

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WP.No.30832 of 2015

ORDER:

In this Writ Petition, the petitioner is questioning the action of the respondents in not implementing Memo No.39/APC/Peshi/2015 dt.31.08.2015 issued by 1st respondent and for a consequential direction to the 4th respondent not to proceed with the enquiry pursuant to proceedings Rc.No.2264/2012-Hsg dt.08.04.2015 issued by 3rd respondent.

2. The 5th respondent-Society is a welfare society registered under the provisions of the Andhra Pradesh Co-operative Societies Act, 1964 (for short, 'the Act') on 11.08.1992. It's object is to provide for benefit of its members the trade of building and of buying, acquiring, selling, hiring, letting and developing land in accordance with the co-operative principles through the Army Welfare Housing Organization (for short, 'AWHO') by means of a self-financing scheme.
3. Land of extent Acs.30.00 in Sy.No.157/1 in Thokatta Village, Thirumalagiri Mandal, Hyderabad was transferred by way of allotment to the AWHO on payment of market value by the then State of Andhra Pradesh Vide G.O.Ms.No.1446 dt.16.09.1981 and subsequently the same was transferred to the 5th respondent-Society under a deed of conveyance dt.23.12.2002. Flats and duplex houses were constructed by the A.W.H.O. New

Delhi through their Project Manager located at Secunderabad. These were allotted to persons such as the petitioner who were serving or had served the Indian Army.

4. The petitioner was a member of the Society at the time of filing of the Writ Petition and had been allotted a dwelling unit in 1988 upon full payment of cost and is residing therein.
5. Alleging that the persons in management of the 5th respondent-Society had committed several irregularities in the management of the said Society and had acted contrary to the interests of its members, the petitioner made complaints to the Governor of the State of Andhra Pradesh on 03.09.2012, to the Commissioner for Co-operation and Registrar of Co-operative Societies on 25.07.2013 and to others. Basing on these complaints, by proceedings dt.26.11.2013, the Commissioner for Co-operation and the Registrar of Co-operative Societies directed the District Co-operative Officer to submit a detailed report. This was followed up by a reminder on 12.05.2014.
6. Since the preliminary enquiries disclosed considerable irregularities in the affairs of the 5th respondent-Society, an enquiry into the affairs of the 5th respondent-Society was also ordered under Section 51 of the Act by the Joint Registrar/District Co-operative Officer, Hyderabad Urban District vide proceedings Rc.No.2264/2012-Hsg dt.09.07.2014. Smt. P. Harini, a Dy. Registrar of Co-operative Societies was appointed as Enquiry Officer. She submitted a report dt.12.01.2015 pointing out several serious irregularities committed by the Managing Committee of the 5th respondent-Society including financial

irregularities to the tune of Rs.23.37 crores.

7. Basing on the same, the Dy. Registrar of Co-operative Societies vide proceedings R.C.No.922/2012-Hsg dt.10.02.2015 issued a show-cause notice calling upon the managing committee members of the 5th respondent-Society to show-cause why it shall not be superseded under Section 34 of the Act.
8. Although 5th respondent received the said notice, it did not submit any reply to it. The Dy. Registrar of Co-operative Societies also kept quiet.
9. Surprisingly, abandoning the earlier Section 51 enquiry report dt.12.1.2015 and the findings of the enquiry officer therein and the show-cause notice dt.10.02.2015 issued, the Special cadre Dy. Registrar/District Co-operative Officer, Hyderabad District issued proceedings Rc.No.2264/2012-Hsg dt.08.04.2015 again directing a fresh enquiry under Section 51 of the Act on the ground that the earlier enquiry was not comprehensive and appointed the 4th respondent as the enquiry officer.
10. The petitioner alleges that the 4th respondent then started putting questions to petitioner and 51 other members contrary to the terms of reference contained in the proceedings Rc.No.2264/2012-Hsg dt.08.04.2015, which was unwarranted.
11. The petitioner then made a representation to the 1st respondent objecting to this second Section 51 enquiry by 4th respondent.
12. In view of this the 1st respondent issued Memo No.39/APC/PESHI-2015 dt.31.08.2015. The said memo states :

GOVERNMENT OF TELANGANA

AGRICULTURE & COOPERATION DEPARTMENT

Memo No.39/APC/Peshi/2015, Dt.31.08.2015

Sub : ARMY Welfare Cooperative Housing Society (AWCHS) – Statutory Inquiry under Sec.51 of APCS Act, 1964 – Certain allegations made by the members of the Society – Orders Issues.

