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Dr. S.K. Singh Vs The Cooperative Tribunal and Others

Writ Petition No. 3574 of 2001

Court: Andhra Pradesh High Court

Date of Decision: Nov. 26, 2008

Acts Referred:
Andhra Pradesh Co-operative Societies Act, 1964 â€" Section 51, 52, 61(1)#Transfer of Property Act, 1882 â€" Section 41

Citation: (2009) 2 ALD 474 : (2009) 2 ALT 244

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: D. Prakash Reddy and T.S. Praveen Kumar, for the Appellant; GP, for respondents 1 and 2, K. Raghuveer Reddy and P. Sriraghuram, for the Respondent

Judgement

C.V. Nagarjuna Reddy, J.
This case unfolds the story of a victim of fraud perpetrated on him by respondent No. 4 with the active

connivance of respondent No. 3 and unjust and unwarranted intervention with the arbitral award by the Andhra Pradesh Cooperative Tribunal

headed by a responsible judicial officer. The following facts unravel this squalid affair:

The petitioner is a member of respondent No. 3 Society (for short, "the Society") with membership No. 1498 and was allotted plot bearing No.

1012 admeasuring about 1100 square yards on 04.08.1975 by the Society. The petitioner paid the entire cost of the plot in instalments and was

corresponding with the Society for allotment of an alternative plot. The petitioner lives in USA. On 23.12.1992, he addressed a letter to the

Society requesting it to furnish information to his GPA, Dr. Dinesh Singh (for short, "the GPA") regarding his membership. In reply thereto, the

Secretary of the Society wrote letter dated 05.01.1993, wherein he informed that the petitioner''s membership and his plot were transferred to his

''sister'' Smt. V. Aruna wife of Ashok Rao, H. No. 1-2-51, Sri Krupa Towers, Flat No. C-1, Domalguda, Hyderabad, respondent No. 4 herein,

based on the petitioner''s letter dated 04.07.1992 and notarized affidavit dated 06.07.1992. The Secretary further informed that the petitioner is

not a member of the Society and that if any further information is required, he may write to the Society or visit it. Shocked by this letter, the

petitioner wrote back on 22.03.1993, wherein he informed that respondent No. 4 is neither his sister nor in any way related to him, that the alleged

letter of transfer and the affidavit relating thereto were forged with the mala fide intention of grabbing his land by misrepresentation and that the

entire transaction was allowed to take place by the Society without verification of genuineness of the transfer letter and the affidavit. The petitioner

requested the Society to enquire into the matter and restore his membership and the plot by cancelling the transfer made in favour of respondent

No. 4. The petitioner also informed in the said letter that he was authorizing his nephew Dr. T. Dinesh Kumar Singh through GPA duly executed by

him to take appropriate steps in the matter.

2. As the Society failed to take any steps to restore his membership and the plot to him, the petitioner caused legal notice dated 11.11.1993 issued

to the Secretary of the Society, wherein the Society was called upon to take necessary action in that regard by revoking the transfer made in

favour of respondent No. 4 and restore the membership and re-allot the plot in his favour, failing which necessary steps including criminal action

will be taken against the Society and all the persons concerned with the alleged fraud. The Secretary of the Society got a reply sent through his

lawyer wherein he inter alia referred to the previous correspondence the petitioner had with the Society from the time of allotment in the year 1975.

Reference to purported letter dated 04.07.1992 of the petitioner and the notarized affidavit dated 06.07.1992 was made in the said reply notice

and the Society took the stand that it has transferred the membership and plot acting bona fide on the said documents. It is inter alia stated ""The

Society is not interested in any way, except looking after the activities of the Society. When once the Society receives a letter and the affidavits in

the usual course of business, the Managing Committee of the Society has approved the transfer after making the verification with the records and

correspondence already available with the Society and since the transfer has been effected, the tenor of your notice to ignore the affidavits and the

letters at this belated stage does not arise. Your client is advised to take legal recourse"". It is further maintained that the Society is not aware of any

fraud practiced by respondent No. 4 and it cannot sit over the judgment and decide whether the letter and the affidavits are forged or not and that

the same falls within the purview of the Courts and as the Managing Committee of the Society already acted upon the transfer letter and the

notarized affidavit in good faith and effected transfer, the question of restoring back the plot and membership did not arise.

3. A further reply notice to the said reply notice of the Society was issued by the petitioner through his lawyer on 14.02.1994, wherein he

reiterated his stand that the alleged letter and the affidavit, on the basis of which the transfer was effected, were forged and fabricated documents.

The petitioner charged the Society of conspiring with and shielding respondent No. 4 in the entire fraud. A copy of the said notice was marked to

respondent No. 4 ""for information"".

4. A day after the copy of legal notice was sent to respondent No. 4, she and respondent No. 5 filed separate affidavits before the Society

requesting for transfer of the plot from her to respondent No. 5. A more detailed account of the events will be given in the later part of this

judgment.

