

High Court for the State of Telangana

The Hon'ble The Chief Justice Raghvendra Singh Chauhan

and

The Hon'ble Dr Justice Shameem Akther

W.A. No. 425 of 2019

Date: 02-07-2019

Between:

Mr. B. Sridhar Rao

...Appellants

And

The State of Telangana
Rep. by its Principal Secretary to Govt.,
Home Department,
Secretariat, Hyderabad and 4 others

...Respondents

Counsel for the Appellants: Mr. T. Narender

Counsel for respondent Nos.1 to 4: AGP for Home

The Court made the following:

Judgment: (per Hon'ble The Chief Justice Raghvendra Singh Chauhan)

The appellant has challenged the legality of order dated 17-04-2019, passed by the learned Single Judge in Writ Petition No.7891 of 2019, whereby the learned Single Judge has dismissed the writ petition *inter alia* on the ground that it had been filed against a private society, respondent No.5, and since a private society is not covered by Article 12 of the Constitution of India, the writ petition is not maintainable. Secondly, there are disputed questions of fact with regard to whether there are any arrears owed by the appellant to the respondent No.5, society, or not. Such disputed questions cannot be adjudicated under the writ jurisdiction.

Briefly the facts of the case are that the petitioner had purchased a residential flat, bearing number A-104 in Block-A, first floor in Matrixx Majestic, situated in Yaprall Village, falling under the Greater Hyderabad Municipal Corporation, Alwal Circle, Malkajgiri Mandal, Ranga Reddy District. According to him, there is a society, namely M/s. Matrixx Majestic Residential Welfare Society,

respondent No.5, which looks after the day-to-day maintenance of the apartment building, collects maintenance charges, including for common area, and payment of electricity bills. However, according to the appellant, the respondent No.5, society, is not conducting itself in a legal manner. Therefore, he had raised his voice against its misconduct, and highlighted the illegal activities of the Management Committee. The petitioner had also filed a civil suit, namely OS.No.169 of 2015, before the Junior Civil Judge, Malkajgiri. In the said suit, temporary injunction order has been passed in favour of the appellant. According to the appellant, as a retaliating tactics, the respondent No.5, society, has issued a notice to the appellant on 25-02-2019, demanding that there is arrears of about Rs.10,125/-, which needs to be paid by him. Since the appellant was aggrieved by the said demand notice, he filed the writ petition. But, as mentioned above, the writ petition has been dismissed by the learned Single Judge. Hence, this appeal before this Court.

This Court has asked the learned counsel for the appellant a pointed query as to how a writ petition is

maintainable against a private society *i.e.*, respondent No.5 herein. According to him, since the respondent No.5, society, has disconnected the electricity and the water supply to his flat by exercising a power that it does not have, the appellant is entitled to invoke the writ jurisdiction of this Court.

When this Court further pointed out to the learned counsel that under Section 21 of the Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987 (for short 'the Act'), the Manager does have the power to cut off, to withhold, or in any manner curtail, or reduce any essential supply, or service enjoyed by the apartment owner, the learned counsel pleaded that he has challenged the constitutional validity of Section 21 of the Act. However, a bare perusal of the prayer clause of the appeal clearly reveals that no such challenge has been made by the appellant before this Court. Therefore, the said submission is not a correct statement of fact.

Needless to say, a writ petition would not lie against a private society. Therefore, the learned Single Judge was

justified in concluding that the writ petition is highly misconceived, and it is not even maintainable. Moreover, as there are disputed questions of fact with regard to the alleged arrears owed by the appellant to the respondent No.5, the society, the learned Single Judge was equally justified in concluding that such disputed questions of fact cannot be adjudicated under the writ jurisdiction.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. The writ appeal, being devoid of any merit is hereby dismissed.

As a sequel to dismissal of the writ appeal, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(Raghvendra Singh Chauhan, CJ)

(Dr. Shameem Akther, J)

Dt: 2nd July, 2019
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