

HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition Nos.6894 of 2014 & 22094 of 2013

COMMON ORDER:

Heard Mr. Srinivas Bodduluri for petitioners, learned Assistant Government Pleader for Co-operation, Mr. C.H. Jayakrishna, holding for Mr. C.B. Adarsh Kumar for 3rd respondent and Mr. V. Kishore for 4th respondent.

2. The petitioners apprehending initiation of coercive steps by 3rd respondent for recovery of alleged dues in various accounts of 3rd respondent bank filed the present writ petitions. The gist of the petitioners' complaint is that the amounts, in fact, are not due or borrowed by petitioners and the outstanding is shown on account of manipulation that has taken place when the then Managing Committee was in office. The 2nd respondent, at the instance of 4th respondent, initiated enquiry under Section 51 of the Cooperative Societies Act, 1964 (for short 'the Act') and a report is also available and the report substantially supports the grievances of the petitioners. Notwithstanding the subsequent developments, the 3rd respondent was taking up coercive steps for recovering amount not actually payable by petitioners. Hence the writ petitions for the following relief:

“..writ of *mandamus* declaring the action of the respondents in taking coercive steps against the petitioners for repayment of amount not due by concocting loan accounts and falsification of accounts as arbitrary, contrary to the provisions of the Andhra Pradesh Co-operative Societies Act, 1964, the rules framed there under and unconstitutional and consequently direct the respondents 1 and 2 to immediately initiate penal action against the staff and Managing Committee who committed fraud and misappropriated funds in the name of the petitioners from the 3rd respondent society during 1995-2002.”

3. Counsel for 3rd respondent firstly submits that the objections raised by petitioners cannot and could not be at the first instance considered by this court under Article 226 of the Constitution of India and the writ prayer is premature and does not challenge order, notice or a direction said to have been issued by any of the respondents. The 3rd respondent or for that matter 2nd respondent is required to follow the procedure stipulated under the Act for realising amount due from a member or defaulter. He draws the attention of the court to the stand of 3rd respondent in the counter-affidavit, which reads thus:

“I submit that with regard to the allegations made by the 6th petitioner, it is submitted that, this respondent is verifying the records thoroughly as the petitioner contends that the 3rd respondent Society is demanding to repay the four loans. I fairly admit before this Hon'ble court only three loans are maximum for any person i.e., long term loan, short term loan and gas loan/ two wheeler loan.

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It is submitted that, the petitioners if at aggrieved by the notices issued by the Respondent Society, ought to have approached the Society with a representation regarding their grievance but not to have approached this Hon'ble court suppressing the true facts and even the petitioners have statutory remedies under the Andhra Pradesh Co-Operative Societies Act, 1964.”

4. Mr. Srinivasa Rao, having regard to the stand of 3rd respondent, seeks leave of the court to file representation/reply to the notice, if any, issued in this behalf and requests the court to direct 3rd respondent to consider the objections/ explanation and pass orders, in accordance with law. He further submits that as the petitioners are relegated to approach 3rd respondent, he seeks liberty of the court to workout legal remedies, if circumstances warrant, against consideration and decision of 3rd respondent.

5. The statement is placed on record.

6. The writ petitions are disposed of by this order:

The 3rd respondent puts the petitioners on notice, considers entire material on record, including the report under section 51 of the Act, and proceeds in the matter as warranted in accordance with law in realising amount if any due from petitioners.

7. Both the writ petitions are accordingly disposed of. No order as to costs. Pending miscellaneous petitions if any in these writ petitions shall stand dismissed in consequence.

Date: 08.08.2017
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S.V. BHATT, J

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