

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.22627 OF 2017

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for respondents 1 to 5.

As per the affidavit filed in support of the writ petition and the material available on record, the seventh respondent was registered as a Mutually Aided Cooperative House Building Society on 17.08.2004 with 19 promoter members. The petitioner claims to be its President. It appears that one Sri A.Balaji, a member of the Society submitted a representation, in pursuance of which, an enquiry was ordered by the Registrar of Mutually Aided Cooperative Societies, A.P., Hyderabad, by proceedings dated 03.12.2015. The enquiry was directed to be conducted with reference to the following points:

- i) Allotting more than one plot to the member;
- ii) Admitting and allotting plots to the persons, who have already availed similar services in other society;
- iii) Allotment of plots without observing the seniority;
- iv) Not maintaining the books of accounts properly;
- v) Not conducting General Body Meetings as per the procedure;
- vi) Not conducting the elections to the Managing Committee;
- vii) Not furnishing the required Annual returns as prescribed in the Act

The Deputy Registrar/Enquiry Officer completed the enquiry, prepared a detailed report on 31.03.2016 and submitted the same by letter dated 04.05.2016. On such report, the Special Commissioner and Registrar of Cooperative Societies reviewed and passed an order on 01.06.2016 for taking follow-up action in respect of 12 items. Apart from 12 items, the District Cooperative Officer, Kadapa, was directed to initiate action for recovery of Rs.6,53,358/- from the petitioner as per the provisions of Section 33 of Andhra Pradesh Mutually Aided Cooperative Societies Act , 1995 (APMACS Act, for brevity) and also to initiate criminal action under Section 38(4) of the APMACS Act for

misappropriation of funds of the Society. A copy of the enquiry report was furnished by the District Cooperative Officer, Kadapa.

Challenging the said proceedings of the District Cooperative Officer and Divisional Cooperative Officer, the petitioner filed W.P.No.43648 of 2016. The relief sought in the said writ petition is as follows.

“The High Court may be pleased to issue a Writ of Mandamus declaring the Inquiry Report submitted by the respondent No.4 through letter in Rc.No.1867/2015-D, dated 31.03.2016 to the respondent No.3 and the consequential proceedings in Rc.No.6533/2015/Hsq., dated 01.06.2016 issued by the respondent No.2 directing the respondent No.3 to initiate necessary action as has been indicated through the Inquiry Report dated 01.03.2016 for dissolution of the Society, to cancel the allotment of house and to initiate Civil and Criminal action as arbitrary, illegal, contrary to procedure envisaged under the provisions of the A.P.Mutually Aided Cooperative Societies Act, 1995 and violative of the principles of natural justice apart from being violative of fundamental rights guaranteed to the petitioner under Articles 14, 19 and 21 of the Constitution of India and consequently set aside the same.”

When the learned counsel for the petitioner urged before this Court that steps are being taken contrary to the scheme of the APMACS Act including dissolution of the Society, this Court disposed of the same on 23.12.2016 with the following observations:

“This Court has no reason to doubt that the respondents have set in motion the procedure under Sections 29 and 31 of the Act and will proceed in accordance with law. As and when the next step is taken in the matter, before appropriate forum, the petitioner can raise objections on the tenability of the report etc.

The Assistant Government Pleader, on instructions, submits that the report is the first stage of proceedings under Sections 29 and 31 of the Act and the respondents will follow the procedure stipulated by law before decision is taken in this behalf.

The statement is placed on record. The writ petition is disposed of. It is made clear the disposal of the writ petition shall not be understood as this Court expressing view on the objections now stated in the affidavit on merits canvassed by the petitioner.”

No appeal was preferred against the said order and it has become final.

The District Cooperative Officer issued proceedings on 28.10.2016 authorising the Divisional Cooperative Officer to file criminal case against the Committee Members including the President, the petitioner herein, and directed to contact the Station House Officer, RIMS Police Station, Kadapa, and furnish the copy of the F.I.R., to him. In pursuance of the said proceedings, the Divisional Cooperative Officer addressed a letter to the Station House Officer/Inspector of Police, RIMS Police Station, Kadapa, on 31.10.2016 and a complaint was registered as F.I.R.No.100 of 2016 under Sections 406, 409 and 420 IPC.

Now, the present writ petition is filed with the following prayer:

“This Hon’ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the proceedings in Rc.No.4058/2015-D2, dated 28.10.2016 issued by the third respondent and the consequential proceedings in Rc.No.1523/2015-E, dated 31.10.2016 issued by the fifth respondent as illegal, arbitrary and without jurisdiction by declaring that the enquiry proceedings initiated and the enquiry report is illegal, unsustainable and *non est* in the eye of law as violative of provisions of the A.P.Mutually Aided Cooperative Societies Act, 1995.”

