

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)
TUESDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND TWENTY THREE
PRESENT
THE HONOURABLE SMT JUSTICE LALITHA KANNEGANTI
WRIT PETITION NO: 27149 OF 2022

Between:

Vasathi Housing Limited, Registered office at 8-2-269/S/61, Sagar Society, Banjara Hills, Road No.2, Hyderabad, Telangana rep by its Director and CEO P.V. Ravinder Kumar,

...PETITIONER

AND

1. Government of Telangana, Represented by its Secretary Department of Revenue, T.S. Secretariat Hyderabad
2. The Registrar General of Societies Commissioner of Stamps and Registrations, Telangana, Hyderabad
3. The Registrar of Societies, Ranga Reddy (R.O) Prashant Nagar, Prashanth Nagar, IDA Kukatpally, Kukatpally, Hyderabad, Telangana 500072.
4. Vasathi Anandi Owners Welfare Association, Office at Sy.No.4/A and 4/AA, Peerancheruvu Village. Gandipet Mandal, Ranga Reddy District, Hyderabad, Telangana

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ or order or direction more particularly in the nature of Writ of Certiorari to call for the records from Respondent No. 3 relating to the Registration No. 1490/2017, dt. 03/11/2017 where by the Respondent No. 3 has Registered the Respondent No. 4 as a society under Telangana Societies Registration Act 2001, and consequently quash/ cancel the Registration No. 1490/2017, dt. 03/11/2017 as null and void and against the provisions of Section 3 (1) of the Telangana Societies registration Act, 2001 Act and principles laid down in the decided cases and consequently cancel / Set aside the same;

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the registration of the Respondent No 4 association vide Registration No. 1490/2017, dt. 03/11/2017 issued by the Respondent No. 3 under Telangana Societies Registration Act 2001 pending disposal of the WP and pass

IA NO: 2 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Hon'ble NCLT- II, Hyderabad to decide the legal status of the Respondent No.4 under section 3 of the Telangana Societies Registration Act 2001 before disposal of the C.P. No. 50/7/HDB/2020 pending disposal of the WP;

Counsel for the Petitioner: SRI. V MURALI MANOHAR

Counsel for the Respondent No 1: GP FOR REVENUE

Counsel for the Respondent Nos 2 & 3: GP FOR STAMPS AND REGISTRATIONS

Counsel for the Respondent No 4: SRI P. PRATAP

The Court made the following: ORDER

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No.27149 of 2022

ORDER:

The writ petition is filed seeking the following relief:

"... to issue a Writ or order or direction more particularly in the nature of Writ of Certiorari to call for the records from Respondent No.3 relating to the Registration No.1490/2017, dt.03.11.2017 where by the Respondent No.3 has Registered the Respondent No.4 as a society under Telangana Societies Registration Act, 2001 and consequently quash/ cancel the Registration No.1490/2017, dt.03.11.2017 as null and void and against the provisions of Section 3 (1) of the Telangana Societies registration Act, 2001 Act and principles laid down in the decided cases and consequently cancel/Set aside the same and"

2. Mr. V. Murali Manohar, learned counsel for the petitioner submits that the petitioner is a company incorporated under Companies Act having its Registered office at 8-2-269/S/61, Sagar Society, Banjara Hills, Road No.2, Hyderabad, Telangana. The petitioner has developed residential project "Vasathi Anandi or Anandi Project" and under the project the Petitioner has built 483 Apartments consisting of 7 towers and each tower is having 7 floors in an area of 23804.27 Square Yards situated at Survey No. 4/A, 4/AA, near Hanuman Temple, Peram Cheru, Gandipeta Mandal and as per the terms of the agreement executed by the petitioner with the purchasers of the flats, the flat owners shall form a Society and the society shall take the maintenance of the Project from 01.04.2014 and the petitioner shall transfer the interest free corpus fund collected from the purchasers of the flat to the said society. It is submitted that there was an inordinate delay

of 4 years 4 months on the part of the purchasers of the flat to form a society and they have formed a society on 03.11.2017 and the said society has taken over the maintenance of the Vasathi Anandi on 29.04.2018.