5. The petitioner initiated arbitration proceedings before the Cooperative Sub-Registrar u/s 61(1)(b) of the Andhra Pradesh Cooperative Societies

Act, 1964 (for short, "the 1964 Act") impleading the Society and respondent No. 4 as parties thereto. On 17.03.1994, the Arbitrator granted an

order of injunction restraining the Society and respondent No. 4 from selling, constructing and transferring the property, but in the meantime the

Society effected transfer of the property in favour of respondent No. 5 on 28.02.1994. After receiving necessary pleadings and considering oral

and documentary evidence let in by the parties, the Arbitrator passed award on 10.05.1995 in ARC. No. 4 of 1994 in favour of the petitioner.

The said award was questioned by the Society in CTA. No. 182 of 1997 before respondent No. 1 Tribunal (for short, "the Tribunal"). The said

appeal was allowed by the Tribunal by order dated 30.11.2000, which is called in question in this writ petition. In the appeal, respondent No. 5

got himself impleaded as respondent No. 4 and supported the case of the Society. The Tribunal framed three points, which are as under:

1. Whether Dr. Dinesh has the legitimate General Power of attorney in his favour so as to represent Dr. S.K. Singh in this case? and if so, whether

he is entitled to maintain this case?

2. Whether the 2nd respondent transferred the membership of the petitioner and the plot No. 1012 in favour of the 1st respondent V. Aruna

basing on the forged letter dated 04.07.1992 and affidavit dated 06.07.1992? and if so, whether such transfer is illegal?

3. Whether the petitioner is entitled for re-transfer of the membership as well as the said plot in his name?

4. To what relief?

6. The Tribunal held all the four points against the petitioner.

7. Sri D. Prakash Reddy, learned Senior Counsel appearing for the petitioner contended that the whole approach of the Tribunal in reversing the

award passed by the Arbitrator is fundamentally erroneous and that in the face of the documentary as well as circumstantial evidence, which

clinchingly established fraud played by respondent Nos. 3 and 4, the Tribunal committed a serious legal error in overlooking the evidence adduced

on behalf of the petitioner and set aside the award on the grounds, which are totally extraneous and unsound. The learned Counsel further

submitted that respondent No. 4, who falsely claimed that she is the sister of the petitioner, got the membership and plot fraudulently transferred in

her favour and neither respondent No. 4 nor respondent No. 5, who is a subsequent transferee, derived any legal right over the plot in question.

The learned Senior Counsel also contended that the Tribunal unjustly rejected unimpeachable evidence, which established beyond any doubt the

fraud played by respondent Nos. 3 to 5 and non-suited the petitioner on the ground that Dr. Dinesh Singh did not hold valid GPA.

8. Sri K. Raghuveer Reddy, learned Counsel representing respondent No. 3 Society sought to support the findings of the Tribunal. Counsel for

respondent No. 4 was not present during any of the hearings though the case underwent adjournments several times commencing from

06.09.2008. Sri P. Raghuram, learned Counsel appeared for respondent No. 5 and made his submissions. He submitted that while he does not

want to argue on the correctness or otherwise of the order of the Tribunal, he would confine his arguments only to the provisions of Section 41 of

the Transfer of Property Act, 1882 (for short, "the 1882 Act"). The learned Counsel submitted that respondent No. 5 is a bona fide transferee

from respondent No. 4, who is the ostensible owner, for consideration and that respondent No. 5 took reasonable care to ascertain that the

transferor has power to make the transfer and acted in good faith. He therefore contended that as respondent No. 5 satisfied the ingredients of

Section 41, the transfer is not voidable on the ground that the transferor was not authorized to make it.

9. Before dealing with the contentions advanced by the learned Counsel for respondent No. 5, I would like to first examine whether the order

passed by the Tribunal is sustainable in law.

10. On point No. 1 framed by the Tribunal, it held that the GPA failed to file the original General Power of Attorney before the Arbitrator and that

the same is fatal, for, failure to produce the original GPA denied an opportunity to the Tribunal to compare the signature of the principal with his

admitted signature and find out whether the petitioner has really executed the GPA authorizing Dinesh Singh to represent him in the case. The

Tribunal further reasoned that when the respondents have challenged the competence of Sri Dinesh Singh to represent the petitioner the burden is

heavy on the latter to prove that he has been authorized to file this case on behalf of the principal. The Tribunal therefore concluded that Sri Dinesh

Singh did not possess the legitimate GPA in his favour to represent the petitioner and that therefore he has no locus standi to maintain the case.

