

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.5874 of 2017

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 10.10.2017 passed by the learned XV Additional District Judge, Ranga Reddy District at Miyapur, in I.A.No.1012 of 2017 in S.O.P.No.555 of 2017. The said I.A. was filed by the petitioner herein, being the 11th respondent in the OP, under Order 7 Rule 11 CPC seeking rejection of the plaint and dismissal of the OP. By the order under revision, the Court below dismissed the I.A.

By order dated 10.11.2017, this Court granted interim stay of further proceedings in the OP.

Heard Sri M.V.Pratap Kumar, learned counsel for the petitioner/11th respondent, and Sri A.Ramakrishna Reddy, learned counsel for the first respondent/petitioner in the OP.

Perusal of the petition in S.O.P.No.555 of 2017 reflects that it was filed under Section 23 of the Telangana Societies Registration Act, 2001 (for brevity, 'the Act of 2001'). The petitioner therein was the society itself, viz., Vasantha Valley Owners Welfare Association with Registration No.75 of 2009. Its grievance, as set out in the petition, was that a new association, namely, the 11th respondent in the OP, the petitioner herein, had been formed by a group of ten of its members. The prayer in the OP reads as under:

'It is therefore prayed that this Hon'ble Court may be pleased to allow the Petition by granting the Order and Decree in favour of the Petitioner and against the Respondent as follows:

1. By Declaring the respondent No: 11 Association and also the acts of the Respondents 1 to 10 in floating the new Association and circulating the notice Dt:30-07-2017 as illegal, null and void and not binding on the members of the Petitioner Association.
2. By granting Perpetual Injunction in favour of the Petitioner and against the Respondents restraining them from taking over/interfering in the activities of the Petitioner Association in any way.
3. By granting costs of the Petition.
4. Any other relief/s which are deem fit and proper in the circumstances of the case and in the interest of justice.'

The contention of the 11th respondent in the OP in its application filed under Order 7 Rule 11 CPC was that the dispute raised in the OP and the relief claimed therein would not fall within the ambit of Section 23 of the Act of 2001 and therefore, it was barred by law. *Per contra*, the petitioner society contended that it could sue or be sued in its name and as respondents 1 to 11 were its members and were acting detrimental to the interest of the society, the OP was very much maintainable.

The Court below apparently accepted the plea of the petitioner society that respondents 1 to 11 in the OP were its members and opined that as they were acting detrimental to the interest of the petitioner society by floating a new association and as the petitioner society could sue or be sued in its own name, in terms of Section 19 of the Act of 2001, the dispute raised could be treated as one between the managing committee and the members of the society, which would fall within the scope of Section 23 of the Act of 2001. The Court below therefore held that the OP, as framed, was maintainable under Section 23 of the Act of 2001 and accordingly rejected the application under Order 7 Rule 11 CPC.

Section 23 of the Act of 2001 reads as under:

'23. Dispute regarding management:-- In the event of any dispute arising among the Committee or the members of the society, in respect of any matter relating to the affairs of the society, any member of the society may proceed with the dispute under the provisions of the Arbitration and Conciliation Act, 1996, (Central Act 26 of 1996) or may file an application in the District Court concerned and the said Court shall after necessary inquiry pass such order as it may deem fit.'

Be it noted that Section 23 deals with 'disputes regarding management' and postulates that in the event of any dispute amongst the committee members or the members of the society in respect of any matter relating to the affairs of the society, any member of the society may file an application in the District Court concerned and the said Court shall pass such order as it may deem fit after necessary enquiry. The provision therefore clearly excludes the society itself espousing any dispute as regards its own management. A registered society is a body corporate under Section 18 of the Act of 2001 but it would have to be administered to by individuals, namely its committee members or any officer authorized in this behalf by the bye-laws of the society. Section 19 merely makes it clear that the society may sue or be sued in its name and

the committee or any authorized officer of the society may bring or defend any action or other legal proceedings touching or concerning any property or any right or claim of the society. This provision therefore envisages the society undertaking any action or legal proceeding touching or concerning any property or any right or claim made by it. It does not visualize the society itself maintaining an application under Section 23 with regard to any dispute as to its own management.

The decision in ALL INDIA SC AND ST RAILWAY EMPLOYEES ASSOCIATION V/s. E.VENKATESHWARLU¹, relied upon by Sri A.Ramakrishna Reddy, learned counsel, is not relevant as that was a case relating to a dispute raised by a member of the society in relation to the elections conducted to the society. Similarly, the judgment of a Division Bench of this Court in THE A.P. FOOTBALL ASSOCIATION V/s. KURNOOL DISTRICT FOOTBALL ASSOCIATION² is of no avail as that was a case relating to a dispute between the members of the society and the members of its managing committee.

Further, the prayer in the OP reads to the effect that the petitioner society seeks a declaration that the 11th respondent association and the acts of its existing members, respondents 1 to 10, in floating a new association is illegal. In this regard, it may be noted that the 11th respondent in the OP, the petitioner herein, viz., Triyuga Enclave Owners Welfare Association, is an independent society which was registered under the Act of 2001 with Registration No.989 of 2017. Merely because its members were already the members of Vasantha Valley Owners Welfare Association, it would not have the effect of making the newly incorporated society also a member of the existing society, viz., Vasantha Valley Owners Welfare Association. This appears to be the misconception which not only prevailed upon the petitioner society in the OP but also upon the Court below.

As Triyuga Enclave Owners Welfare Association is a body corporate and is admittedly not a member of Vasantha Valley Owners Welfare Association, no application could have been filed under Section 23 of the Act of 2001 in relation to any dispute that Vasantha Valley Owners Welfare Association has with the newly incorporated Triyuga Enclave Owners Welfare Association. The understanding of the Court below that

¹ 2003(2) ALD 384

² AIR 1982 AP 97

the dispute must be construed as one between the managing committee and the members of the society is clearly erroneous as Triyuga Enclave Owners Welfare Association is not even a member of Vasantha Valley Owners Welfare Association. In this regard, the Court below seems to have completely overlooked Section 18 of the Act of 2001 which endows the newly incorporated society with legal status, independent of its members. The grievance of the petitioner society in SOP No.555 of 2017 therefore could not be brought within the ambit of Section 23 of the Act of 2001.

The application filed by Triyuga Enclave Owners Welfare Association under Order 7 Rule 11 CPC based on this premise therefore warranted consideration and acceptance. The order under revision holding to the contrary is erroneous in law and on facts and is accordingly set aside.

The civil revision petition is allowed holding that SOP No.555 of 2017 is not maintainable under Section 23 of the Act of 2001. The Court below shall take steps accordingly.

This order shall however not preclude the petitioner society from availing independent appropriate remedies in accordance with law before the proper forum as regards its grievance against Triyuga Enclave Owners Welfare Association.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

17th November, 2017
PGS