3. Learned counsel for the petitioner submits that the petitioner was required to maintain the project from 01.01.2014 to 28.04.2018 and the money collected from the flat purchasers towards corpus fund and the maintenance fee was utilized for the maintenance of the Vasathi Anandi and the petitioner has refunded a sum of Rs.2,07,20,000/- on 22.01.2018 being the balance available with the petitioner and has rendered account wherein the society is liable to refund to the petitioner.

4. Learned counsel for the petitioner submits that the respondent No. 4 filed C.P.No.50/07/HDB/2020 against the petitioner before National Company Law Tribunal-II, Hyderabad under Section 7 of the Insolvency and Bankruptcy Code (for short "IB Code") with all false allegations. It is submitted that the Respondent No.4 also filed O.S. No.180/2021 before the Principle District Judge, Ranga Reddy District at L.B.Nagar as the petitioner is liable to pay a sum of Rs.3,64,50,116/- being the balance corpus fund. The petitioner is contesting the said C.P. and also the suit and it is the main contention of the Petitioner that the object clause of the Respondent No.4 is not in consonance with Section 3 (1) of the Telangana Societies Registration Act, 2001 and as such the very existence of society is null and void and the

Respondent No. 4 does not hold any validity, since there is no legal existence of the Society.

5. Learned counsel for the petitioner submits that as per the terms of the Agreement of sale entered by the petitioner with the flat purchasers, the Flat owners association should have been established on or before 31.12.2013 and the Petitioner shall transfer the interest free corpus fund collected from the purchaser towards the maintenance of Vasathi Anandi. It is submitted that the petitioner filed its counter in C.P.No.50/7/HDB/2020 and contesting the same and it is the case of the Petitioner that the Flat owners Association should have been established on or before 31.12.2013 and should take up the maintenance of the society and whereas this Respondent No.4 society was established on 03.11.2017 and it has taken the maintenance of the Society only in the month of April, 2018 i.e., after the laps of 4 years and 4 months when the society was supposed to take the maintenance of the project. The petitioner has furnished the full details of the maintenance expenditure incurred by the petitioner from 2013 to 2018 and it is the case of the petitioner that the petitioner need not pay any amount as claimed by the Respondent No.4 as financial debt. It is also the case of the Petitioner that there is no financial debt as defined under Section 5 (8) of the IB code and the Respondent No.4 is not a financial Creditor as defined under Section 5 (7) of the IB Code. It is submitted that the Petitioner filed I.A. No. 473/2022 in C.P. No.50/7/HDB/2020 seeking amendment of

the pleading and the said I.A. is pending. It is submitted that the NCLT without deciding whether the registration of the Respondent No.4 as society is not valid as per the provisions of Section 3 (1) of the Telangana Societies Registration Act and none of the objects of the Respondent No.4 society are not falling within the ambit of the Definition under Section 3 (1) of the Telangana Society Registration Act 2001, is trying to proceed for hearing of the main C.P. It is submitted that when the locus stand and maintainability of the C.P. is under challenge, the NCLT-II, Hyderabad shall decide the maintainability as a preliminary issue. If the NCLT-II, Hyderabad is allowed to proceed with disposal of C.P. No. 50/7/HDB/2020 without deciding the maintainability and locus stand of the Respondent No.4 to initiate the said proceedings.

6. Learned counsel for the petitioner submits that whether a resident welfare association/Flat owner association can registrar as a society under Telangana Society Registration Act, 2001 was decided by this Court in W.P.No.3319/2013 filed by Nugget Estates Private Limited Vs Government of Andhra Pradesh and others vide orders dt.05.03.2013. He submits that the petitioner made a representation dt.14.06.2022 to the Respondent No.3 requesting for cancellation of the Registration Certificate No.1490/2017 issued in favour of Respondent No.4 as the objects of the Respondent No.4 as per its By-laws are meant for maintenance of common areas and allied activities which are not in consonance with Section 3 of the Telangana

Societies Registration Act. He submits that if the Respondent No.4 is allowed to function, it will cause irreparable loss and injury to the petitioner. It is submitted that the petitioner is having vast experience in the construction field and is having good reputation for quality of the work. In view of the same, the petitioner has come before this court.