11. In rendering the finding that Sri Dinesh Singh failed to file the original GPA, the Tribunal failed to note the evidence of Sri Dinesh Singh and the

specific observation made by the Arbitrator in his award. In his chief- examination, Sri Dinesh Singh, who deposed as PW.1, stated ""I am the

GPA holder of Dr. S.K. Singh, the petitioner herein. Ex.A1 is the original GPA."" In the award, the Arbitrator stated ""Ex.A1 is the original GPA.

Ex.A2 is the certified copy of the passport."" The Arbitrator also stated in his award at another place ""I have perused the original General Power of

Attorney dated 12.07.1993, wherein Sri S.K. Singh has authorized Dr. D.K. Singh as his General Power of Attorney holder duly signed before

second Secretary Embassy of India Washington D.C. and signed and sealed by second Secretary"". Very curiously the Tribunal omitted to refer to

these aspects and made a wholly incorrect observation that the Arbitrator was absolutely silent and did not discuss anything on the crucial and vital

point of non-filing of the original GPA.

12. At the hearing of this writ petition, it has come out that after the award was passed by the Arbitrator, the GPA of the petitioner has taken back

the original GPA by submitting a photo copy before the Arbitrator in order to file the same in the pending criminal case. After hearing the writ

petition in part on 19.09.2008, this Court adjourned the case directing the GPA of the petitioner to produce the original GPA. Accordingly, during

the subsequent hearing of the case, the original GPA was produced before the Court by the learned Counsel for the petitioner on 23.10.2008.

Learned Counsel for respondent Nos. 3 and 5 have not made any submissions on the genuineness of the original GPA. I have carefully perused the

said GPA and am satisfied that the copy made available in the record of the Arbitrator, which was transmitted to the Tribunal, is the authentic copy

of the original GPA. In my view, the Tribunal made an unnecessary issue out of a non-issue by delving into the purported non-genuineness of the

GPA. Without regard to the serious nature of the dispute raised before it, the Tribunal gave undue importance to this aspect and in the process

allowed itself to digress from the real issue involved before it, namely; whether there was fraudulent transfer of the valuable property by respondent

No. 3 in favour of respondent No. 4 and later by respondent No. 4 in favour of respondent No. 5. As the genuineness of the GPA is established

beyond any cavil of doubt, the finding of the Tribunal on point No. 1 that Dr. Dinesh Singh had no locus standi to initiate arbitration proceedings is

unsustainable and this finding is accordingly reversed.

13. With regard to the findings on point Nos. 2 and 3, in support of the plea put-forth on behalf of the petitioner that the transfer was fraudulent

and the two letters, namely, 09.05.1992 and 04.07.1992 purportedly addressed by the petitioner from Guntur address and also the alleged

affidavit of the petitioner attested by a notary at Hyderabad on 06.07.1992 were out and out forgery, the GPA of the petitioner relied on many

circumstances. In his evidence, he deposed that for more than 10 years the petitioner was residing in USA and his last visit to India was on

14.09.1990 and he went back to USA on 28.09.1990. From this circumstance, he wanted to prove that there was no possibility of the petitioner

addressing the abovementioned two letters and signing the affidavit on the abovementioned date in Guntur. To substantiate this plea, the GPA filed

the certified copy of the petitioner''s passport, which was marked as Ex.A2. He also filed Ex.A3 passport, the validity of which expired on

05.07.1992. The GPA also clearly deposed that respondent No. 4 was not the sister of the petitioner and that the signatures on letters dated

04.05.1992 and 04.07.1992 and affidavit dated 06.07.1992 are not of the petitioner and are forged. The GPA, besides filing a copy of letter

dated 22.03.1993 addressed by the petitioner to the Society, also identified the signature of the petitioner at two places on document dated

21.12.1992 produced by the Society, which was marked as Ex.B1. He categorically stated that the signature found in Ex.A1 (the original GPA)

on all papers and on Ex.B1 are that of the petitioner. He also deposed that the signature contained on letter dated 04.07.1992 does not belong to

the petitioner and the same is forged and that the signature on letter dated 09.05.1992 was also not of the petitioner. To the suggestion put forth on

behalf of the Society that he was deposing falsely in disputing the signatures of the petitioner, he empathetically denied the same. When the Society

gave a suggestion to the GPA that the signatures on affidavit dated 06.07.1992 and Exs.A1 and B1 are of the petitioner, he specifically replied that

the signature on affidavit dated 06.07.1992 is not the same as that on Exs.B1 and A1.

14. The counsel for respondent No. 4 has not subjected the GPA to any cross- examination with regard to the genuineness of letters dated

09.05.1992 and 04.07.1992 and the affidavit dated 06.07.1992. No suggestions whatsoever were put by the counsel for respondent No. 4 to the

GPA that the said documents on the basis of which transfer was made by the Society in favour of his client were genuine. Though the Secretary of

the Society examined himself as RW.1 and tried to establish that the two letters (Exs.B3 and B4) and the notarized affidavit (Ex.B5) are genuine

documents, respondent No. 4 has not even examined herself.

