

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.25818 OF 2016

ORDER:

1. This writ petition is filed by the petitioner challenging the Election Notification in Rc.No.1/Elections-2016, dated 27.7.2016 issued by the 3rd respondent styling himself as Election Officer for conducting elections to the 4th respondent-society, even though he was not appointed as Election Officer either by the Registrar or the District Collector, who is the Election Authority, as contemplated under Rule 22(2) of the A.P. Co-operative Societies Rules, 1964.

2. Brief facts of the case are as follows:

(i) The 4th respondent-Devuni Kadapa Police Department Employees' Mutually Aided Co-operative House Building Society, Kadapa, Y.S.R. District, was registered under the provisions of the A.P. Mutually Aided Co-operative Societies Act, 1995 (hereinafter referred to as 'the Act'). After registration of the society one V.C. Sajjanar, IPS was elected as Chief Promoter of the Society. Thereafter, the petitioner was elected as the President of the Society in the elections conducted in the year 2006 and he continued as such till 15.7.2016. While so, the District Co-operative Officer, YSR District, Kadapa in exercise of powers conferred under the provisions of Section 23(3) of the Act appointed an Adhoc Board for specific purpose of conducting elections vide proceedings in Rc.No.4058/2015-D2, dated 16.7.2016.

(ii) As per Rule 22 of the A.P. Co-operative Societies Rules, 1964 (for short, 'the Rules'), the Registrar and the District Collector of the District shall be the Election Authority for the Society or the class of Societies and the Election Officer shall be appointed from the class of Officers specified in

the Rule 22(2)(a) of the Rules. Further, the Voters' list of the society has to be prepared and finalized as per the procedure laid down under Rule 22(2)(b)(i) to (vi) of the Rules. Thereafter, the Election schedule shall be published as prescribed in Form-I of the Rules, 1964 and the election will be conducted and the results will be declared as per the procedure laid down under Rule 22(4) to (9) of the Rules.

(iii) Even though the District Co-operative Officer, YSR District, Kadapa appointed an adhoc committee through the proceedings dated 16.7.2016, neither the Registrar nor the District Collector, who shall be the Election authority appointed any one as election officer, whereas, the 3rd respondent claiming himself as Election Officer published voters' list without there being any date whatsoever that too, without adhering to the procedure contemplated under Rule 22 of the Rules, by deleting the name of the petitioner from the voters' list. The 3rd respondent issued the impugned election notification proposing to conduct elections to the 4th respondent-society. Hence, the petitioner filed this writ petition.

3. The averments in the counter filed by the 3rd respondent are as follows:

(i) The 3rd respondent was appointed as Election Officer to the Society by the Adhoc Board of the Society as per Section 23(4) of the A.P. Mutually Aided Co-operative Society Act and he is conducting elections to the Managing Committee of the Society as per the provisions of the said Act. The members of the 4th respondent-society submitted a representation to the District Co-operative Officer on 23.6.2016 with a request to conduct General Body meeting for appointment of adhoc committee so as to conduct Elections to the Managing Committee of the Society as per Section 23 of the A.P. M.A.C.S Act. After considering the said representation, the

District Co-operative Officer, Kadapa, YSR District, issued notice dated 27.6.2016 calling the members of the society to the General Body Meeting for appointment of adhoc committee and on 8.7.2016 meeting was conducted and in the said meeting, the General Body of the Society unanimously resolved for appointing one S. Sankar Rao, President and 7 other members as Directors of the Adhoc Committee of the Society for the purpose of conducting elections to the Managing Committee of the society. The Adhoc Board resolved in the meeting dated 20.07.2016 and requested the Superintendent of Police, Kadapa to depute one Officer from the police Department to act as Election Officer. As per their request, the 3rd respondent was deputed as Election Officer to the Society. The Adhoc committee in a meeting held on 21.7.2016 unanimously appointed the 3rd respondent as Election Officer to conduct elections to the society as per Section 23(4) of the AP MACS Act. The President, Adhoc Board gave proceedings dated 21.7.2016 along with election schedule and handed over certain records including list of members to the Election Officer. The 3rd respondent gave wide publicity for conducting elections to the society and he started the election programme as per the election schedule.

(ii) Insofar as the petitioner is concerned, as per the Minutes Book of the society at page No.31, due to retirement of DSP, Kadapa/President of the Society, the duties and responsibilities of the President were temporarily handed over to the petitioner. The resolutions of the General Body Meeting dated 27.10.2006 were signed by M. Ramprasad Rao, the then DSP Kadapa and the petitioner. The petitioner was not elected as President of the Society by the General Body of the Society as per provisions of 21(3) of the A.P. MACS Act and Bye Law No.26. The petitioner himself acted as President to the society from 2006 in violation of the provisions of the Act.

The District Co-operative Officer gave orders for prosecution of the petitioner and other Directors as they failed to file annual returns of the society to the DCO. The petitioner committed several irregularities and that the Divisional Co-operative Officer, Proddatur who was appointed as Enquiry Officer under Section 29 of AP MACS Act, conducted enquiry and filed his enquiry report. The enquiry report reveals that the petitioner, acting as President, and the other Directors existed prior to Adhoc board, committed several irregularities. After perusing the enquiry report, the Special Commissioner has issued review vide proceedings dated 11.6.2016 directing the District Co-operative Officer, Kadapa, to take action on the defects pointed out by the enquiry officer, and to initiate civil and criminal action against the petitioner and other members. On the complaint made by a member of the Society, against the petitioner, a case was registered against the petitioner and others.