7. There is no interim order passed by this court in this writ petition.

8. A counter affidavit is filed and the learned counsel for the respondent No.4 Mr. P. Pratap submitted that the society was registered on 03.11.2017. As stated by the petitioner, there is delay of 4 years 4 months on the part of the purchasers of the flat to form a society is due to the fact that the petitioner company ought to have completed the construction on or before 31-12-2013 and it failed to do so. Whereas the true fact of the case is that even today most of the common facilities like swimming pool, Avenue Plantation and Landscaping, Two Lifts, C. C. TV Camera Surveillance System, Developer liability of Rs.160,00,000/- towards deposit for municipal water connection (paid by the Respondent No. 4), etc., are not completed.

9. It is further stated in the counter affidavit that the society was formed on 03-11-2017 and delay is clearly due to the incompleteness of the construction by the petitioner. It is further submitted that the petitioner was required to meet all the expenses of what so ever during the period of construction till the handover of the maintenance responsibility to the

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4th respondent herein on 28.04.2018. However, contrary to that, the Petitioner Company has collected a total of Rs.4,76,12,273/- from the 483 Apartment Owners under the head of Corpus Fund and also collected a sum of Rs.1.12Crores from the members of the society towards the maintenance fee for the period May, 2015 to May, 2018 (3 years) in addition thereof, the petitioner also collected a sum of Rs.1.02 Crores from the members of the Society towards one year (2014-2015) as advance maintenance fee, without any right to collect. It is admitted that the petitioner has refunded a sum of Rs.2,07,20,000/- on 22-01-2018 to the society out of total Corpus Fund collected of Rs.4.76 Crores and it is submitted that the petitioner is liable to repay the remaining corpus fund of Rs.2.70 Crores together with interest thereon to the society and defaulted in doing the same. It is denied that the society is liable to refund any amount to the petitioner.

10. It is further stated in the counter affidavit that thereafter, the Respondent No.4 filed C.P. No.50/07/HDB/2020 against the petitioner before National Company Law Tribunal-II, Hyderabad under section 7 of the IB Code. He submits that only for the purpose of evading the payment of amounts to the respondents, the petitioner has come up with a plea that the registration of the association is not valid as defined under Section 3(1) of the Telangana Societies Registration Act. It is submitted that the objects mentioned under Section 3(1) of the said Act are not exhaustive, rather they are illustrative in nature and the object of the Respondent No.4, as

mentioned in the memorandum and By-laws, as required under section. 4(1) of the Act are valid and enforceable in the eye of the law. Therefore, the registration is valid. The details furnished by the petitioner in the name of maintenance expenditure are false and fabricated and they are not the expenses paid towards the maintenance of the Respondent No.4 society, instead majority of the expenses are consisting of the salaries of the petitioner office staff, security and housekeeping personnel engaged. Apart from that, it is manifestly apparent from the above statement that during 2013 to 2018, there cannot be any payments to the security, housekeeping, electrician etc. as the project was still under construction.

11. It is further stated in the counter affidavit that the maintenance of the association is handed over in the month of March, 2018 and therefore, till such date maintenance is required to be done by the petitioner from out of his pocket till flats are handed over to the owners. It is submitted that the Occupancy Certificate was issued by Peerancheruvu Gram Panchayath on 03. 06. 2016. It is submitted that the Respondent No.4 is a financial creditor within the meaning of section 5(7) of the IB Code and the amount claimed by the Respondent No.4 is duly admitted by the corporate debtor company, and the same is a financial debt within the meaning of section 5(8) (f) of the IB Code as the amount of Corpus Fund and other amounts due have the commercial effect of borrowing.

