

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

**Writ Appeal No.866 of 2018
And
Writ Petition No. 36375 of 2017**

Common 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. 36375 of 2017 dated 31.10.2017.

The 1st respondent herein filed W.P. No. 36375 of 2017 seeking a writ of Certiorari to quash the proceedings of the Registrar dated 11.10.2017, purporting to conduct an enquiry into the affairs of the 1st respondent-Society; and to direct the Registrar not to interfere with the functioning of the 1st respondent-Society except in accordance with law.

By way of interim relief, they sought stay of all further proceedings pursuant to the proceedings of the Registrar dated 11.10.2017. The proceedings of the Registrar dated 11.10.2017, which is impugned in the Writ Petition, cites the following reasons as justification for appointment of Sri N. Vittal, Assistant Registrar, O/o. Deputy Registrar, Charminar, as the Enquiry Officer. They are :

1. The present Managing Committee dug the bore well and constructed the Security Room at the site of the Society without permission of competent authorities incurring an expenditure of 10.00 lakhs and the security room was demolished by the GHMC authorities.
2. These constructions were taken up at a stage when revenue authorities had issued a show cause notice to the society for resumption of Government land allotted to the society.

3. To inquire into the expenditure incurred and modus operandi followed for renovation of society office.

In the order under appeal, the learned Single Judge observed that the impugned proceedings were not in conformity with Section 29 of the Act, and granted interim stay for a period of four weeks. The said interim order has been extended from time to time, and is in force as on date. The appellants, who were impleaded as respondents in the Writ Petition and who are members of the 1st respondent-Society, have preferred this appeal aggrieved by the order of the learned Single Judge. Since the learned Single Judge was of the view that the notice issued by the authorities was contrary to Section 29 of the Telangana State Mutually Aided Cooperative Societies Act, 1995 ("1995 Act" for short), it is necessary to make a reference thereto.

Section 29 relates to enquiry and under Sub-section (2) thereof, the Registrar may, of his own motion, hold an enquiry or cause an enquiry to be made into the specific matter or matters relating to any gross violation of any of the provisions of the Act by the Co-operative Society. The power conferred on the Registrar to cause an enquiry under Section 29(2) is only in relation to a specific matter or matters which in turn relate to a gross violation of any of the provisions of the 1995 Act by the 1st respondent-Society concerned.

While Sri K.V. Raghuvver, learned counsel for the appellants, would refer to the provisions of the bye-laws, we find considerable force in the submission of Sri Vedula Venkataramana, learned Senior Counsel appearing on behalf of the 1st respondent-writ petitioner, that it is only for gross violation of the provisions of the 1995 Act, can the Registrar cause an enquiry.

Sri K.V. Raghuvver, learned counsel for the appellants, would then refer to Section 21(8)(b) of the 1995 Act, which requires every Director or employee of a Cooperative Society, while exercising his power and

discharging his duties, to exercise such due care, diligence and skill as a reasonably prudent person would exercise in similar circumstances. While drawing our attention to the first ground mentioned in the proceedings dated 11.10.2017 which relates to the digging of a bore well and construction of a security room without the permission of the competent authority incurring an expenditure of Rs.10.00 lakhs, and to the demolition of the security room by the GHMC authorities, Sri K.V. Raghuveer, learned counsel for the appellants, would submit that failure to obtain prior permission from the GHMC, to make such construction, had resulted in demolition of the said structure; the bore well was dug and the security room was constructed incurring an expenditure of Rs.10.00 lakhs; and since the security room was demolished because of their failure to obtain prior permission from the GHMC, Section 21(8)(b) was attracted, and the Board of Directors of the 1st respondent-Society must be held to have failed to exercise due care and diligence as a reasonably prudent person would exercise in similar circumstances.

While the other two reasons, mentioned in the proceedings dated 11-10-2017 for instituting an enquiry, evidently do not fall within the ambit of Section 21(8)(b) of the 1995 Act, it cannot be said with certainty that the first ground would not. The Registrar has merely undertaken the exercise to cause an enquiry. Since all pleas, as are available to the 1st respondent-writ petitioner, can always be taken during the course of enquiry before the Enquiry Officer, we see no reason to interdict the enquiry into the first ground ie,

“The present Managing Committee dug the bore well and constructed the Security Room at the site of the Society without permission of competent authorities incurring an expenditure of 10.00 lakhs and the security room was demolished by the GHMC authorities.”

Suffice it to make it clear that, since grounds 2 and 3 *ex facie*, do not fall within the ambit of Section 21(8)(b) of the 1995 Act, no enquiry can be caused there-into, much less a roving enquiry which is sought to be caused with respect to the third ground. The Enquiry Officer shall confine the enquiry to the first ground; and, thereafter, take action in accordance with law. It is also made clear that we have not expressed any opinion on merits, nor shall the observations made by us in this order be construed as the ingredients of Section 21(8)(b) having been attracted, for these are all matters for the Enquiry Officer to examine after giving the 1st respondent-Society a reasonable opportunity of being heard. Needless to state that the Enquiry Officer shall examine the matter on its merits, uninfluenced by any observations made by us in this order. The order under appeal is set aside.

Sri Vedula Venkataramana, learned Senior Counsel appearing on behalf of the 1st respondent-writ petitioner, the learned Government Pleader for Cooperation and Sri K.V. Raghuvver, learned counsel for the appellants, agree that, in the light of the order now passed by us, the cause in the Writ Petition does not survive necessitating any further adjudication by this Court.

Both the Writ Appeal and the Writ Petition are disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

28th June, 2018

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