

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.12978 of 2009

ORDER:

The Animal Husbandry Department Employees Cooperative House Building Society/petitioner challenges the order dated 16.06.2009 in O.A.No.99/2008 of the A.P. Cooperative Tribunal, Visakhapatnam, as illegal and contrary to the A.P. Cooperative Societies Act, 1964 (for short 'the Act').

2. The circumstances leading to the filing of the writ petition are in a brief nutshell and are not disputed by the contesting parties. The tribunal considered the scope and object of Section 21(3) of the Act and on being satisfied that the petitioner herein committed breach of mandatory requirement of Section 21(3) of the Act allowed the appeal filed by the third respondent. Hence, the writ petition.

The circumstances relevant for disposal are as follows.

3. On 08.04.2003, the third respondent was admitted as member of petitioner/society. The third respondent was allotted membership No.GI.No.291. The petitioner had obtained land for allotment of house plots to the members of petitioner-society. Admittedly, the third respondent was not allotted house plot by the petitioner. The third respondent filed petition under Section 61 of the Act in ARC.No.15/2006-07 complaining against the action of petitioner in not allotting a plot to him. On 23.08.2008, the Assistant Registrar of Cooperative Societies dismissed the claim filed by the third respondent. The third respondent filed O.A.No.99 of 2008 before the A.P. Cooperative Tribunal, Visakhapatnam. The tribunal framed the following point for consideration:

"Whether the award passed by the Assistant Registrar/first respondent is maintainable on facts and whether any interference is necessary?"

The tribunal recorded the following findings:

“6. The respondent society has not denied the facts of appellant's admission into the society on 8.4.2003 and the allotment of GL.No.291. The only disqualification raised by the respondents-3 and 4 is that appellant was not working within the radius of 20 km of Visakhapatnam by the time of his admission. Now the point needs attention is whether General body has properly addressed this issue or not. The ultimate authority of the society is vested with the General body. As per section 21(3) of Andhra Pradesh Co-operative Societies Act, in case of person with disqualification has been admitted as member, General body is empowered to remove such person from the membership, subject to giving opportunity of representation and the resolution of removal of membership shall be communicated and on such communication, the membership is deemed to have ceased. However, admittedly, the society at its wisdom has not taken any action contemplated to remove the appellant from the society and during the argument, respondent society admitted that the appellant is not removed from the society and he is still a member of the society but, as the General body observed disqualification, the house plot was not allotted to the appellant. With the admission of the respondents and in absence of any material to show removal proceedings, the membership of the appellant shall be considered live.

7. Further, the section 21(3) of the Act and the direction of Registrar of Co-operative Societies is also suggesting to follow due procedure for such removal any member. Though the respondent-society claimed that there was discussion in the General body in accordance with the byelaws under section 21(3), the same is not reflected according to the prescribed procedure, but only one line remark in the resolution is found. It is also pertinent to note that the respondent-society, except the remark that the appellant was not working with Visakhapatnam area, no other point raised showing any other disqualification or other point on non-eligibility of the appellant. If all these facts are considered, it can be concluded that the General body without following due procedure prescribed in the section has rejected the allotment of adverse remark regarding disqualification about his membership and without following the procedure contemplated by the statute, simple denial of allotment of plot is not justified and the action of the society cannot sustain the

test of law or factual merit.

8. Basing on the observations made above, if the award is examined, the facts are misread and misinterpreted by the arbitrator as such, the arbitration award is liable to set aside and the society is directed to consider the appellant's name and allot a house plot as it is clearly evident from the facts of the case that the appellant is still member of the society and no other disqualifications are proved against him for allotment of house plot."

4. Mr. Ch. Dhanamjaya, counsel appearing for petitioner, challenges the award on two grounds viz. (a) that the tribunal committed illegality by ignoring admitted facts/circumstances of the case and the direction issued is unsustainable in law and (b) the general body has, in fact, taken a decision that the deviation, if any, in following the procedure to declare a member as ineligible and remove him from the rolls, does not vitiate the resolution.

5. Mr. P. Veeraju, in reply, contends that two contentions urged in the writ petition do not arise on the showing of the petitioner for even as late as 11.06.2006 the third respondent was treated as member of the society and in the very general body meeting held on 11.06.2006 on the ground that the third respondent was not working in the area of operation of petitioner society, plot was not allotted to the third respondent. It cannot go thus far to strike off the name of the third respondent from the rolls of the society. According to him, the procedure under Section 21 of the Act is mandatory. Once it is admitted that the third respondent was not put on notice much less any opportunity was given, the self-serving resolutions in the general body, in no manner affect the status of the third respondent as member of the petitioner society. He prays for dismissal of the writ petition.

6. I have perused the material available on record and noted the submission of the learned counsel appearing for the parties.

The summary of the above narration is that on 08.04.2003 the third

respondent was admitted as member of petitioner/society. The third respondent raised a dispute complaining against non-allotment of plot to the third respondent. The primary authority ought to have confined its consideration to the facts and circumstances prevailing as on that date and granted relief. On the other hand, in the case filed by the third respondent, the tribunal recorded finding on the membership of the third respondent. In the considered view of this Court, such finding recorded by the primary authority is unsustainable vitiated, as rightly found and considered by the tribunal. Once it is admitted that the third respondent was not subjected to the procedure under Section 21 of the Act, in an application filed before the Assistant Registrar by the third respondent for grant of plot, the procedure required to be followed by petitioner cannot be undertaken by the Assistant Registry.

I do not see any illegality or irregularity warranting interference by this Court. It is made clear that on the eligibility of the third respondent to continue as member, if any issue arises, it is open to the society to consider and proceed in accordance with law. All the defences open to the third respondent can be canvassed and are required to be considered contemporaneously before any decision is taken.

The writ petition fails and is dismissed with the above observation. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

S. V. BHATT, J

June 8, 2016
DSK