12. It is further submitted that law regarding the veracity of registration or its cancellation has been time and again settled by various judgements of this court and Hon'ble Apex Court. Relying on the order passed by the Co-ordinate bench of this court in W.P.No.25713 of 2019, he submits that there is no Act, which compels the registration of an Association or Society in a particular Statute, therefore, there can be no hard and fast rule that, a person must be member of a particular Association or Society or Union registered under particular Statute and there is no prohibition under any Act of Parliament that, an Association or Society must register itself under a particular statute, followed the decision of the Apex Court in A P Dairy Development Corporation Federation Vs. B. Narsimha Reddy, reported in AIR 2011 SC 3298.

13. It is further submitted that earlier in Vijayanagaram Cooperative Land Mortgage Bank Limited Vs. B. Ranaiah, reported in 1968 (1) An. WR 52, it was settled by the High Court of Andhra Pradesh that it is for the member of a society to choose one or more societies which according to them can cater to their needs and objectives and the member can take membership of any of the Societies of his choice.

14. Learned counsel for respondent No.4 also relied on the order passed by the Delhi High Court in The Indian Veterinary Association (Regd) vs. Govt. of NCT Delhi and Ors in W.P. (C) 3265/2020 and submits that the Delhi High Court has held that the Registrar of Societies have no authority

to cancel registrations while carrying out his quasi-judicial duties under Section 12 of the Societies Registration Act, 1860 and the Registrar of Societies is not given any authority to cancel or withdraw a Society's registration after it has been done so. Under Section 31 of the Specific Relief Act, 1963, only a civil court can accomplish the same. He also relied on the order passed by the Delhi High Court in Supreme Court Bar Association vs. The Registrar of Societies and Ors in W.P. (C) 3260/2010, wherein the Delhi High Court held that Registrar of Societies has no power to cancel the registration.

16. Having heard the learned counsel on either side, perused the entire material on record.

17. The petitioner is a builder and the respondent No.4 association is formed by the purchasers of the flats. The whole dispute between the parties is with regard to the corpus amount which has to be handed over to the respondents and in that regard, there arose a dispute between them. The court is not concerned with the said dispute and the competent court will decide whether any amounts are liable to be paid to the unofficial respondent or not.

18. The petitioner has filed this writ petition only with a sole intention to see that respondents shall not pursue the litigation against him if this court hold that the unofficial respondent association cannot be resisted

under the Telangana Societies Registration Act. That is the only endeavor on the part of the petitioner. The petitioner is not a member of the said association. With the registration or non-registration of the association, the petitioner rights are not affected. Only for the purpose of evading the payment or to delay the process before the NCLT, the petitioner has come up before this court.

19. Taking into consideration the locus of the petitioner, the purpose that is sought to be achieved and in the light of the settled law, this court is not inclined to go into the issue of deciding the registration.

20. Accordingly, the writ petition is disposed of giving liberty to the petitioner to avail appropriate remedies if any. There shall be no order as to costs.

The Miscellaneous Applications, if any shall stand automatically closed.

SD/- MOHD. SANAULLAH ANSARI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Secretary Department of Revenue, Government of Telangana, T.S. Secretariat Hyderabad
2. The Registrar General of Societies Commissioner of Stamps and Registrations, Telangana, Hyderabad
3. The Registrar of Societies, Ranga Reddy (R.O) Prashant Nagar, Prashanth Nagar, IDA Kukatpally, Kukatpally, Hyderabad, Telangana 500072.
4. One CC to SRI. V MURALI MANOHAR, Advocate [OPUC]
5. One CC to SRI. P. PRATAP, Advocate [OPUC]
6. Two CCs to GP FOR REVENUE, High Court for the State of Telangana, Hyderabad. [OUT]
7. Two CCs to GP FOR STAMPS AND REGISTRATION, High Court for the State of Telangana, Hyderabad. [OUT]
8. Two CD Copies

HIGH COURT

LK, J

DATED: 24/01/2023



ORDER

WP.No.27149 of 2022

**WP IS DISPOSED
OF WITHOUT COSTS**