15. The Tribunal held that non-examination of the petitioner was fatal. The basis for this finding is that he is the only competent person to deny

execution of the two letters and the affidavit and rushed to the conclusion that in order to make a wrongful gain the GPA used the name of the

petitioner and filed the case unauthorizedly. This finding is absolutely without any basis whatsoever. The Tribunal wittingly or otherwise glossed

over the fact that the petitioner has been in USA and as per the evidence produced on his behalf he has last visited India in the year 1990. As he

was unable to prosecute his case personally, he executed the power of attorney in favour of Sri Dinesh Singh, who is no other than his own

nephew. On these admitted facts, there was no warrant for the Tribunal to presume from the non-participation of the petitioner in the proceedings

before the Arbitrator that Sri Dinesh Singh filed the case unauthorizedly for wrongful gain. The Tribunal further failed to consider the documentary

evidence filed before the Arbitrator, the authenticity of which is not and for that matter cannot be disputed, which established beyond any pale of

doubt that Exs.B3 to B5, the two letters and the affidavit are forged and to establish this fact there was no need for the presence of the petitioner.

16. A perusal of Ex.A7, the reply notice got issued through the Society''s lawyer makes it evident that the Society was well aware of the fact that

the petitioner had been corresponding with it from USA and as recent as 14.03.1992, a few days before controversial letter dated 09.05.1992

(Ex.B3) was purportedly written by the petitioner, he wrote letter to the Society requesting for demarcation of his plot. It was categorically stated

in the said reply notice ""All through the original member was corresponding with the Society from America"". It was also stated that the Society

received letter dated 21.10.1992, wherein the petitioner attested the signature of his GPA Dr. Dinesh Singh and also an undated letter received on

21.12.1992 (Ex.B1) bearing USA address requesting for information regarding his plot number and membership number and authorizing his GPA

Dr. Dinesh Singh to receive the particulars. Thus, when the Society has received umpteen number of letters containing the original signatures of the

petitioner, wherein he denied the execution of the two letters and the notarized affidavit, it is beyond one''s comprehension that the Tribunal termed

the GPA as an unauthorized person intending to make unjust enrichment. The Tribunal failed to consider that these letters addressed by the

petitioner, far from being disputed, are admitted by the Society.

17. The Arbitrator summoned original application of the petitioner filed for allotment of plot to compare his signature with the signature found on

affidavit dated 06.07.1992. The Society failed to produce the said application on the ground that it is not traceable. That the Secretary of the

Society, RW.1, deliberately withheld the said application is evident if his cross-examination is perused. He has clearly stated therein as under:

I never saw the plaintiff Sri S.K. Singh and RI. I do not know who submitted the Ex.B3 to B6 in my society office. We have compared the

signatures of Sri S.K. Singh with that of original application and from correspondence.

18. Having said so, RW.1 stated ""We did not address any letter to S.K. Singh enquiring about the application dated 04.05.1992, Exs.B3 and B4

and B5, as there is no need since required documents as per procedure were produced. I do not remember whether I have seen the original

application submitted by S.K. Singh while joining as a member after I assumed office."" This material contradiction in the evidence of RW.1 clearly

goes to show that he was not a truthful witness and he deliberately withheld the original application for membership filed by the petitioner before

the society from being filed before the Arbitrator. The Arbitrator rightly drew an adverse inference in this regard.

19. Be that as it may, when the initial burden was discharged by the petitioner through his GPA, respondent Nos. 3 and 4 failed to discharge the

onus shifted on them to show that Exs.B3 to B5 are not forged documents. Even in the absence of original application of the petitioner, the record

contained the original signatures of the petitioner on documents such as Ex.A1, the original GPA, Ex.A5, letter dated 22.03.1993 and Ex.B1, letter

written by the petitioner to the Society on 21.12.1992. Indeed, PW.1, GPA was subjected to cross- examination with reference to these

signatures to elicit from him that the admitted signatures of the petitioner on Exs.A1 and B1 and the disputed signatures on Exs.B3 to B5 are one

and the same. But the GPA stood firm on his stand that the signatures on Exs.B3 to B5 are not of the petitioner. The only manner by which

respondent Nos. 3 and 4 would have discharged the onus shifted to them was by sending the signatures contained on Exs.B3 to B5 to a

handwriting expert for comparison with the admitted signatures contained on Exs.A1, A5 and B1. They have not made any such effort in this

regard. Surprisingly, the Tribunal failed to discuss this crucial aspect.

