

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.16569 of 2010

ORDER:

Heard Sri Y.Subrahmanyam for petitioner, the Government Pleader for Cooperation and Sri G.Naresh Kumar for respondent Nos.4 to 6.

The petitioner challenges proceedings Rc.No.467/2010-D, dated 19.06.2010 issued under Section 51 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act'), as illegal, contrary to Section 51 of the Act and unconstitutional.

The operative portion of the order reads thus:

"Now therefore by virtue of powers vested in me U/s 51 of the A.P.C.S. Act, 1964 I, the District Coop. Officer, Ongole do hereby order an enquiry under Sec 51 of the Act into the constitution, working and financial condition of the Managing committee of The I.L.T.D. Staff Coop. Industrial House construction society Ltd, No.J.152, Chirala and the allegations leveled against the Managing Committee of the said society in the petitions referred above (copies are enclosed).

The Sub Divisional Coop. Officer, Chirala is hereby appointed as an enquiry officer to conduct the statutory enquiry under Sec.51 of the A.P.C.S. Act, 1964. The Enquiry officer is directed to submit the report within two months from the date of receipt of this order."

The petitioner is a Society registered under the Act. The petitioner alleges that a few persons claiming to be legal heirs of deceased members of society filed petition for their personal gains and prayed for allotment of plots to them. The 2nd respondent on these petitions ordered 3rd respondent to enquire into the allegations. The 3rd respondent on

12.04.2010 submitted report. The report dated 12.04.2010 substantially vindicates the stand of the petitioner society vis-à-vis the allegations. While matter stood thus, on same grievances received from the legal heirs of the deceased members, the 1st respondent ordered enquiry under Section 51 of the Act through proceedings dated 19.06.2010. Hence, the writ petition.

Now, the challenge to this statutory enquiry against petitioner under Section 51 of the Act is primarily on two grounds, namely, that the report of 3rd respondent dated 12.04.2010 is not brought to the notice of 1st respondent wherein the allegations are found to be untenable and secondly, there is no material warranting initiation of enquiry under Section 51 of the Act. The 1st respondent ordered statutory enquiry without even recording substantive satisfaction. Therefore, he prays for setting aside the statutory enquiry initiated through proceedings impugned in the writ petition.

On 13.07.2010, this Court granted stay of all further proceedings.

Respondent Nos.1 to 3 filed counter-affidavit and also petition to vacate the interim order dated 13.07.2010. It is stated in the counter-affidavit as under:

“It is submitted some representations were received from the legal heirs of the deceased members of the I.L.T.D. Staff Cooperative Industrial House Construction Society Limited, Chirala stating that the Managing

Committee of the said society is not admitting them as members even though they are the legal representatives of the past members. The same was referred to the Divisional Coop. Officer, Ongole for enquiry on 06.04.2010 and the Divisional Coop. Officer, in turn referred to the Sub Divisional Coop. Officer, Chirala for enquiry and submitting report. The petition enquiry referred to the Sub Divisional Coop. Officer, Chirala is only with regard to admission of members only, for which the Sub Divisional Coop. Officer conducted enquiry on 12.04.2010 and submitted his report on 10.05.2010. Thereafter several representations/petitions were received by the Collector grievance cell and by this respondent's office alleging several irregularities against the Managing Committee of the I.L.T.D. Staff Cooperative Industrial House Construction Society Limited, Chirala, inter alia with regard to allotment of plots. Excess registration of plots over and above Ac.0.03 cents i.e., Ac.0.05 cents and Ac.0.10 cents, registration of plots in the name of Non-Members, irregular allotment of plots in Acs.12.00 cents which was allotted for public purpose, registration of plots in the name of bogus members, manipulation of photo identity cards, allotment of plots to the relatives of the M.C. members who are not at all members, change of old layout by reducing the extent of roads to 30 feet's, registration of plots by using forged documents and using the photos of other persons.

As *prima facie* evidence was furnished along with complaints, the same were referred to the Divisional Coop. Officer, Ongole vide letter dated 10.06.2010 and in turn the Divisional Coop. Officer Ongole has referred the same to the SubDivisional Coop. Officer, Chirala who is having the jurisdiction in respect of the said society for enquiry and submission of report. The Sub Divisional Coop. Officer, Chirala vide his report dated 09.06.2010 recommended for a statutory enquiry into the irregularities committed by the Managing Committee of the ILTD Staff Cooperative Industrial House construction society Ltd., Chirala. The said report was forwarded to this respondent by the 3rd respondent through letter dated 14.06.2010. The petitioner's contention that in respect of the same individual grievances which have been enquired into the impugned proceedings dated 19.06.2010 were issued is therefore not tenable.

The initiation of Section 51 enquiry by the 1st respondent in exercise of his *suo motu* powers is valid and such an action was approved by this Hon'ble High Court in similar circumstances."

The 1st respondent places on record the complaints received to explain that the contents against the petitioner society are not similar to the first set of charges. Respondent Nos.4 and 5 tried to elaborate the alleged irregularities or illegalities committed by petitioner society. The petitioner

filed reply affidavit and this Court is of the view that taking all these averments beyond narration may result in expression of a view into the allegations or the enquiry under Section 51 of the Act. Therefore, the averments necessary for considering the grounds of challenge are referred to.

Learned Government Pleader relies on the unreported decisions of this Court in W.A.No.131 of 2012 and W.P.No.21680 of 2017 to contend that the substantive satisfaction is examined from the reasons stated in the very order impugned in the writ petition and this Court in exercise of jurisdiction under Article 226 of Constitution of India at this stage may not look into other aspects, and prays for dismissing the writ petition.

The contention of petitioner is that the report dated 12.04.2010 clears the petitioner from substantial allegations against which now enquiry is conducted and, therefore, the enquiry under Section 51 of the Act is not warranted and amounts to arbitrary exercise of power. The reply of 1st respondent is that the report dated 12.04.2010 cannot be treated as a report under Section 51 of the Act and it is a preliminary report gathered with reference to the allegations made therein on a complaint petition and consequently the report cannot be expanded as a statutory report or utility to relieve the petitioner from enquiry under Section 51 of the Act.

I have taken note of these contentions, perused the report dated 12.04.2010 and considered the effect of the report dated 12.04.2010 on the allegations into which enquiry is ordered by the 1st respondent. *Prima facie*, this Court is of the view that the petitioner is expanding the legal effect and scope of report dated 12.04.2010. Therefore, the contention that second enquiry into same allegations is untenable and accordingly rejected.

Learned counsel for the petitioner vehemently contends that the proceeding suffers from lack of even subjective consideration of knowing the necessity to order enquiry under Section 51 of the Act and, therefore, suffers from non-application of mind and hence amounts to arbitrary exercise of power at the instance of vested interests. The contention is merely noted to be rejected. The order impugned in the writ petition refers to more than one complaint, each complaint refers to more than one allegation against petitioner and at this stage which ordering enquiry the registrar cannot be expected to state more than the necessity for ordering the enquiry.

In the case on hand, the 1st respondent called for preliminary report from Sub-Divisional Officer, Chirala, who, in turn, submitted report dated 09.06.2010 and on being satisfied with the material received by way of complaints and the recommendations in the report dated 09.06.2010, the 1st

respondent decided under Section 51 of the Act to order statutory enquiry into the allegations against petitioner society. Though Mr.Subrahmanyam forcibly canvassed this contention, the same is not brought to proper conclusion by meeting the effect of documents filed by respondents.

After perusing the material and the record, I am satisfied that the petitioner failed to make out a case.

Accordingly, the Writ Petition fails and is dismissed. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

31st August, 2017.
ssp



S.V.BHATT, J