

(2010) 11 MAD CK 0218

Madras High Court

Case No: Writ Petition No. 25189 of 2003

Wing Commander

APPELLANT

Vs

Ramadurai (Retd.), Member,
Government Officials Co-op.
Housing Society Vs The State of
Tamil Nadu

RESPONDENT

Date of Decision: Nov. 9, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: Krishna Srinivasan, for Ramasubramaniam Associates, for the Appellant; P. Gurunathan, Government Advocate for Respondents 1 to 3 and A. Baskaran, for Respondent 4, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.

The writ petition is directed against the order of the second Respondent/Registrar (Housing) Co-operative Societies dated 3.4.2003 rejecting the appeal filed by the Petitioner, insofar it was held that the resolution of the society dated 30.6.1984 restricting the membership of the society to 296 flat owners was unenforceable, and for a direction to the fourth Respondent to take action in terms of the order of the second Respondent dated 3.4.2003.

2.1. The writ Petitioner is one of the members of the fourth Respondent/Government Officials Co-operative Housing Society, which has been constituted with the object of providing houses for its members. The fourth Respondent/Society was started in the year 1966 for buying and acquiring land by

purchase, laying of the said lands as house sites to suit the requirements of the society and to construct residential houses and flats or other buildings for the benefit of its members.

2.2. It is stated that with the above said object the society has purchased vast extents of land in Oorur Village in South Madras, called as Besant Nagar, from the Tamil Nadu Housing Board and the constructions of individual units were completed in the year 1984 and possession was handed over to the individual members and therefore, the main object of the society has been achieved and as on date, the society is involved only in the maintenance of 296 dwelling units belonging to its members.

2.3. The management of the fourth Respondent/Society is vested with the Board of Directors as per the bye-laws framed in accordance with the Tamil Nadu Co-operative Societies Act, 1983 (for brevity, "the Act") and the board members shall hold the office for a period of three years. It is stated that the present Board, which assumed office in September, 1996, continued till 25.5.2001, when it was superseded by the Government by G.O.368, dated 25.5.2001.

2.4. It is stated that the then Board of Directors taking note of the fact that the construction activities have completed, by resolution dated 30.6.1984 restricted the membership of the society to 296 members, who are the holders of the flats. The said resolution was lodged with the second Respondent for registration along with the annual reports, audited reports, after approval of the same at the Annual General Body Meetings from 1984 onwards and therefore, according to the Petitioner, the number of members of the society is fixed at 296.

2.5. It is stated that since the working capital of the fourth Respondent/society was below Rs. 5 Lakhs, it could not have a paid employee as a Secretary. However, the fourth Respondent appointed a paid employee as a Secretary and the subscription of the members was increased.

2.6. It is the case of the Petitioner that he has represented to the first Respondent about the mal-administration of the fourth Respondent/society by various representations dated 28.3.2001, 31.3.2001, 2.4.2001, 15.4.2001 and 5.5.2001. Pursuant to the same, it is stated that the first Respondent has directed the convening of Annual General Body Meeting of the society on 15.4.2001 by appointing two representatives from the Co-operative Department to supervise the conduct of the meeting and it was in those circumstances, the Board of Directors of the fourth Respondent/Society inducted 302 new members on 13.3.2001, based on a resolution stated to have been passed on the said date, and that induction of large number of members was only for the purpose of outnumbering the existing 296 members. On the date of the meeting there was a chaotic situation and the Government nominees adjourned the meeting and the no confidence motion moved by 296 flat owners, who are the members, was frustrated.

2.7. In the meantime, the Government in the gazette notification issued on 25.5.2001 has superseded the governing body of the fourth Respondent/society and appointed a Special Officer. The Petitioner thereafter submitted a memorandum to the third Respondent/Deputy Registrar (Housing) on 10.8.2001 to declare that the 296 flat owners alone constitute the membership of the society; that these 296 flat owners should alone convene the General Body Meeting; and he also requested for removal of the paid Secretary.

2.8. On the writ petition filed in W.P. No. 18472 of 2001 by the Petitioner, this Court, by an order dated 8.10.2001, has directed to consider the representation. However, the third Respondent, in the letter dated 13.12.2001, has stated that there was nothing wrong with the affairs of the fourth Respondent/society. It was against that order of the third Respondent, the Petitioner has filed an appeal to the second Respondent u/s 152 of the Act. The second Respondent, by the impugned order dated 3.4.2003, has directed the fourth Respondent to look into the legality of the newly admitted 302 members; and also directed the fourth Respondent to convene a General Body meeting of the legally admitted members, apart from directing the fourth Respondent to look into the validity of the appointment of the Secretary as per Section 73 of the Act.

2.9. The Petitioner is aggrieved over the decision of the second Respondent in the appeal holding that the resolution of the fourth Respondent dated 30.6.1984 curtailing the membership to 296 is unenforceable, on the grounds that the second Respondent has no jurisdiction to declare the resolution as valid, since that was not the issue before the second Respondent on appeal; that the second Respondent ought to have rendered a finding about the appointment of a paid Secretary; that since the construction activity has been completed, there is no question of adding new members; and that the second Respondent should have considered and given a finding as to the legality of the induction of 302 members on 13.3.2001.

