

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Appeal No.1988 of 2017

JUDGMENT : (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.40180 of 2017 dated 30.11.2017. The appellants herein are the petitioners in the said writ petition wherein they sought a mandamus to declare the enquiry report submitted by the Assistant Registrar/Enquiry Officer in the office of the District Cooperative Officer, Visakhapatnam, and the consequential notices issued by the Deputy Registrar on 28.10.2017 as arbitrary and illegal. They also filed W.P.No.40629 of 2017 questioning the proceedings of the Deputy Registrar dated 28.10.2017 asking them to show cause why the Managing Committee of the Society should not be superseded.

By a common order passed in W.P.Nos.40180 and 40629 of 2017 dated 30.11.2017, the Learned Single Judge dismissed both the writ petitions. In the order under appeal, the Learned Single Judge observed that the respondents were obligated to furnish documents, as requested by the appellant-writ petitioners, if not already furnished, for the purpose of filing explanation; and to also afford an opportunity of hearing before passing an order pursuant to the notice issued under Section 34(1) of the A.P. Cooperative Societies Act, 1964 (for short "the Act"). The respondents were directed to grant the appellant-writ petitioners sufficient time for filing explanation after providing them the documents sought for.

Before us Sri V.V.N.Narayana Rao, learned counsel for the appellant-writ petitioners, would contend that, while the terms of reference was regarding the alleged irregularities by the erstwhile managing committee, which held office during the period 2008-14, the enquiry officer, while conducting an enquiry under Section 51 of the Act,

had exceeded the terms of the reference, and had sought to cause an enquiry even for the subsequent period from 2014 onwards; the enquiry officer had given a clean chit to Sri K.Pydi Babu, the erstwhile President of the Society, even though his challenge, to the supersession of the committee, was rejected by this Court; the validity or otherwise of the preliminary enquiry report cannot be questioned either in the proceedings under Section 34 or under Section 60 of the Act; the appellant-writ petitioners' only remedy, to question the same, is by way of writ proceedings under Article 226 of the Constitution of India; and the Learned Single Judge erred in relegating the appellant-writ petitioners to the remedy of filing a reply to the show cause notice issued under Section 34(1) of the Act.

On the other hand, the learned Government Pleader for Cooperation would submit that the allegation of misappropriation, which the 4th respondent has held to have been proved in the preliminary enquiry caused under Section 51 of the Act, exceeds Rs.12.00 crores; while the appellant-writ petitioners' challenge to the notice issued under Section 34(1) of the Act was also rejected by the Learned Single Judge, they have chosen not to question the said order; the order under appeal, to the extent the Learned Single Judge directed the appellant-writ petitioners to furnish their reply to the show cause notice issued under Section 34(1) of the Act, has attained finality; this would necessitate the challenge, to the preliminary enquiry report passed under Section 51 of the Act, also to be rejected; and, in any event, since the enquiry under Section 51 of the Act is in the nature of a preliminary enquiry, pursuant to which action can be taken either under Section 34(1) of the Act, or under Section 60 thereof, the appellant-writ petitioners can raise all the objections, which they have urged in the writ petition, in their reply to the show cause notice issued under Section 34(1) of the Act.

As noted hereinabove, the Learned Single Judge has, in the order under appeal, relegated the appellant-writ petitioners to the remedy of filing their reply to the notice issued under Section 34(1) of the Act. He has also directed the respondents to furnish the appellants such documents as they may require, as also to grant them reasonable time to submit their reply.

As the appellant-writ petitioners are entitled to raise all such contentions as are available to them in law, including the contentions raised in the writ petition, in reply to the notice issued under Section 34(1) of the Act, we see no error in the order of the Learned Single Judge necessitating interference. In an intra-court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

27th December, 2017

Note: Issue C.C in three days.

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