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(1989) 1 KLJ 736

High Court Of Kerala

Case No: O.P. No. 3986 of 1988

Joy Neeralakottil APPELLANT

Vs

Joint Registrar and

others RESPONDENT

Date of Decision: April 17, 1989

Acts Referred:

Constitution of India, 1950 â€" Article 299#Government of India Act, 1935 â€" Section 175(3)#Representation of the People Act, 1951 â€" Section 7(d)

Citation: (1989) 1 KLJ 736

Hon'ble Judges: T.L. Viswanatha lyer, J

Bench: Single Bench

Advocate: Cyriac Joseph, for the Appellant; Rajendran Nair Govt. Pleader, for the Respondent

Final Decision: Allowed

Judgement

T.L. Viswanatha lyer, J.

Petitioner has been disqualified from being a member of the Committee of the third respondent Kaduthuruthy Co-operative Rubber Marketing and Processing Society Ltd., which is a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969 (the Act, for short). He has been disqualified under rule 44(1)(d) of the Rules framed under the Act, which runs as under:-

44. Disqualification for membership of committee-(1) No member of the society shall be eligible for being elected, or appointed as a member of the committee of the society u/s 28 if he:-

XXX

(d) is interested directly or indirectly in any contract made with the society or in any sale or purchase made by the society privately or in any auction or any transaction of the society other than investment and borrowing involving financial, interest, if the contract or

transaction is subsisting or if the contract, sale, purchase or transaction be not completed.

The reason for disqualification was as follows:

The Society was on the look-out for a suitable place to install a crumb rubber factory. They advertised in the dailies, but the lands offered were not suitable. The managing committee, on its enquiry located four sites as suitable for the purpose. One of these sites under consideration belonged to the petitioner, who was a member of the managing committee of the Society. A sub-committee was constituted to consider the suitability of the four sites, and it recommended purchase of the petitioner"s site having an extent of 2.35 acres for a price of rupees five lakhs, at the rate of Rs. 2,135/- per cent. A copy of the report is Ext. P1. This was communicated to the petitioner by the President of the Society by his letter Ext P2 dated 10-4-1988. The petitioner was requested to give consent before 12-4-1988 to assign the land to the society. The petitioner accordingly gave what is called a deed of consent, namely Ext. P3 on 12-4-1988. He agreed thereby to assign to the society 2.35 acres of land for a total consideration of rupees five lakhs. He also agreed to have the property measured to the satisfaction of the society and to reduce the price, if the extent was less. The society was itself to arrange for getting legal opinion, valuation as also necessary permission from the department.

- 2. It would appear that the petitioner had apprehended disqualification from membership of the committee by virtue of the proposed sale. Ext. P2 the letter from the President, had sought to allay this apprehension of the petitioner by intimating that the petitioner need enter into any agreement for sale or execute the deed of sale only after the requisite sanction was obtained from the department. His consent for the sale was required to enable the society to go through the preliminaries like getting legal opinion, and valuation and for securing departmental sanction, besides exemption u/s 101 of the Act. It was in these circumstances that the petitioner was requested to give his consent before 12-4-1988.
- 3. The society applied to government by their petition Ext. P6 to exempt the society from the operation of rule 44(1) (d) in respect of the proposed purchase of the petitioner"s land. No orders have been passed thereon. It was in the meanwhile and two days before Ext. P6 was sent, that the Joint Registrar initiated proceedings by Ext. P7 to disqualify the petitioner for his entering into the "agreement" Ext. P3. The petitioner replied by Ext. P8 pointing out that the society had chosen this land from among various lands offered for sale, that he had consented to sell the land only subject to the condition that exemption u/s 101 was obtained and that he will not be disqualified thereby. He had not entered into any contract entailing disqualification under rule 44(1)(d). The explanation was not accepted by the Joint Registrar and the order of disqualification Ext. P9 followed.
- 4. I am afraid Ext. P9 is unsustainable in law. Rule 44(1) (d) disqualifies a person if he is interested directly or indirectly in any contract made with the society, or in any sale or purchase made by the society privately or in any auction or in any transaction of the

society other than investment, if the contract or transaction be subsisting or not completed.

- 5. To entail disqualification under the first part of the rule, the existence of a contract is a sine qua non. Such a contract should be one which is legal, valid and binding on both the parties, one which is liable to be enforced by or against the society. (Vide in this connection Laliteshwar Prasad Sahi Vs. Bateshwar Prasad and Others, , where it was held that a contract entered into with government in contravention of section 175(3) of the Government of India Act 1935 or Article 299 of the Constitution was void and unenforceable and such an agreement could not be called a contract within section 7(d) of the Representation of People Act, 1951.) A mere consent to sell property as that contained in Ext. P3 is nothing, but an expression of the willingness of the petitioner to sell the property to the society, if they deem fit to purchase it. It is not a bilateral agreement and it does not cast any obligation on the society to purchase the property or on the petitioner to sell it. It is not supported by consideration, to be a contract in law. It is not even an undertaking to sell the property to the society. When a binding enforcible agreement between the parties is called for to make it a contract for the purpose of the Rule, a consent letter Ext. P3 which is not even an agreement to sell, cannot prove lethal to the petitioner"s membership of the committee of the society.
- 6. The facts narrated earlier show that the petitioner was very anxious to retain his membership of the committee of the society and was not willing to enter into any transaction, if he was liable to be disqualified. Even his consent in Ext. P3 was only conditional on the society obtaining necessary exemption u/s 101 from government from the operation of Rule 44. In other words, the transaction would not have gone through if the exemption u/s 101 had not been granted. I am therefore, of the view that there was no contract as envisaged by the rule, disqualifying the petitioner from membership of the committee of the society. If on the other hand the consent subsequently fructifies into an agreement to sell or into a transaction of sale itself, Rule 44(1) (d) will be attracted. That stage has not reached in this case. The Joint Registrar, was therefore, in error in disqualifying the petitioner invoking rule 44(1) (d). Ext. P9 is not sustainable in law.

I therefore, allow the original petition and quash Ext. P9. No costs.