

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP No.4581 of 2014

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Date:05.06.2015

Between:

Ganta Chandrashekar Rao

... Petitioner.

AND

My Home Navadweepa Apartment
Owners' Welfare Association, Rep.by its
President, Mr. N.V.Ratnam Choudary,
Office-1-12-/M, Ground Floor, Vayu
Block,

My Home Navadweepa, Hitech City,
Hyderabad and others.

...Respondents.

The Court made the following :

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ORDER:

This revision is preferred against order dated 05-11-2014 in Society O.P.No.343/2013 on the file of Second Additional District Judge, Ranga Reddy.

2. Brief facts leading to this revision are as follows:-

Revision petitioner herein and fourth respondent herein filed Society O.P.No.343/2013 by invoking Section 23 of A.P. Societies Registration Act, 2001 (hereinafter referred to as 'Societies Act') to declare Bye-law Nos.17.3 & 17.4 of first respondent Association as illegal void and contrary to Sections 14 to 20 of Societies Act. According to petitioners, they are members of My Home Jewal Apartment Owners' Welfare Association, who owned two flats in My Home Jewal Apartments. According to them, one of the Bye-laws of the Society, permit proxy voting system at the time of Election of the Managing Committee, which is not in accordance with law prevalent in a democratic system and that said provision is contrary to the one of the Bye-laws of the very same society. Respondent resisted the application on the ground that S.O.P is not maintainable as Section 23 of Societies Act only speaks about disputes regarding management and the relief claimed is in respect of Bye-laws of the Society, which are framed with approval of majority of members. Trial Judge, after considering the contentions and rival contentions of both parties, held that the bye-laws are of administrative nature and the legality of the same cannot be decided by invoking Section 23 of the Societies Act and on that ground dismissed the application and aggrieved by the same, one of the petitioners preferred present revision.

3. Heard both sides.

4. Advocate for revision petitioner submitted that the Court ought to have considered the relief claimed by the revision petitioner, because Clause 17.4 is contrary to the settled democratic principles of using proxy method in the elections. He further submitted that as the elections of the society would also come under the affairs of the Society, the Court can entertain the application under Section 23 of the Societies Act as it is a dispute between a member and the Society. He submitted that when Bye-law Nos.17.3 & 17.4 are contrary to each other, which destroy the purpose of secret ballot, the lower Court ought to have declared them as null and void. He submitted that the lower Court erred in dismissing the application and it committed illegality, the same has to be rectified by this Court by invoking the powers under Section 227 of the Constitution of India.

5. On the other hand, Advocate for respondents submitted that all the bye-laws are framed in a democratic way as per majority opinion. He submitted that by following the same bye-laws, elections were conducted earlier and elections were conducted subsequent to filing of this petition and there was no objection from any of the member except the petitioner. He further submitted that all the resolutions are circulated to all the members both personally and through email and every member will be knowing each and every resolution. He further submitted that elections were conducted by following this proxy method many times and in fact, for the current year also elections were conducted and new committee has taken over on 14-12-2014 and the Court cannot rewrite the bye-laws and it is only for the members. He submitted that the trial Court has rightly dismissed the application. He submitted that the present system is the voice of 548 members in an association consisting about 550 members.

6. Now the point that would arise for my consideration in this revision is whether order of the Court below is legal, proper and correct?

7 . **Point:-** The main grievance of the petitioner is that the rule permitting proxy voting contradicts the rule of secret ballot. According to petitioner, as per Bye-law No.16.5, the voting in election shall be by way of secret ballot, but bye-law No. 17.3 & 17.4 enable proxy voting and they contradict each other therefore, Bye-law Nos.17.3 & 17.4 have to be treated as null and void. These Bye-laws are extracted hereunder for better appreciation:-

“16.5. The voting in lection shall be by way of secret ballot.

17.3. A member entitled to attend and vote at the General Body meeting is entitled to appoint a proxy to attend and vote instead of himself and the proxy should be a member of the Association. Proxies in order to be effective must be received by the association not less than 48 hours before the scheduled time of the meeting. Corporate Entities either being Member or being proxy of other Member intending to send their respective authorized representatives are required to send a duly certified copy of the Board/governing body resolution authorizing such representatives to attend and vote at the General Body meeting.

17.4. At a General Body meeting every member shall have one vote for each flat owned by him. In the event of his absence, a proxy of the Member (holding an authorization as per Form – “E” duly signed by the Member) is entitled to cast vote. Only the Members of the Association can be authorized as proxy/ies of other Members. A single person can represent as a proxy for more than one Member. However, such proxy/Member will be allowed into the meeting hall by duly verifying the identity through submission of one of the following proofs with photo identity: (a) Passport (b) Driving License issued by the competent authority (c) Voter identification card (d) Ration Card (e) PAN Card (f) any other photo identity proof issued by the Government authorities.”

8. From a reading of above rules, it is clear that a member entitled to

attend and vote at the General Body Meeting is entitled to appoint a proxy to attend and vote instead of himself, but the condition is that the proxy should also be a member of the Association. So it indicates a proxy shall be a member, but not a third party or outsider. Now the point that has to be examined is whether the above Bye-laws can be declared as null and void by treating them as affairs of the society. These Bye-laws are framed by way of a resolution adopted by majority of the members. Bye-laws contemplate rules, quorum for the meeting and also provide a clause for amendment, subject to the provisions of Societies Act and it is also clear from the material on record that these Bye-laws bind all its members and its employees and they are framed for functioning of the society. If any of the Bye-law is harmful or hurdle in functioning of the society, the remedy of the members is to place it before the General Body either for amendment or deletion. Trial Court, after an elaborate discussion of these aspects with reference to case law cited before it held that the petitioners are not entitled for the relief claimed and consequently, dismissed the petition giving liberty to the petitioners to move for a resolution in the General Body for amendment of the Bye-laws. I do not find any wrong in the findings of the trial Court nor any jurisdictional error to correct the same by exercising the powers under Section 227 of the Constitution of India.

As rightly pointed out by Advocate for respondents, when the elections were held prior to filing of this petition and after filing of this petition in which, the very proxy method was followed and no one challenged those elections, the grievance of one or two members in an association consisting of nearly 550 members cannot be countenanced.

9. For these reasons, I am of the considered view that the trial Court rightly dismissed the application and that there are no grounds to interfere with the same and the revision is liable to be dismissed.

10. Accordingly, revision is dismissed. No costs.

11. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:05.06.2015

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