Ref : Representation of Col S.P. Putchala (Retd.), Member of AWCHS.

The Attention of Director & Registrar of Cooperation (FAC) is invited to the subject and reference cited above. It is noticed that the findings of the statutory Inquiry conducted into the affairs of AWCHS are serious in nature. It is also noticed that another statutory Inquiry was ordered to cover certain issues which are not covered under the earlier Inquiry. Perusal of the petition cited in the reference and the enclosures reveal that the Inquiry Officer is not able to command the confidence of the members of the society.

In view of the above, the Director & RCS (FAC) is directed to examine the issue thoroughly and issue necessary orders for conducting statutory Inquiry under Sec.51 of APCS Act, 1964 in to the affairs of AWCHS by a team of senior officers headed by District Cooperative Officer, Ranga Reddy and assisted by an Officer of the cadre of Dy. Registrar from Hyderabad District. The Director & RCS (FAC) is also requested to examine the issue of notice issued by DLCO, Secunderabad, dt.10.02.2015 under Sec.34 of APCS Act, 1964 to the society and submit a report in this regard within a week.

Sd/-

SECRETARY TO GOVERNMENT

To :

The Director & Registrar of Cooperation (FAC), Hyderabad.

Copy to :

Col S.P. Putchala, (Retd.) 230,

Sector "A", AWHO Colony,

Secunderabad – 500 009.

13. Thus, the 1st respondent had directed the 2nd respondent to

examine the issue thoroughly and issue necessary orders for conducting statutory enquiry under Section 51 into the affairs of the 5th respondent-Society *by a team of Senior Officers headed by the District Co-operative Officer, Ranga Reddy and assisted by an Officer of the cadre of Dy. Registrar from Hyderabad District*; and the 2nd respondent was also requested to examine the issue of notice issued by the DLCO, Secunderabad dt.10.02.2015 under Section 34 of the Act to the 5th respondent-Society and *submit a report in a week*.

14. Both the directives *contained* in the above memo of the 1st respondent were ignored by the 2nd respondent even though under Section 131 of the Act, they are binding on the 2nd respondent.
15. Further, the 5th respondent issued a show-cause notice to petitioner on 21.08.2015 threatening to expel him from the membership of the Society in exercise of its power under Section 23 of the Act. Although the petitioner replied to the same on 10.09.2015, the 5th respondent expelled the petitioner from the membership of the 5th respondent-Society in the General Body Meeting held on 27.09.2015.
16. The petitioner asserts that this has been done since he exposed the frauds committed by the past and present Managing Committees of the 5th respondent-Society which are disclosed in the enquiry report dt.12.01.2015 of Smt. Harini, the Dy. Registrar of Co-operative Societies.
17. According to respondent nos.1 to 3, the second enquiry initiated

under Section 51 of the Act pursuant to the proceedings RC.No.2264/2012/HSG dt.08.04.2015 was also completed and enquiry report was received on 07.10.2015.