(iii) The District Co-operative Officer conducted general body meeting on 8.7.2016, and 113 members unanimously resolved to appoint an adhoc committee consisting of S. Sankar Rao, President of the 4th respondent and seven others as Directors for the purpose of conducting elections. The Adhoc Board appointed the 3rd respondent as election officer and the 3rd respondent is conducting elections to the society as per the provisions of the Act.

4. The averments in the counter filed on behalf of the 4th respondent are as follows:

(i) One Sajjanar was nominated as Chief Promoter in the meeting of the society held on 4.7.2004. In the General Body meeting of the society held on 9.8.2005 under the Chairmanship of V.C. Sajjanar IPS, S.P., the DSP, Kadapa (M. Ram Prasada Rao) was nominated as President of the

society, as Sajjanar was transferred. In the resolutions passed in the said meeting, 15 persons were unanimously elected as Directors of the Society in the place of old Directors. But as per bye-laws of the society the total Directors are 8 only. The name of the writ petitioner was at S.No.4 thereof. In the meeting of the Board of Directors held on 27.4.2006, it was noted that an extent of Ac.34.60 cents of land was allotted to the society vide G.O.Ms.No.478, dated 24.4.2006 on payment of Rs.76,000/- per acre. It was decided to raise a compound wall and prepare a lay out for the land. It was also decided to allot not less than Ac.0.04 cents of land to each member. Certain Officers working in Police stations were to look after the work relating to the lay out of the land allotted. It was further decided to collect Rs.12,000/- from each member for meeting the expenditure. In the General Body meeting of the society dated 12.10.2006, the plots were sought to be distributed by lots (Dip). It was noted in the said meeting that as on that day, the collection was Rs.1,56,56,550/- and the expenditure was Rs.1,41,07,600/-. The balance amount was Rs.15,48,950/-. No plots were allotted to 704 members. However, a subscription of Rs.5,550/- was collected from each member. In the meeting of the society held on 27.10.2006, the affairs of the society were handed over by the then President Ram Prasada Rao to the writ petitioner. The petitioner was never elected as President of the society. However, he continued in the office illegally without conducting any elections and he committed several irregularities.

(ii) The District Co-operative Officer, YSR District, Kadapa conducted General Body meeting on 8.7.2016, and the General Body appointed the present adhoc board consisting of 8 members and that the adhoc board was appointed for specific purpose of conducting elections through General Body. Under Section 37(2) of the Act “any dispute relating to Elections

held to a co-operative society shall be referred to the Co-operative Tribunal. If the petitioner has any grievance, he has to approach the Co-operative Tribunal under Section 37 of the Act. The present writ petition is not maintainable.

5. It is the case of the petitioner that the 3rd respondent issued Election Notification in Rc.No.1/Elections-2016, dated 27.7.2016 styling himself as Election Officer for conducting elections to the 4th respondent-society, even though he was not appointed as Election Officer either by the Registrar or the District Collector, who is the Election Authority, as contemplated under Rule 22(2) of the A.P. Co-operative Societies Rules, 1964. Further, it is the case of the petitioner that as no separate procedure is envisaged under A.P. Mutually Aided Co-operative Societies Act for conducting elections, the procedure envisaged under A.P. Co-operative Society Rules, 1964 is required to be followed.

6. It is the case of the 4th respondent-society that the election officer shall verify the record for arriving at the genuineness of the membership and that the persons disqualified either in terms of bye-laws or in terms of A.P. M.A.C.S Act shall be excluded from membership and that the Election Officer shall draw out a reasonable election schedule, publish voters' list calling for objections while giving three days time for submitting objections. It is the further case of the Society that after the last date for submitting the objections, within two days thereafter, final list of voters be published and that the date of filing nominations for eight posts shall be notified and two days time may be given for withdrawals and publication of list of contestants and thereafter, three days time may be given for conducting elections.

7. While admitting the writ petition, this Court suspended impugned notification. Considering the facts and circumstances of the case and the arguments advanced by the Counsel on record and the objections raised by the parties, without expressing any opinion on the contentions raised on behalf of all the parties, as well as the merits of the case and in the interest of the Society, it is just and proper to dispose of the writ petition with the following conditions:

(a) The Election notification impugned herein is set aside.

However, the District Co-operative Officer/the Election authority concerned is directed to take steps to appoint an Election Officer to conduct elections to the Managing Committee of the 4th respondent-Society afresh after conducting General Body meeting in consonance with the provisions of the Act/Rules applicable to the 4th respondent-Society, within a period of two months from the date of receipt of a copy of this Order.

(b) The Election Officer so appointed shall publish the voters' list calling for objections and giving three days time for submitting objections. After expiry of time for submitting the objections, within two days thereafter, the final list of voters be published. The date of filing nominations for eight posts shall be notified. Two days time shall be given for withdrawals/rejection of nominations. Thereafter, three days time shall be given for conducting elections. Counting of votes and publication of results shall be done on the same date of election. The Election Officer shall complete the above exercise, within one month from the date of his appointment.

8. With the above directions, the Writ Petition is disposed of. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated: 9th March, 2017
Nn.



HONOURABLE SRI JUSTICE RAJA ELANGO**WRIT PETITION No.25818 OF 2016**

Nn.

