

THE HON'BLE SRI JUSTICE S.V.BHATT

Writ Petition No.9814 of 2012

ORDER :

Heard Sri Y.Subrahmanyam for petitioner, the Assistant Government Pleader and Mr.K.V.Subba Reddy for parties.

The issue arises under Section 52 of Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act').

The petitioner was elected as President of Machilipatnam Cooperative Building Society in the election held on 05-04-2007. The petitioner challenges proceedings Rc.No.627/2012/D1, dated 13-02-2012 of the 1st Respondent as illegal, without material and contrary to Section 52 of the Act.

The circumstances relevant for the disposal of the writ petition are that Chalamalasetti Gandhi – 4th Respondent on 07-09-2011 submitted representation/complaint against the society to the Divisional Cooperative Officer – 2nd Respondent. The 2nd Respondent, through proceedings Rc.No.2127/2011/G, dated 13-09-2011, having noticed the nature of allegations, forwarded the same to Assistant Registrar – II – 2nd Respondent to look into the matter and submit a report. The operative portion of the instant communication reads as follows :

"I am enclosing herewith the petition of Sri

Chalamalasetti Gandhi vide reference cited. Wherein it was informed that the Managing Committee of the Machilipatnam Cooperative Building Society have committed several irregularities and they have grabbed away crores of rupees of the Society land. The Society was established in the year 1950. Nearly 28 Acre 80 Cents of land was secured and divided into 138 plots classified as A, B, C and D and distributed among 120 members.

The main allegations are as follows :

1. B-28 Plot was reserved for shopping complex and the Managing Committee divided the same into 4 plots and sold away.
2. C-57 Plot was reserved for Office and the Managing Committee divided the same into 3 plots and sold out the plots. The amount was swallowed up by the Managing Committee and caused loss to the Govt. Property.
3. C-12, D-17 and D-28 plots are not allotted to any member and plots are sold out and swallowed the money.
4. B-25, B-26 and B-27 plots are not allotted to any member. But the Managing Committee of the Society sold out the plots and swallowed the money.
5. D-39 to D-47 Number plots are also not allotted to any member. But the Managing Committee members have sold out as their own property.

Therefore, the Assistant Registrar-II, Machilipatnam is hereby directed to visit the Society, verify the records and particulars of land and submit your report on the allegations of the petitioner within 15 days from the day of receiving this Memo.”

The 3rd Respondent through letter Rc.No.752/2007-G, dated

28-01-2012, from the material available on record it appears, submitted report to the 1st Respondent and also the 2nd Respondent. The 1st Respondent in purported exercise of his jurisdiction under Section 52 of APCS Act directed as follows :

“Proceedings of the Joint Registrar/District Co-op. Officer,
Krishna, Machilipatnam

Present : Sri T.H.Nataraja Rao, M.A., HDC.,

Rc.No.627/2012/D1
02-2012

Dated : 13-

Sub :- CBS- The Machilipatnam Cooperative Building Society Ltd.,
No.H.1640, Machilipatnam – petition filed by Sri Ch.Gandhi
– petition enquiry report submitted – certain irregularities –
Inspection under Section 52 of the APCS Act, 1964 into the
books and accounts of the society – Orders – Issued.

Read :- Letter Rc.No.752/2007/G, Dt.28.01.2012 of the Divisional
Cooperative Officer, Machilipatnam and enclosed
petition
enquiry report of the Assistant Registrar-II
Machilipatnam
Sub Division.

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Whereas, in the reference read above, the Divisional Co-operative Officer, Machilipatnam while forwarding the preliminary enquiry report of the Assistant Registrar –II Machilipatnam Sub Division on the Machilipatnam Cooperative Building Society Ltd., No.H.1640, Machilipatnam reported that preliminary enquiry officer noticed certain irregularities in the affairs of the society.

Whereas the Divisional Co-operative Officer, Machilipatnam requested the District Cooperative Officer, Krishna, Machilipatnam to order an inspection Under Section 52 of the APCS Act, 1964 into the affairs of the society.

Now, therefore, I, the Joint Registrar/District Cooperative Officer, Krishna, Machilipatnam by virtue of powers conferred on me vide G.O.Ms.No.34 F&A (Coop-IV), Dept., Dt.18-1-1989 read with G.O.Ms.No.19, Agrl. & Coop. (Coop-IV), Dept, Dt.01-02-1995 do hereby order an inspection into the affairs of the said society under Section 52(1) of the APCS Act, 1964 with special reference to the preliminary enquiry report of the Assistant Registrar-II, Machilipatnam Sub Division and authorize Sri D.Vijay Kumar, Assistant Registrar – VI, Machilipatnam Sub Division to conduct the Inspection.

The Inspection Officer of the Machilipatnam Cooperative Building Society Ltd., No.H.1640, Machilipatnam, shall start the

Inspection immediately and complete it within a period of 60 (sixty) days from the date of this order and submit the report to the Divisional Cooperative Officer, Machilipatnam in quadruplicate.

The Divisional Co-operative Officer, Machilipatnam is directed to obtain and submit the Inspection report along with his remarks soon on receipt of the Inspection report from the Inspecting Officer.