Learned counsel for the petitioner pointed out that though he is willing to face the criminal proceedings initiated, the enquiry report itself is bad in law and he raised the following contentions:

The second respondent has no jurisdiction to order an enquiry as he is not the ‘Registrar’ defined under Section 2(r) of the APMACS Act. He further submits that without completion of civil proceedings which were sought to be initiated pursuant to the enquiry report, initiation of the criminal proceedings is bad. He placed reliance on Sections 29(3) and 31 of the APMACS Act. In support of his submissions, he relied on decisions in **Marathwada University**

vs. Seshrao Balwant Rao Chavan¹, M.V.Ramanaiah vs. APSEMAC Housing Society Limited², M.Laxmana Rao vs. Primary Agricultural Cooperative Society³, Karimnagar Cooperative Urban Bank Limited vs. B.Hanumanlu⁴, Lankala Koderu Cooperative Rural Bank Limited vs. Ungarala Pullaiah Naidu⁵ and T.Satyanarayana vs. Joint Registrar/District Cooperative Officer⁶.

When this Court pointed out that the present writ petition relates to consequential proceedings pursuant to the enquiry report and he should confine his submissions to the main relief sought in the present Writ Petition in view of the order in W.P.No.43648 of 2016 becoming final, he made elaborate submissions on the consequential relief in the present Writ Petition by giving up the main relief. He submitted that this court can examine the enquiry report. The decisions relied on by him relate to the said challenge only. In my view, such a challenge in the present round of litigation arising out of consequential proceedings cannot be entertained when this Court merely granted permission to the petitioner to challenge the consequential proceedings. In the guise of challenging the consequential proceedings, the petitioner is not entitled to challenge the jurisdiction of the second respondent to initiate enquiry and entrusting the enquiry to the third respondent. Even otherwise also, Section 2(r) of the APMACS Act reads as follows.

2(r) "Registrar" means the Registrar of Mutually Aided Cooperative Societies appointed under Section 4 of this Act, and includes any other person on whom all or any of the powers of the Registrar under this Act are conferred;

G.O.Ms.No.151, Agriculture and Cooperation Department, dated 20.06.2016, a copy of which was filed by the petitioner himself, enables the discharge of duties of the Registrar under the provisions of the APMACS Act by Additional Registrars working in the office of the Commissioner for

¹ AIR 1989 SC 1582

² 2013 (1) ALD 242

³ 1996 (4) ALD 141

⁴ 2013 (1) ALD 608

⁵ 2002 (6) ALT 380

⁶ 2009 (2) ALD 189

Cooperation and the Registrar of Cooperative Societies and hence it cannot be said that the second respondent lacks jurisdiction. Though the petitioner appeared before enquiry officer, he never challenged the jurisdiction of the enquiry officer and now it is not open to the petitioner to challenge the jurisdiction of the second respondent or the third respondent. The case of **Marathwada University** relates to the delegation of power when the statute prohibits from such delegation. In the instant case, the Registrar has not delegated his power but exercised his power of ordering enquiry by appointing an enquiry officer and on submission of the report by the enquiry officer, action was directed to be taken. In view of the same, the said decision is not applicable with regard to the jurisdiction of the second respondent is concerned.

Regarding the decision in **M.V.Ramanaiah**, the action was initiated by the second respondent under Section 29(2) of the APMACS Act and hence, reliance on Section 31 of the APMACS Act is misplaced.

The other decisions were rendered under the provisions of the A.P.Cooperative Societies Act and they are not applicable to the facts of the present case. In any event, in view of the order in W.P.No.43648 of 2016 becoming final, the arguments based on the jurisdiction of the second respondent and the report of the third respondent are not available to the petitioner since the petitioner himself did not advance any argument on the consequential actions of the respondents 2 and 3 pursuant to the report and as the petitioner expressed his willingness to face the criminal proceedings, no grounds exist for entertaining the present writ petition.

Before parting with the case, this Court feels it necessary to record its displeasure with regard to the conduct of the Counsel in the present case in prolonging the arguments to the detriment of the waiting advocates for thirty minutes, though this Court pointed out that the arguments relating to the matter already covered in W.P.No.43648 of 2016 which should have been

argued therein cannot be entertained. After arguing for thirty minutes, he left the court in a huff stating that full opportunity was not given to him. Normally this Court will not comment on the conduct of the advocates but the advocate, who conducts the case, has also equal responsibility in not prolonging the case beyond a point when hundreds of cases are waiting. When this Court expressed its opinion and time of thirty minutes was given for a matter of admission, the comment of the Counsel that 'full opportunity was not given', is not expected from an advocate having more than thirty years of standing. Keeping in view the precious time of the Court consumed in the present case, this writ petition is dismissed with costs of Rs.10,000/- (Rupees ten thousand only) payable to the Andhra Pradesh Legal Services Authority within four weeks from today.

Consequently, miscellaneous petitions pending, if any, shall also stand closed.

07.08.2017
pln

A.RAMALINGESWARA RAO, J

