

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal No.181 of 2018

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.16569 of 2010 dated 31.08.2017. The appellant herein filed the said writ petition seeking a mandamus to declare the proceedings of the District Cooperative Officer, Ongole, in R.C.No.467/2010-D, as contrary to the mandatory provisions of the A.P. Cooperative Societies Act, 1964 (for short "the Act"), illegal and improper, and to set aside the same.

The proceedings, which were subjected to challenge in the writ petition, was issued by the District Cooperative Officer, Ongole on 19.06.2010. The said proceedings records that several representations were received by his office, through the Collector Grievance Cell, C.M.Peshi, C.C & R.C.S, Andhra Pradesh, Hyderabad and Public Representatives of the District, who had all alleged that the Managing Committee of the appellant-writ petitioner had committed several irregularities in admission of members and allotment of plots to the members. The Table given thereunder refers to nine such complaints, and then records that the Divisional Cooperative Officer, Ongole, in his letter dated 14.06.2010, had informed that there was a dire need to order an enquiry under Section 51 of the Act, as the allegations were serious in nature; and it was felt necessary to have a thorough probe into the irregularities committed by the Managing Committee of the appellant-writ petitioner and to fix up responsibility against the concerned. The District Cooperative Officer, in the exercise of the powers vested in him under Section 51 of the Act, ordered an enquiry to be caused into the constitution, working and financial condition of the

Managing Committee of the appellant-society, and the allegations levelled against the Managing Committee in the petitions referred to in the Table. The Sub-Divisional Cooperative Officer, Chirala was appointed as an enquiry officer to conduct the statutory enquiry under Section 51 of the Act.

Sri P.Gangaiah Naidu, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, would place reliance on a report submitted by the enquiry officer, in proceedings Rc.No.12/2010/SDLCO/CLX dated 10.05.2010, wherein, with reference to four other petitions filed by individuals alleging irregularities in allotment of plots, the said enquiry officer had opined that the petitioners were not members of the society; as per the members list of the Society, the names of the petitioners were not shown in the list of members; the petitioners were asking one plot as the legal heirs of their elders; the petitioners had not applied for membership, and had not paid the share capital, entrance fees and savings to the said society; the petitioners were neither eligible for membership nor for plot from the society; and the society had rightly not allotted plots to them.

According to the learned Senior Counsel, since an enquiry had already been caused into the complaints of irregularities in allotment of plots, and the enquiry officer had, in his report dated 10.05.2010, opined that the petitions were frivolous and without basis, causing an enquiry all over again, under Section 51 of the Act, was wholly unjustified; and the Managing Committee, of the appellant-writ petitioner, could not be subjected to undergo the ordeal of yet another enquiry when, in the earlier enquiry, the enquiry officer had absolved the Managing Committee of all blame.

On the other hand, Learned Government Pleader for Co-operation would submit that the earlier enquiry, pursuant to which the report

dated 10.05.2010 was submitted, was more in the nature of a preliminary enquiry, and not an enquiry under Section 51 of the Act; no reliance can, therefore, be placed on such an enquiry report; even otherwise, the present enquiry under Section 51 of the Act is being caused on the basis of the representations submitted by other individuals, and not those on whose complaints the preliminary enquiry was caused earlier; it is not as if the appellant-writ petitioner would not be given an opportunity of being heard during the course of the Section 51 enquiry; the Section 51 enquiry is far more comprehensive in nature, and the enquiry officer would be required to examine all the records to ascertain whether or not the Managing Committee had committed any irregularities; and the Learned Single Judge was, therefore, justified in refusing to interdict the Section 51 enquiry being caused into the allegations of irregularities by the Managing Committee of the appellant-society.

In the order under appeal, the Learned Single Judge observed that he had taken note of the contents, had perused the report dated 12.04.2010 (evidently the report dated 10.05.2010), and had considered the effect of the said report on the allegations into which the enquiry was ordered; he was of the view that the appellant-writ petitioner was expanding the legal effect and scope of the report; and the contention that the second enquiry, into the same allegations, was untenable necessitated rejection. The Learned Single Judge also rejected the contention that the proceedings, directing an enquiry to be caused under Section 51 of the Act, suffered from non-application of mind, and observed that the order, impugned in the writ petition, referred to more than one complaint, and each complaint referred to more than one allegation against the appellant-writ petitioner; and, at the stage of

ordering enquiry, the Registrar could not be expected to state the necessity for ordering an enquiry.

Having noted that the District Cooperative Officer had called for a preliminary report from the Sub-Divisional Officer, Chirala who, in turn, had submitted a 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 District Cooperative Officer had decided to cause an enquiry under Section 51 of the Act, the Learned Single Judge held that the appellant-writ petitioner had failed to make out a case warranting interference. The Writ Petition was accordingly dismissed.

It is no doubt true that the earlier report dated 10.05.2010 makes no reference to the said report having been submitted pursuant to an enquiry directed to be caused under Section 51 of the Act. The submission of the Learned Government Pleader that the earlier enquiry was more in the nature of a preliminary enquiry, and not an enquiry under Section 51 of the Act, cannot, therefore, be said to be without merit. Even in an enquiry under Section 51 of the Act, the Managing Committee of the appellant would be given an opportunity of putting forth their contentions before the enquiry officer. As the appellant seeks to place reliance on the report dated 10.05.2010, it is always open to them to place a copy of the said report for the consideration of the enquiry officer during the course of enquiry being conducted under Section 51 of the Act. While the said report may not bind the enquiry officer, while causing an enquiry under Section 51 of the Act, he is bound to consider the objections put forth by the appellant-writ petitioner, including that the earlier report absolved them of similar allegations made by the other representationists.

Suffice it, therefore, to direct that, while the enquiry under Section 51 of the Act may go on, the appellant shall be afforded an opportunity of being heard and their objections shall be considered before the report, under Section 51 of the Act, is finalised.

Subject to the aforesaid observations, we see no reason to interfere with 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)

(KONGARA VIJAYA LAKSHMI, J)

22nd February, 2018
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AND
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Writ Appeal No.181 of 2018

Date: 22.02.2018

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