

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.No.9533 of 2016

ORDER:

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As against the order dated 23-11-2015 passed by the 3rd respondent under Section 34(1) of A.P.Co-operative Societies Act, 1964 (for short 'the Act'), the petitioners filed an appeal before the A.P.Co-operative Tribunal, Vijayawada (for short 'the Tribunal'), which is numbered as O.A.No.46 of 2015. Along with the O.A., the petitioners also filed M.A.No.41 of 2015 seeking stay of the order, dated 23-11-2015 passed by the 3rd respondent. However, the said M.A. was dismissed on 30-12-2015. Questioning the order dated 30-12-2015 in M.A.No.41 of 2015 in O.A.No.46 of 2015 of the Tribunal, the present writ petition is filed.

Sri Ganta Rama Rao, learned senior counsel for the petitioners submits that crucial questions with regard to applicability of Section 34(1) of the Act and jurisdiction of the 3rd respondent to initiate proceedings under Section 34(1) of the Act raised in the O.A. have not been considered by the Tribunal. Further, the Tribunal while passing the order in M.A.No.41 of 2015 has failed to advert to the issue of applicability of Section 34(1) of the Act. In that view of the matter, learned senior counsel for the petitioner submits that the impugned order is vitiated on account of non-consideration of the specific issues raised before the Tribunal and thereby, the interference of this Court is called for.

The writ petition is resisted by learned Government Pleader for Co-operation for respondents 1 to 3 and Sri N.Jaya Surya, learned counsel appearing for the 4th respondent.

Both the learned Government Pleader as well as learned counsel appearing for the 4th respondent submits that the order which is passed is only an interim order pending disposal of the appeal and granting of stay being discretionary, the impugned order shall not be interfered with by this Court.

Learned Government Pleader submits that much amount has been

misappropriated and in that view of the matter, the continuation of the Managing Committee would not be in the interest of Society and its members.

Learned counsel appearing for the 4th respondent reiterates the same.

Having considered the rival submissions, a perusal of the impugned order goes to show that the Tribunal has passed a reasoned order. Prima facie, Section 34 was adverted to. Apart from legal grounds, the Tribunal has also adverted to prima facie facts as found by the 3rd respondent in coming to the conclusion that balance of convenience does not lie in favour of the petitioners in granting stay and continuing affairs in their hands.

In that view of the matter, there being no compelling reasons, this Court is not inclined to interfere with the order passed by the Tribunal refusing to grant stay of proceedings of the 3rd respondent superseding the managing committee.

However, the basic right of the members of the co-operative Society is to be governed by elected members. In the interest of justice, a direction shall be issued to the Tribunal to dispose O.A.No.46 of 2015 in a time bound manner within a period of four months from the date of receipt of a copy of this order. While passing the order, the Tribunal shall consider the specific objection raised by the petitioners in relation to the very jurisdiction of the 3rd respondent to invoke the provisions of Section 34(1) of the Act merely basing on the enquiry report under Section 51 of the Act.

The writ petition is disposed of accordingly. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

CHALLA KODANDA RAM, J

Date: 31.03.2016

Prv

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Prv