(GIVEN UNDER MY HAND AND SEAL THIS THE 13TH DAY OF FEBRUARY 2012)

-Sd-
Joint Registrar/District Co-operative
Officer, Krishna,
Machilipatnam”

Hence, the Writ Petition.

Sri Y. Subrahmanyam, counsel for petitioner, has made the following legal and factual submissions.

- (a) The inspection ordered is contrary to Section 52 of the Act;
- (b) According to him, bare reading of impugned proceedings would go to show that there is clear non-application of mind by the 1st Respondent while ordering inspection of record.
- (c) The initiation of causing enquiry at any rate cannot and could not be at the instance of the 4th Respondent, who is a non-member to the society;
- (d) The ordering of inspection by the then Assistant Registrar –VI (D.Vijay Kumar) clearly would go to show that the 1st Respondent has merely gone by the instruction of 2nd Respondent and persons ought not to have been named for inspection of the record of the society.

He prays for setting aside the impugned proceedings, dated

13-02-2012.

The Assistant Government Pleader vehemently contends that the contention that the impugned proceeding is issued contrary to Section 52 of the Act is illegal and that the chronology of dates and events in the matter would clearly go to demonstrate that there is no deviation whatsoever of statutory requirement of Section 52 of the Act. Replying to the second submission it is contended that though inspection cannot be ordered as matter of course under Section 52 of the Act, but at the same time, to order inspection of record to get either a preliminary report or material required for proceeding further in the proposed enquiries, the 1st Respondent does not discharge any function which affects the rights of a party. Therefore, there should be some basis for ordering inspection of record. According to Assistant Government Pleader, in the case on hand there is sufficient material and it cannot be said that there is non-application of mind. It is further contended that in the inspection, as is evident from the proceedings, dated 13-02-2012, it is sufficiently clear that the 4th Respondent has no role whatsoever and the department has discretely gathered information and on being satisfied that there is *prima facie* material for inspection, the inspection is ordered. Against appointment of D.Vijay Kumar to conduct inspection, it is replied by the Assistant Government Pleader that at this point of time, Assistant Registrar No.VI may or may not be the same person who was appointed through the proceedings dated 13-02-2012 and to ensure fairness, an officer in the same cadre will be

called upon to inspect the record and submit a report to the 1st Respondent.

I have considered the material available on record and also the submission of learned counsel appearing for the parties.

Now the point for consideration is whether the impugned proceedings are vitiated as illegal, unwarranted and without jurisdiction.

The chronology of events has already been referred and I am not inclined to repeat the very same admitted dates while examining the points. The 2nd Respondent received complaint from the 4th Respondent against the alleged illegalities in the allotment of house plots by the society. The

1st Respondent is the authority competent to order inspection of the record. The 2nd Respondent, being a superior officer, called upon the Assistant Registrar-II to enquire into the administration of society. The Assistant Registrar-II on 28-01-2012 submitted report to the 1st Respondent. The

1st Respondent, as admitted by the parties, can order *suo motu* inspection of record of a society. In the case on hand, the basis for issuing the impugned proceeding is preliminary report, dated 28-01-2012 of the 3rd Respondent and not at the instance of the 4th Respondent, as contended by the petitioner.

The objection that there is non-application of mind has to be merely noted to be rejected. The 2nd Respondent called for

preliminary report on the allotment of plots by the society. On 28-01-2012, report was submitted to the 1st and 2nd Respondents. The 1st Respondent, being satisfied with the letter dated 28-01-2012 of the 3rd Respondent, ordered inspection and in my considered view, application of mind on the very necessity of ordering inspection of record cannot be equated with any adjudicatory function discharged by the 1st Respondent. The decision taken by him depends upon the material available before the 1st Respondent. As further expression of any view in this behalf would prejudicially affect the ongoing inspection or further enquiry, while rejecting this contention, no finding on fact in this behalf is recorded.

The petitioner, having regard to the complaint, dated 07-09-2011, presumes that the order of the 1st Respondent directing inspection of record is at the instance of the 4th Respondent, which is not factually correct.

May be that the 4th Respondent had set in motion the mechanism for redressal of alleged illegalities against the society. Had it been a case where the 1st Respondent has ordered inspection on representation, dated 07-09-2011, the contentions now canvassed by the petitioner would have been available to challenge the inspection order of the 1st Respondent. But, in the case on hand, one has to examine the very basis for ordering inspection of record. Having observed that, this Court is of the view that the order of the 1st Respondent in the case on hand is on the basis of the report,

dated

29-01-2012 of the 3rd Respondent. As far as the further contention that appointment of a person or a particular person shows the illegal exercise of jurisdiction by the 2nd Respondent is concerned, firstly, there is no prohibition to appoint an officer by name together with his designation for undertaking inspection of record and secondly, at this point of time, the same Assistant Registrar –VI may not be working in the same place and this contention fails and rejected.

For the above reasons and particularly regard being had to the allegations of alienation of plots to members after converting commercial space into house plots, inspection is ordered and no exception can be taken, the core objections raised by the petitioner fail.

The Writ Petition is dismissed. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand disposed of.

**S.V. BHATT,
J.**

Date : 21-03-2016
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