20. The Tribunal also committed a serious error in brushing aside another material circumstance, which clearly establishes that the disputed

documents are forged. The petitioner filed a certified copy of the passport. The Arbitrator perused the said document and found that the petitioner

visited India between 14.09.1990 and 28.09.1990 and that he was not in India during the period when the disputed letters and affidavit were said

to have been signed by him at Guntur. On this finding, the Arbitrator held that the said documents have to be treated as fictitious documents and

that the Society utterly failed to verify the genuineness of the said documents. The Tribunal committed a grievous error in treating the certified copy

of the passport of the petitioner as ""xerox copy"". The GPA in his evidence given as PW.1 stated that the passport marked as Ex.A2 is the certified

copy. The Arbitrator in his award also termed Ex.A2 as the certified copy of the passport. It is therefore not known on what basis the Tribunal

treated the certified copy of the passport as a xerox copy. Neither the Society nor the counsel for respondent No. 4 suggested to PW.1 in his

cross- examination that any of the pages of the passport were missing. The Tribunal has entertained needless suspicion about the possibility of

leaving out certain pages in the passport while taking xerox copy and on that premise it assumed that all the pages of the passport would not have

been produced before the Arbitrator. This approach of the Tribunal is perverse, to say the least. In fact, a copy of Ex.A2, passport filed in the writ

petition contains the attestation of K.C. Banerjee, Attache (Cons), Embassy of India, Washington D.C. with the following endorsement:

Attested true copy of the original passport, in its entirety from page 1-36.

21. It is indeed baffling that the Tribunal, which is headed by a senior District Judge, turned a blind eye to this certificate issued by the responsible

officer of the Indian Embassy at Washington D.C. No further evidence is required to show that Exs.B3 to B5, which are purported to have

originated in Guntur, India are blatantly forged documents because it was conclusively proved from the entries in his passport that the petitioner has

neither visited nor was in India when the said three documents were brought into existence.

22. It is surprising that the Tribunal observed that the Arbitrator was absolutely silent about the oral evidence adduced before him and that he did

not even care to make a mention in his order as to whether he had orally examined any witnesses or not. This is a patently incorrect finding. In his

award, the Arbitrator held as under:

The Chief Examination of Dr. Dinesh Singh, General Power of Attorney holder of Dr. S.K. Singh, original petitioner by plaintiff Advocates and

cross examination was conducted by the counsels of respondent -1 and 2. Dr. Dinesh Singh, General Power of Attorney holder stated that he has

filed the arbitration and further stated that the original petitioner is a member of respondent -2 society and a plot No. 1012 was allotted in the year

August, 1995 as the petitioner is residing at United States of America since more than ten years and his last visit to India was on 14.09.1990 and

back to United States of America on 28.09.1990. Exhibit A1 is the original General power of Attorney, Exhibit A2 is the certified copy of the

passport show correctness of the above statement. The PW.1 has further stated that the letters dated 04.05.1992, 04.07.1992 and affidavit dated

06.07.1992 are not signed by the petitioner as he was not in India. The letters and affidavit are forged ones as the respondent No. 1 is not a

relative as alleged. He further stated that he has seen the file in respondent No. 2''s office the original application of the petitioner was in the file. He

was requested to the respondent No. 2 to restore the membership through letters and legal notice dated 11.11.1993 and a reply was received

from the respondent No. 2 society dated 24.12.1993 stating that the transfer was made on the basis of the affidavits only. Hence, having no other

alternative approached the arbitrator for restoration of membership to the petitioner and re-allotment of plot No. 1012 immediately. In cross

examination the PW.1 has stated that Smt. Aruna is not a relative to Sri S.K. Singh as per the letter dated 22.03.1993 addressed to the society.

He has also further stated in the letter that he has not signed any affidavit or any letter for transfer of membership and plot to Smt. V. Aruna and the

PW.1 denied that the signatures found on the affidavit is a genuine one. The counsel for petitioner has examined Sri G. Narsimha Rao, Secretary of

the respondent -2 society, who stated that the original application of Sri S.K. Singh is not available. Sri S.K. Singh used to make correspondence

from America. A letter dated 04.07.1992 received from Sri S.K. Singh which was made inward No. 47 dated 07.07.1992 along with notarized

affidavit of transfer and transferee. The Managing Committee took a decision to transfer the plot and membership in favour of respondent No. 1.

Exhibit B4 is the letter of the plaintiff and Exhibit B5 and B6 are marked copies of affidavits. On receipt of a letter from Dr. Dinesh Singh, the

General Power of Attorney holder the Secretary got verified the signature of the S.K. Singh on the affidavits and transfer letter and with available

correspondence of the petitioner and found similarity, accordingly the petitioner was informed. The Secretary of the respondent Society has further

stated that the society will abide to the decision of the Arbitrator. The Secretary has further stated that the membership register is not with the

society as it is submitted in some other case the case number in which he submitted he did not know. He further stated that the original application

of the petitioner is found missing. As he is working as Secretary of the respondent Society since March, 1992. The entire records of the

respondent-2 society are kept in society office. Any person who desires to become a member in the society shall have to give an application in a

prescribed proforma supplied by the society. The application contains all the particulars of the member. There upon an entry will be made in the

membership register making the record of all the entries furnished by the members. There is no practice of signing by the member in the

membership register. He has further stated that he is not aware whether respondent -1 is a stranger to the petitioner or not. He did not address any

letter to Sri S.K. Singh enquiring about the application dated 04.05.1992 wherein transfer is asked. He stated that he has not colluded with

respondent -1 and effect a transfer only basing on documents such as letter and affidavits received thereon.

