

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.21515 of 2016

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the orders of the 3rd respondent in Rc.No.20903/ 2012/ HR2, dated 25.05.2016 and 4th respondent in Rc.No.34/ 2013/ Hsg. dated 03.06.2016 as illegal, arbitrary and contrary to the provisions of the Andhra Pradesh Co-operative Societies Act, 1964 (for short "the Act"); and consequently *set aside* the same.

2) The facts in issue are as under:

The writ petitioner is a member of 6th respondent housing society which has acquired land in Manikonda village and later allotted plots to its members on the basis of a lottery system. The said provisional allotment of plots was made basing on the draft lay out on 26.11.2006. After securing approval of the lay out from the H.M.D.A., the allotments were confirmed on 04.06.2011. It is said that the number of the plot which was allotted to the petitioner was No.1. Thereafter, the petitioner secured building permission from Manikonda Gram Panchayat on 11.07.2011 and constructed a residential house. The 7th respondent also claims to be a member of the 6th respondent society. It is averred that the 7th respondent, with the help of other members of the managing committee, manipulated the records and is laying a claim to plot No.3 and 123 of pre-revised un-approved lay out. It is said that the

7th respondent also filed O.P. 38 of 2014 as there were some disputes over his membership in the society. It is said that without conducting any proper enquiry and without giving any notice to the petitioner herein, the impugned orders came to be passed by respondent Nos.3 and 4, whereby the 3rd respondent has to issue necessary directions to the 4th respondent to restore the original plot allotted to the 7th respondent. Basing on the order of the 3rd respondent, the 4th respondent issued proceedings dated 03.06.2016 directing the 5th respondent to take steps to restore the plot. Challenging the same, the present writ petition came to be filed.

3) The learned counsel for the petitioner mainly submits that the impugned orders came to be passed behind his back and that he came to know about the orders passed recently, which lead to filing of the present writ petition. He submits that the 3rd and 4th respondents have no jurisdiction to pass the said orders, since none of the provisions empowered them to direct a co-operative society to allot or re-allot the plots.

4) The 6th respondent society filed their counter supporting the plea of the writ petitioner. It is their case that the 3rd respondent has unilaterally expressed his conclusion even without giving any notice or consulting the society to speak to the ground realities. It is further urged that the order passed by the 4th respondent is in violation of principles of natural justice as the same came to be passed without issuing any notice to them. The

representation of the 7th respondent was taken as gospel truth and then the impugned orders came to be passed directing the society to comply with the order within 10 days. It is stated that even 4th respondent failed to enquire or give notice to know the ground position and passed the impugned order is gross violation of principles of natural justice. Since the statute prescribes a mechanism under Chapter VIII, X and XI of the Act, the 3rd respondent cannot resolve the dispute in the manner he likes. Even on merits, the counsel for the society-6th respondent pleads that the 7th respondent has no right to claim over the property.

5) The 7th respondent, who is appearing in-person, filed a detailed counter explaining how he has been cheated by denying him a plot, which was originally allotted to him. Counter running into 30 pages is filed in support of his plea. However, the gist of his case which has been supplemented by way of written arguments show that the 7th respondent was admitted as a member of the 6th respondent society from the date of inception of the society and he is old member and paid membership fee of Rs.500/. He was allotted plot No.3 where as the writ petitioner was allotted plot No.224. He paid Rs.3,50,000/- towards developmental charges which was collected from the members towards layout developmental charges. In pursuance of the letter dated 05.07.2009, the 7th respondent paid Rs.4,00,000/- for construction of house in plot No.3. After approval of layout by HMDA, dated 21.05.2011, the petitioner being the Secretary of the 6th respondent society has manipulated the records and changed plot

No.1 to his name and allotted plot No.129 to the 7th respondent. When the name of the 7th respondent was removed from the voters list in the elections held on 2014, he filed O.P.No.38 of 2014 before the Co-operative Tribunal. When the draft issues were framed by the tribunal, the 6th respondent society filed W.P.No.31871 of 2015 and got interim stay of all further proceedings. The 7th respondent approached the arbitrator vide Arbitration Application No.55 of 2013. As the Arbitrator forced the 7th respondent to withdraw the same, he withdrew the same. Within three days after withdrawing the case, the 7th respondent approached the Government by way of representations dated 14.03.2014, 09.03.2015 and 12.05.2016, ventilating his grievances. Finally the Government referred the representations to the Registrar of Co-operative Societies vide Memo Rc.No.1684/ Co-op.II(2)/ 2015-1-3, dated 10.04.2015, 01.10.2015 and 17.05.2016. The same were treated as grievance petitions to settle the dispute under Section 61 of the Co-operative Societies Act, 1964. In spite of several remainders, no report is submitted by the District Co-operative Officer, Hyderabad (Urban), which lead to passing of the impugned orders in Rc.No.20903/ 2012/ HR-2 dated 25.05.2016 by the Additional Registrar (Housing), exercising power under Section 61 of the Co-operative Societies Act. The said power was delegated to the Additional Registrar (Housing) vide G.O.Ms.No.890, Food and Agricultural Department, dated 29.03.1965. By no stretch of imagination it could be said that impugned orders were passed without any power or authority. If aggrieved, the writ petitioner

has statutory remedy of appeal provided under Section 76 of the Act or Review under Section 78 of the Act.

