010. Pursuant to this G.O., about 204 members of the Society obtained regularization of their plots.

5. Having regard to Clause-7 of the byelaws, the petitioner Society requested the 2nd respondent to provide

copy of the transfer letter issued in 1982 or permission to the 250 members to whom plots had been originally allotted in 1990 and certified/approved by the Divisional Cooperative Officer for holding membership and service in the Society irrespective of their membership in other Societies.

6. Since byelaw No.7 provided for granting of permission by

2nd respondent for holding membership to persons who avail services in two housing societies and there is no explicit provision in the A.P. Cooperative Societies Act, 1964 (for short "the Act") prohibiting dual membership at the time of admission of members in 1982, the 2nd respondent passed orders on 15-11-2010 granting permission to 250 members including 128 members to whom plots were already allotted in different ventures of the H.M.T. Employees Cooperative House Building Society to acquire plots by virtue of allotment/regularization directly by the Government.

7. This was assailed by 3rd respondent before the 1st respondent. There upon the 1st respondent had passed the impugned order on

04-12-2012 setting aside the order dt.15-11-2010 of the 2nd respondent on two grounds: (a) that dual membership is

not permitted under the provisions of the Act and (b) a judgment of the A.P. High Court dt.05-01-2010.

8. Sri C.V. Mohan Reddy, learned Senior Counsel for Sri Putta Krishna Reddy, learned counsel for petitioner contends that there is no prohibition in the Act for dual membership; Clause No.7 of the byelaws entitles a person who is already a member of any other Society with the same or similar object of the petitioner Society and who avails himself of the services of such other society to get similar services from the petitioner Society, provided permission in writing from the

2nd respondent is obtained; and the judgment of this Court dt.05-01-2010 has no application and could not have been made the basis for setting aside the order dt.15-11-2010 of the 2nd respondent.

9. The 1st respondent had filed a counter-affidavit placing reliance on proceedings Rc.No.16438/2000/Housing (1) dt.07-06-2000 issued by 2nd respondent to all Cooperative Housing Societies in exercise of his power under Section 4(2) of the Act directing them to admit members after taking a sworn affidavit from them that they do not have any house site/house and that they are not members of other Cooperative Housing Society.

10. These proceedings dt.07-06-2000 have not been mentioned in the impugned order dt.04-12-2012 passed by 1st respondent. It is settled law that the validity of *quasi* judicial order can be adjudicated only on the basis of its contents and that new reasons cannot be supplied by way of affidavit or otherwise **(Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others^[1])**. This legal proposition is not disputed by the learned Government Pleader.

11. That apart, the order dt.05-10-2010 of this Court referred to in the impugned order dt.04-12-2012 was passed in W.P.No.7956 of 2008 and batch and it relates to allotment of Government land to Government servants and Public Representatives in the year 2005 vide G.O.Ms.Nos.242 and 243 dt.28-02-2005, which laid down the policy followed by G.O.Ms.No.419 dt.25-03-2008 etc.

In that judgment, a Division Bench of this Court recognized the power of the State to allot land to groups or Societies comprising identified categories of persons including Members of Parliament and Legislative Assembly, members of All India Services and other categories of persons, but criticized the action of the Government allowing persons who already own properties in their own names or in the names of their spouses or

children following an earlier Division Bench judgment of this Court in W.P.No.13730 of 2006.

12. The point to be considered is that the question whether a member already has a house plot or house site in another Society is to be determined with reference to date on which he obtained the said membership in the petitioner Society and not with regard to the date on which the issue was raised before the 1st respondent.

13. Looking at from this perspective, the judgment of this Court

dt.05-01-2010 in W.P.No.7956 of 2008 and batch cannot be applied to members of petitioner Society, who had become members of this Society way back in the year 1982 and who had been allotted plots by the petitioner Society in 1990.

14. The learned Government Pleader appearing for 1st respondent has not been able to point out any provision in the Act, which prohibits persons from having membership in more than one Housing Society.

15. None appears for 3rd respondent at the time of hearing of this Writ Petition although a counter affidavit is filed seeking to support the impugned order. In the counter affidavit filed by 3rd respondent also reliance is placed on

the proceedings dt.07-06-2000, which have already been held by me to be inapplicable.

16. In view of the above reasons, I am of the opinion that the impugned memo dt.04-12-2012 cannot be sustained. It is accordingly set aside and the proceedings of the 2nd respondent dt.15-11-2010 are upheld.

17. The Writ Petition is allowed accordingly. No costs.

18. As a sequel, miscellaneous petitions pending if any, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 07-12-2015
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[\[1\]](#) AIR 1978 SC 851