23. The above reproduced portion of the order of the Arbitrator shows that he not only referred to the factum of recording oral evidence, but also

analyzed the same. The approach of the Tribunal clearly suggests that it proceeded with pre-conceived notions and was evidently desperate in

reversing the Arbitrator''s award on jejune and non-existent grounds. In this process it rendered findings on facts, which are diametrically contrary

to the record. The casual and flippant manner in which the Tribunal overturned the Arbitrator''s award lent support to the blatant fraud played by

respondent Nos. 3 and 4.

24. From the material discussed above, I have no hesitation to hold that Exs.B3 to B5 are forged documents on the strength of which the Society

transferred the membership and plot belonging to the petitioner to respondent No. 4 and respondent No. 4 was further allowed to transfer the plot

to respondent No. 5 by the Society.

25. Let me now consider the submissions of the learned Counsel for respondent No. 5. In this connection it is necessary to refer to the material

events in brief leading to transfer of allotment in favour of respondent No. 5.

26. On the strength of Exs.B3 to B5, the Managing Committee of the Society passed a resolution on 30.07.1992. Though the learned Counsel for

the Society has not produced the minutes concerning approval of transfer, the record containing xerox copies of certain documents produced by

the Society shows that on 31.07.1992 Sri G. Narasimha Rao, the Secretary of the Society addressed a letter to the petitioner whose address is

shown as 2-503/39, 78 Vani Apartments, opposite V.C.M. High School, Brindavan Gardens, Guntur, to the effect that his request for transfer of

his membership No. 1498 and plot No. 1012 in favour of his "sister" Smt. V. Aruna (respondent No. 4) was approved by the Managing

Committee on 30.07.1992. Obviously not knowing about the said transfer, on 23.12.1992, the petitioner made enquiries about his plot from the

Society. With reference to the said letter, the Secretary of the Society wrote back to the petitioner to his USA address on 05.01.1993 to the effect

that verification of the Society"s records revealed that his membership and plot were transferred to ""his sister Smt. V. Aruna, wife of V. Ashok

Rao"" based on his letter dated 04.07.1992 and notarized affidavit dated 06.07.1992. On 22.03.1993, the petitioner addressed letter (Ex.A5)

expressing his surprise at the transfer of his membership and plot and clearly stated therein that Smt. V. Aruna is neither his sister nor in any way

related to him nor that he knew her and that the alleged letter and the affidavit relating to transfer were forged with the mala fide intention of

grabbing his land by misrepresentation. The petitioner also expressed his surprise about the manner in which the entire transaction has taken place

without the Society verifying the genuineness of the letter and the affidavit before effecting transfer. In the said letter, he requested the Secretary of

the Society to enquire into the matter and restore his membership and plot and also referred to the GPA being sent in favour of Dr. T. Dinesh

Kumar Singh to take appropriate steps on his behalf. There was a lull thereafter for about eight months. On 11.11.1993, the petitioner got a legal

notice (Ex.A6) addressed to the Secretary of the Society, which was replied to through legal notice dated 24.12.1993 (Ex.A7), wherein it was

inter alia stated that as the Society cannot review its own judgment, it is for the petitioner to take recourse to legal proceedings for restoration of his

plot. The petitioner got a further reply notice issued to the advocate of the Society, wherein he alleged fraud and collusion between the Society and

respondent No. 4 and conveyed his intention to initiate civil and criminal proceedings. At this juncture respondent No. 4 addressed an undated

letter, which was received by the Society on 17.02.1994, wherein it is stated as under:

I am herewith submitting transfer affidavits for transferring my membership No. 1498 and plot No. 1012 Phase-II with amounts in favour of my

brother Sri Ravindra Prasad Sinha S/o. Sri H.N. Sharma aged about 43 years, residing at 411, Rahava Ratna Towers, Chirag Ali lane, Hyderabad

- 500 001 and occupation business.

Therefore, I request you to kindly effect the transfer at the earliest.

27. This letter is found from the sketchy record produced by the learned Counsel for the Society in the course of hearing. The record also contains

the copies of two separate affidavits dated 15.02.1994 filed by respondent Nos. 4 and 5. They make an interesting reading. In her affidavit,

respondent No. 4 stated that she is a Member of the Jubilee Hills Cooperative House Building Society, Hyderabad, with registration No. 1498

and was allotted plot bearing No. 1012 Phase-II. She affirmed and stated that respondent No. 5 is her "brother" and she is his sister. She agrees

to transfer her membership and plot in favour of respondent No. 5. In his affidavit filed by respondent No. 5, he affirmed and stated that

respondent No. 4 is his "sister" and was a member of the Society with membership No. 1498 and allotted plot No. 1012 Phase-II and that

respondent No. 4 has transferred by an affidavit her membership and plot in his name.