6) The written arguments which are placed on record by the 7th respondent does not anywhere indicate the order dated 03.06.2016 passed by the 4th respondent in Rc.No.34/ 2013-Hsg, wherein the Divisional Co-operative Officer was instructed to submit his report within three days while taking steps to restore the original plot allotted to the 7th respondent. It only states that pursuant to the representation made by the 7th respondent, the Government referred the matter to the Registrar, Co-operatives vide memo dated.10.04.2014 etc. Pursuant to the representation of the seventh respondent, who is appearing in-person, lead to passing of the order dated 25.05.2016. The relevant portion of the order dated 03.06.2016 is as under:

“The Commissioner for Cooperation and Registrar of Cooperative Societies, Telangana, Hyderabad have also instructed to issue directions to the society to restore the original plot allotted to the individual while submitting the report within ten days from 30.05.2016.

In view of the above, the Divisional Cooperative Officer is instructed to submit his report within three days while taking steps to restore the original plot allotted to Sri P.Chandrsena Reddy.”

7) In the column subject there is a reference to the representation of the 7th respondent, who is suffering since last 5 years due to illegal activities of the housing society. Hence, the Additional Registrar, Housing, O/o. Commissioner for Cooperation

and Registrar of Cooperative Societies, Telangana State, passed the following order:

“Therefore, the District Cooperative Officer, Hyderabad (Urban) is requested to furnish the report called for in the matter within ten days from the date of receipt of this memo for onward submission to the Government and the District Cooperative Officer, Hyderabad (Urban) is also instructed to issue directions to the society to restore the original plot allotted to the individual.”

8) However, in the written arguments there is no reference to the order dated 03.06.2016 but it has been specifically contended that the Additional Registrar (Housing), and the District Co-operative Officer have ample jurisdiction to pass the impugned order under the provisions of the A.P.Co-operative Societies Act. The said power is delegated to the Additional Registrar of Co-operative Department vide G.O.Ms.No.890, Food and Agriculture Department, dated 29.03.1965 issued by the Government of Andhra Pradesh exercising their power under Section 3 of the A.P.Co-operative Societies Act, 1965. Therefore, it is urged that the plea of the petitioner that the said authority has no jurisdiction cannot be accepted. Even on merits, he pleads that injustice has been done to him by putting his membership on tender hooks and also canceling the plot which was allotted to him.

9) He further pleads that O.P.No.38 of 2014 filed by him before the Co-operative Tribunal was challenged by way of W.P.No.31871 of 2015 and the entire proceedings are stayed. Though the plea of the petitioner that the 7th respondent has to

approach an arbitrator under Section 61 of the Act, the 7th respondent infact approached the arbitrator and made an application No.55 of 2013 but however he was forced to withdraw the same since the arbitrator ie. Divisional Co-operative Officer, Golconda was a member and allottee in 6th respondent society. He further submits that in view of the judgments of the Apex Court the petition has to be dismissed as the petitioner has approached the Court with un-clean hands. In support of his plea, he relied upon the following judgments of the Apex Court.

1. Dilip Singh v. State of U.P.¹
2. Chandalvaraya Naidu v. Jagannath²
3. Prestige Lights Limited v. State Bank of India³
4. K.D.Sharma v. Steel Authority of India⁴
5. Vijay Syal v. State of Punjab⁵

10) Though the arguments which were advanced across the Bar relate to the jurisdiction of the authorities in passing the impugned orders but at the same time it has been specifically urged by the counsel for the petitioner and 6th respondent that the impugned orders came to be passed without giving any notice to them thereby violating the principles of natural justice. Even if the argument of the 7th respondent is accepted, that the Additional Registrar, who passed the impugned order dated 25.05.2016 has jurisdiction to pass the order, he ought to have issued a notice before passing the impugned order.

¹ (2010) 2 SCC 114

² AIR 1994 SC 853

³ (2007) 8 SCC 449

⁴ (2008) 12 SCC 481

⁵ (2003) 9 SCC 401

11) As seen from the proceedings, the impugned orders adversely affect the rights of the petitioner and the 6th respondent. The order dated 25.05.2016 specifically gives direction to the District Co-operative Officer to issue directions to the 6th respondent society to restore the original plot to the 7th respondent. Order dated 03.06.2016 postulates that the Divisional Co-operative Officer was requested to submit his report within 3 days while taking steps to restore the original plot allotted to the 7th respondent.

12) A reading of the two impugned orders does not anywhere indicate that the aggrieved persons were put to notice. In fact even the written arguments filed by the 7th respondent does not anywhere refer to giving of notice to the writ petitioner and the 6th respondent society.

13) In *Canara Bank v. V.K.Awasthy*⁶ the Apex Court while dealing with the concept of principles of natural justice held as under:

“The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should

⁶ 2005 AIR (SC) 2090

appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time.

Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.”

14) Having regard to the judgment referred to above and having regard to the fact that the impugned proceedings came to be issued without giving any notice to the writ petitioner and 6th respondent, the orders under challenge is set aside and the matter is remanded back to the 3rd respondent to pass orders in accordance with law after hearing the writ petitioner, 6th respondent and the 7th respondent herein, by taking into consideration all the objections raised by them, as early as possible, preferably, within a period of two (02) months from the date of receipt of a copy of the order.

15) With the above direction, the writ petition is disposed of.
There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

28.04.2017
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