

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition Nos.24019 and 27027 of 2007

Common Order:

These two Writ Petitions are being disposed of by this common order as they relate to the same Society.

W.P.No.24019 of 2007 was filed by the petitioner Society challenging the notice dated 15.10.2007 issued by the sixth respondent, the Assistant Registrar/Liquidator and W.P.No.27027 of 2007 was filed by the same Society challenging the proceedings issued by the fifth respondent in the said Writ Petition dated 17.05.2007.

The Deputy Registrar of Co-operative Societies issued proceedings on 17.05.2007 stating that the petitioner Society was registered on 17.09.1948 and started functioning from 21.10.1948. The Society has not been conducting any activity for the last three years and remained as a nominal Society. The Executive Committee has not taken any action for development of the Society and no elections are being conducted. It was classified as D-category in the annual audit and the continuance of the Society serves no useful purpose to the members. It was also stated that though a notice was issued on 10.05.2007 to the President, no reply was furnished and, in those circumstances, he exercised the power under Section 64(2) of the Andhra Pradesh Co-operative Societies Act (for short 'the Act') and ordered for winding up of the Society. He also appointed the Liquidator under Section 65(1) of the Act. When the said Liquidator issued a notice on 15.10.2007, the same was challenged in W.P.No.24019 of 2007.

It is the case of the petitioner Society that there are nearly 486 members in the Society and it owns 764 Acres of agricultural land. All the members were allotted a piece of land for agricultural use. The main object of the Society is to provide agricultural land to its poor landless members. The elections were held on 23.09.1997 and the period came to an end on 22.09.2002. The respondents have not initiated any action for holding elections by appointing an Election Officer and hence the Managing Committee of the Society passed a resolution on 22.04.2002 requesting the respondents to hold elections. In those circumstances, the petitioner Society filed W.P.No.16549 of 2002 and the same was disposed of on 22.09.2004 directing the respondents to take steps to hold elections within a period of six months and in spite of the said order no elections were conducted. Without conducting elections, the Divisional Cooperative Officer was insisting the Society to hand over the records. The petitioner Society further states that it is not receiving any aid from the Government and by virtue of the amendment made on 25.04.2001 to the Cooperative Societies Act by Act 22 of 2001 in respect of the Societies which are not receiving aid it is the responsibility of the incumbent committee of the Society to hold elections. In view of the same, the petitioner Society conducted elections on 30.06.2005 for a term of five years. The records of the Society are being audited from time to time by the department auditors. While so, when a notice was issued by the Liquidator on 15.10.2007 that he was appointed as a Liquidator by proceedings dated 17.05.2007 they came to know about the order passed by the fifth respondent, Deputy Registrar of Cooperative Societies.

The fifth respondent, who is the Deputy Registrar of Cooperative Societies, Amalapuram, East Godavari District, filed a counter affidavit

stating that as per the directions of this Court an official person-in-charge was appointed to the Society by the then Divisional Cooperative Officer on 30.04.2005. In pursuance of the same, when the Managing Committee was directed to produce the records to proceed further to conduct elections, it was not complied with and majority of the members not paid the minimum share capital amount. In those circumstances, the elections could not be conducted. The activities of the Society became dormant and it was found that there was no possibility for revival of the Society. Accordingly, orders were passed on 17.05.2007 for winding up the Society by appointing the Liquidator. The allegation made by the petitioner Society in the affidavit with regard to request made to the respondents to conduct elections was denied. It is stated that the Society never passed any resolution nor requested for conducting elections. When records were asked to be handed over, the petitioner Society submitted an explanation on 22.01.2005 stating that the records are with the earlier Managing Committee and requested to issue election notification by fixing the date of elections. The Liquidator was appointed after following the procedure contemplated in the provisions of the Act.

A reply affidavit is filed by the petitioner Society stating that the total number of members of the Society as on 2002 was 486 and it continued so till 2010. However, as on 2015 number of members came to 451. As per the bye-laws of the Society, elections have to be conducted by the Society itself. Since the petitioner Society is not receiving any aid from the Government, it conducted the elections on its own during the years 2005, 2010 and 2015.

Learned counsel for the petitioner Society submits that without giving any opportunity of making representation and without conducting

any enquiry as contemplated under Section 64 of the Act, the Deputy Registrar of Co-operative Societies on his own wound up the Society which is contrary to Sub-section (2) of Section 64 of the Act.

Learned Government Pleader, on the other hand, submitted that the Society has become dormant as majority of its members did not pay the minimum share capital amount and taking those circumstances into consideration the impugned order was passed.

Now, it is clear from the above facts that the petitioner Society was registered on 17.09.1948 and it started functioning from 21.10.1948. The Society is having Ac.573.41 cents of land and the land was leased out to its members. The petitioner Society states that since it was not receiving any aid from the Government it conducted elections in the years 2005, 2010 and 2015. The show cause notice dated 10.04.2007 referred in the impugned order dated 17.05.2007 was stated to have not been received by the petitioner Society.

In the circumstances, the impugned order dated 17.05.2007 passed by the Deputy Registrar of Cooperative Societies, Amalapuram, East Godavari District, winding up the petitioner Society, appointing the Liquidator and the consequential notice issued by the Liquidator dated 15.10.2007 are set aside. The Registrar of Cooperative Societies is given liberty to take appropriate action, if he so chooses, in exercise of powers under Section 64(2) of the Act by issuing appropriate notice to the present Executive Body of the petitioner Society, who claims to be running the affairs of the Society, and after giving appropriate opportunity to submit an explanation, take necessary action. In order to verify whether the elections were held and Executive Body is functioning, it is open to the

fifth respondent, Deputy Registrar of Cooperative Societies, Amalapuram, East Godavari District to call for the records from the petitioner Society and it is needless to observe that the Society shall cooperate in submission of the records.

The Writ Petitions are, accordingly, allowed to the extent indicated above. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed.

Date: 10.11.2016
Nsr



A. RAMALINGESWARA RAO, J