28. At the hearing, learned Counsel for the Society and also respondent No. 5 candidly admitted that there is no relationship between the

petitioner and respondent No. 4 or between respondent Nos. 4 and 5. I will deal with this aspect a little later. At this juncture, it would suffice to

note that when respondent No. 4 approached the Society to effect a further transfer of her membership and plot in favour of respondent No. 5, the

very transfer of the membership and plot in favour of respondent No. 4 was in the thick of the controversy with the Society receiving serious

protests and objections from the petitioner and both the petitioner and the Society exchanging legal notices. In this state of affairs, the Managing

Committee of the Society, which met on 22.02.1994 at 6.00 p.m., passed resolution approving further transfer of the membership and plot from

respondent No. 4 to respondent No. 5. About two days later, the petitioner through his GPA approached the Arbitrator u/s 61(1)(b) of the 1964

Act impleading the Society and respondent No. 4 as respondents. The transfer of membership in favour of respondent No. 5 was intimated by the

Society through its letter dated 28.02.1994 to respondent Nos. 4 and 5. On 17.03.1994, the Arbitrator passed order of injunction restraining

respondent Nos. 3 and 4 from selling and transferring the property in any other manner and making constructions thereon.

29. In the above admitted fact situation, the plea of respondent No. 5 that he is entitled to the protection of Section 41 of the 1882 Act is required

to be considered. Section 41 of the 1882 Act reads as under:

41. Transfer by ostensible owner:- Where, with the consent, express or implied, of the persons interested in Immovable property, a person is the

ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was

not authorized to make it; provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer,

has acted in good faith.

30. To attract this provision, respondent No. 5 should satisfy two conditions, viz., that the petitioner, who is the person interested in the plot in

question, gave his consent expressly or impliedly to respondent No. 4, who claimed to be the ostensible owner and that respondent No. 4

transferred the property to respondent No. 5. Respondent No. 5 also should satisfy that he being the transferee has taken reasonable care to

ascertain that respondent No. 4 had power to make the transfer and acted in good faith.

31. As regards the first condition, it has already been held supra that the petitioner has not given his consent either expressly or impliedly for

transfer and that respondent No. 4 played fraud in getting the allotment transferred in her favour by the Society. This condition is therefore not

satisfied.

32. With regard to the second condition, Patanjali Sastri, J, as he then was speaking for the Division Bench in the The Catholic Mission

Presentation Convent and Another Vs. Subbanna Goundan and Others, analyzed Section 41 with lucidity. It was laid down therein that in order to

invoke successfully the protection of the Section, the transferee must establish that (i) the transferor was the ostensible owner of the properties, (ii)

the transfer took place with the consent express or implied of the real owner, (iii) that the transferee paid consideration, (iv) acted in good faith and

(v) after taking reasonable care to ascertain that the transferor had power to transfer.

33. As noted earlier, there was no express or implied consent of the petitioner, who undoubtedly is the real owner (despite the fact that the

property is not formally registered in the name of the petitioner). Added to this, respondent No. 5 has neither pleaded nor established that he has

taken reasonable care to ascertain that the transferor had power to make such transfer and that he has acted in good faith. The events referred to

above make it manifestly clear that by the time respondent No. 5 applied for transfer, the purported transfer of the plot in favour of respondent

No. 4 was under a serious controversy. If respondent No. 5 had taken even the minimum care to verify the Society''s record, he would have

noticed the correspondence exchanged between the petitioner and the Society, available in the latter''s file. It is not the case of respondent No. 5

that he made any effort to elicit information from the Society or the petitioner, who is the original allottee or to peruse the Society''s record. At this

juncture, it is necessary to notice the conduct of respondent No. 5. He filed a false affidavit before the Society on 15.02.1994 to the effect that he

is the brother of respondent No. 4. Learned Counsel for respondent No. 5 sought to justify this conduct of respondent No. 5 by stating that as the

byelaws of the Society prohibit transfer of the plots in favour of persons, who are not related to the transferor, respondent No. 5 was compelled to

file the false affidavit. Learned Counsel for respondent No. 3 also submitted that this procedure is in vogue in the Society and such affidavits are

accepted. This is an astonishing revelation. Having made the byelaws, the Society is bound to follow the same. If it is felt that the byelaw, which

prohibits such transfer to a person, who is unrelated to the intending transferor cannot be enforced, it can, by all means, appropriately amend its

byelaws. But, the Society cannot indulge in an illegal and unethical practice of accepting false affidavits knowing well about their falsity. This Court

can never countenance, leave alone approve of such a devious procedure being followed by the Society. It is high time that the Society dispenses

with this practice and sooner it does, it is better for everyone.