18. The petitioner contends that the action of the respondent nos.2 to 4 in not implementing the Memo No.39/APC/PESHI/2015 dt.31.08.2015 is arbitrary, illegal and in violation of Section 131 of the Act and the action of respondent nos.2 to 4 in persisting with the second Section 51 enquiry through 4th respondent initiated vide proceedings dt.08.04.2015 of the 3rd respondent, being in defiance of the said memo, has to be ignored.
19. Sri P. Venugopal, Senior Counsel for Sri Siddharth Sharma, counsel for petitioner, reiterated the above submissions.
20. The learned Government Pleader, representing respondent nos.1 to 4, however contended that the second Section 51 enquiry conducted through 4th respondent initiated vide proceedings dt.08.04.2015 of the 3rd respondent has to be taken as compliance of the memo of the 1st respondent.
21. It is pertinent to note that in the counter-affidavit filed on behalf of respondent nos.1 to 3 there is no reference at all to the Memo No.39/APC/PESHI/2015 dt.31.08.2015, and it is not explained in the counter how the second Section 51 enquiry conducted by 4th respondent pursuant to the proceedings dt.08.04.2015 of the 3rd respondent amounts to compliance with the directives of the 1st respondent contained in the said Memo. Admittedly, this second enquiry was commenced, not after the said Memo was issued, but four months prior thereto and *it was not conducted by*

a team of Senior Officers headed by the District Co-operative Officer, Ranga Reddy but by the 4th respondent, a junior officer. It is un-understandable how the 3rd respondent can file a counter-affidavit on behalf of 1st respondent also contrary to the directions contained in the above Memo issued by 1st respondent justifying the second enquiry report submitted by 4th respondent without even referring to the said Memo.

22. Sub-section (1) of Sec.131 of the Act entitles the 1st respondent to issue directions generally or in a particular matter under the Act as it may consider necessary and the Registrar shall give effect to such directions. The learned Government Pleader had no answer to the question as to how the 3rd respondent can ignore the binding directions issued to him by 1st respondent under Section 131 of the Act.

23. Although the 5th respondent-Society also filed a counter-affidavit making allegations against the petitioner and justifying the findings in the second Section 51 enquiry report submitted by 4th respondent, the counsel for 5th respondent also had no answer to the question as to how the 3rd respondent can ignore the binding directions issued to him by 1st respondent under Section 131 of the Act.

24. It is most unfortunate that the 3rd respondent has chosen to act contrary to the Memo No.39/APC/PESHI/2015 dt.31.08.2015 of 1st respondent, and had persisted in the second Section 51

enquiry directed by him vide proceedings dt.08.04.2015 through 4th respondent, even after the said Memo was issued, and is seeking to justify the said action, notwithstanding the binding nature of the Memo under Section 131 of the Act.

25. Merely because the petitioner has now been expelled from the membership of the 5th respondent-Society after filing of the Writ Petition on 27.09.2015 the petitioner lose the locus to continue the Writ Petition. Merely because the 3rd respondent had addressed a letter RC.No.13076/2012/HR2 dt.23.09.2015 to the 1st respondent (as mentioned in a note dt.26.09.2015 of the 2nd respondent handed over to this Court), the Writ Petition would not become infructuous.
26. The enquiry report dt.12.01.2015 of Smt. P. Harini mentions serious irregularities including misappropriation to the tune of Rs.23.37 crores and the respondent nos.2 to 5 cannot seek to white-wash the same by a second Section 51 enquiry conducted by 4th respondent, while disobeying the directions contained in the Memo No.39/APC/PESHI/2015 dt.31.08.2015 of 1st respondent and escape the consequences.
27. Therefore, the Writ Petition is allowed; the action of the respondent nos.2 to 4 in not implementing the Memo No.39/APC/PESHI/2015 dt.31.08.2015 issued by 1st respondent is declared as illegal and arbitrary; and the second Section 51 enquiry conducted by 4th respondent pursuant to the proceedings Rc.No.2264/2012-Hsg dt.08.04.2015 of the 3rd respondent and the report dt.07.10.2015 of the 4th respondent, being contrary to the above Memo, are both declared *non-est* in

the eye of law.

28. The Writ Petition is accordingly allowed with costs of Rs.5,000/- to be paid by 3rd respondent to the petitioner within two (02) weeks from the date of receipt of a copy of this order. The 1st respondent is directed to take note of the conduct of the 3rd respondent in ignoring binding directions issued in the Memo No.39/APC/PESHI/2015 dt.31.08.2015 of 1st respondent and acting contrary to it, and initiate appropriate disciplinary action against the 3rd respondent.
29. Miscellaneous applications, pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 24-11-2015

Ndr/*