34. On the admitted facts of this case, respondent No. 5 cannot claim to be a bona fide transferee. Not only, that he did not take any care to

know about the bona fide nature of the transfer made in favour of respondent No. 4 with reference to the available record, but also by filing a false

affidavit he did not act bona fide. Respondent No. 5 is therefore not entitled to invoke the provisions of Section 41 of the 1882 Act. Irrespective

of whether he had the complicity in the shady transaction involving the Society and respondent No. 4, he cannot claim with any legitimacy that he

has either taken reasonable care in ascertaining whether respondent No. 4 had the power to make the transfer or he acted in good faith. Thus, the

second condition is also not satisfied by respondent No. 5.

35. For the abovementioned reasons, I hold that the transfer of plot No. 1012 and the petitioner''s membership in favour of respondent No. 4

initially and in favour of respondent No. 5 later is vitiated by fraud played by respondent No. 3 Society and respondent No. 4. I further hold that

the order of the Tribunal in reversing the Arbitrator''s award suffers from patent illegalities and injudiciousness. The writ petition is therefore

allowed, the order of the Tribunal is quashed and the award of the Arbitrator is restored.

36. Before parting with this case, this Court is constrained to place on record the absolutely unsatisfactory manner in which the Society has

conducted itself in the whole affair. The Society is the custodian of the interests of its members. When one of its members brought to its knowledge

commission of fraud, it is duty bound to redress his grievance. Far from doing this, the stand reflected in the correspondence emanating from the

Society through its Secretary on the grievance raised by the petitioner clearly shows that the Society is a party to the fraud played by respondent

No. 4 in transferring a valuable plot legitimately belonging to its member. The Society compounded its misdeed by its subsequent conduct, namely,

that (i) it has kept its hands off by informing the petitioner that whatever happened has happened and it is for the petitioner to set the legal process

in motion, (ii) having unequivocally undertaken before the Arbitrator through the evidence of its Secretary (RW.1) that the Society is not interested

in the rival contentions of the parties in dispute and that it will abide by the decision of the Arbitrator, the Society itself filed appeal before the

Tribunal even though neither of respondent Nos. 4 and 5 questioned the Arbitrator''s award, and (iii) despite the fact that transfer of allotment in

favour of respondent No. 4 itself was under serious dispute, the Society had the audacity of approving further transfer in favour of respondent No.

5. The Society failed to take even the barest minimum care to protect the interests of its member by making necessary enquiries from the petitioner

whether the so-called letters and the affidavit filed in his name were genuine and actually signed by him before approving transfer of allotment in

favour of respondent No. 4. At least after the petitioner succeeded before the Arbitrator, the Society did not try to help the petitioner, but it acted

against his interest by questioning the Arbitrator''s award. It is beyond one''s comprehension as to how the Society was aggrieved by the

Arbitrator''s award to justify its action of filing appeal. By this conduct of the Society, it deprived the petitioner of his getting back the plot for more

than 13 long years from the date of passing of the award. It is not difficult for this Court to visualize the mental agony and the helpless indignation,

which the petitioner, a victim of blatant fraud, would have suffered for about 15 years.

37. I have no doubt in my mind that the Society is chiefly responsible for all the sufferance of the petitioner which cannot be compensated in terms

of money. However, I feel that saddling respondent Nos. 3 and 4 with exemplary costs will, to some extent meet the ends of justice. Accordingly,

respondent Nos. 3 and 4 shall pay Rs. 1,00,000/- (Rupees one lakh) each to the petitioner towards costs within a period of four weeks from

today. In the event of default in payment of costs, the petitioner is entitled to recover the same through due process of law. The Society is entitled

to identify the persons responsible for the fraud and initiate action against them in law and also for recovery of costs from them.

38. The facts of this case suggest that all is not well with the affairs of the Society. It has not only failed to evolve a proper method to check

fraudulent transfers, but has been encouraging transfers by accepting false claims of relationship contrary to its own byelaws. Such administration of

the Society, which is the custodian of properties worth crores of rupees, has the potential of harming the interests of its genuine members. To avoid

recurrence of the incidents such as the one taken place in the present case, the Commissioner of Cooperation is directed to initiate appropriate

proceedings either u/s 51 or 52 of the 1964 Act to enquire into the affairs of the Society. The terms of such enquiry shall include but not be limited

to the procedure being followed by the Society in the matter of transfer of allotment of plots. A copy of this judgment shall be communicated to the

Commissioner of Cooperation for taking necessary action.

39. As a sequel to disposal of the writ petition in the manner indicated above, WPMP. No. 27179 of 2008 is disposed of as infructuous.