3.1. The fourth Respondent has filed a counter affidavit stating that the Petitioner has no locus standi, since he cannot represent the Government Officials Co-operative Housing Society. The Petitioner, if at all is aggrieved, can only make an application u/s 81 of the Act, since such grievance can be raised only by the required number of members and therefore, without invoking Section 81 of the Act, the filing of the writ petition is not maintainable.

3.2. It is stated that the impugned order was passed as early as 3.4.2003 and the revision ought to have been filed by 2.7.2003 and the writ Petitioner has failed to avail proper remedy available under the provisions of the Act.

3.3. It is further stated that since it is the case of the Petitioner that the Board and the Secretary of the fourth Respondent/Society have been acting against the interest of the society and inasmuch as the society has been superseded by the government order, the grievance of the Petitioner does not survive.

3.4. It is also stated that inasmuch as the object of the fourth Respondent/society is not only to build residential houses or flats, but there are also other objects available, the increase of members cannot be said to be against the provisions of the Act.

4.1. It is the main contention of the learned Counsel for the Petitioner that when the Board of Directors of the fourth Respondent/society have passed resolution on 25.5.1984 restricting the number of members to 296, after 18 years the members cannot be increased, ignoring the said resolution.

4.2. It is his further submission that the membership of the fourth Respondent/Society itself is based on the object of the society and therefore, it does not mean that any person who is above the age of 18 years would be eligible to be admitted.

4.3. It is his further submission that inasmuch as the object of the fourth Respondent/society was to put up construction and once the construction is completed, there is no question of increasing the members and it is also his submission that as per the bye-laws, only the persons who are having the house sites can be members.

5. On the other hand, it is the contention of the learned Counsel for the Respondents that the Petitioner's remedy is u/s 81 of the Act and as against the order of the second Respondent, a revision lies and therefore, the writ petition is not maintainable.

6. On a reference to the bye-laws of the Government Officials Co-operative Housing Society Limited, the object of the fourth Respondent/society is stated in Clause (2) as follows:

2. The objects of the Society shall be:

(a) to buy or acquire land by purchase, mortgage, lease, exchange, gift or otherwise;

(b) to lay out land to suit the requirements of the society in shape of roads, parks, play-grounds, schools, hospitals, water works, markets, post offices and other social amenities, etc.

(c) to lay out land as house sites for the benefit of the members of the society;

(d) to construct or cause to be constructed buildings or other works of common utility to the society;

(e) to build or cause to be built residential houses or flats or other buildings for the members;

(f) to hold, sell, mortgage, lease out on hire, or on hire purchase system or otherwise dispose of land, houses, house sites, buildings, and all other properties, movable and immovable as may be necessary for carrying out the objects of the

society;

(g) to establish and maintain social, recreative, educational, public health or medical institutions for the benefit of the members;

(h) to raise funds required for the business of the society;

(i) to repair, alter or otherwise deal with the buildings of the society; and

(j) to do all things necessary and expedient for the accomplishment of the aforesaid objects and for the comfort, convenience and good of the members.

7. Clause 6(1)(a) of the Bye-Laws, which is as follows:

6(1)(a) Any person over 18 years of age who is competent to contract shall be eligible for admission as a member. But no person can claim admission as a matter of right.

even though states that the membership cannot be claimed as of right, specifies the qualification for becoming a member as completion of 18 years of age.

8. Clause 39(a)(i) of the Bye-Laws, which is as follows:

39(a)(i) Every member shall at the time of admission to the Society specify the type of house/flat he proposes to acquire/to acquire perpetual tenancy rights by hire-purchase from the Society and execute an agreement to that effect to the Society undertaking in addition to indemnify the Society to the extent of the loss that may be sustained on account of the member not keeping to the contract.

contemplates that at the time of admission every member shall specify the flat or house which he proposes to acquire. It also states that even a tenancy right can be acquired to make a person a member and even by hire purchase a person can enter into the place to opt himself to be a member. Under the Bye-laws, as originally stood, there is no restriction of membership.

9. The Annual Administration Report of the Board of Directors dated 25.5.1984, the operative portion of which regarding membership is as follows:

1. Membership: The Membership of the Society as on 1.7.1983 was 345. The corresponding number as on 30.4.1984 is 296. This reduction has followed the decision of the Board of Directors (Vide their Resolution dated 7.11.1983) to restrict membership to flat owners only, having regard to Building activity having come to an end with the completion of the III Phase blocks B/19 and B/20 and to audit objections to such membership. Several non-flat owning members had also expressed a desire to withdraw their membership for various reasons but their membership fees could not be refunded because of bye-law provisions. A formal draft Resolution for the General Body to ratify the decision of the Board of Directors is appended.

is only a decision and not incorporated as amendment to the Bye-Laws in the manner known to law. Therefore, the decision of the Board of Directors to restrict the members as on 30.4.1984 to 296 has not been statutorily incorporated in the Bye-Laws of the fourth Respondent/society in the form of an amendment.

10. Even after the amendment in respect of Clause 39(a)(i) of the Bye-Laws, the amended provision only states as follows:

39(a)(i) : Every member shall at the time of admission to the Society specify the type of house/flat he proposes to acquire and execute an agreement to that effect to the Society undertaking in addition to indemnify the society to the extent of the loss that may be sustained on account of the member not keeping to the contract.

11. It was in those circumstances, considering the object of the Act, the second Respondent, on appeal, has passed the order observing that the restriction of membership to any number is unenforceable. Admittedly, as it is stated by the Petitioner himself, he is concerned only about that portion of the impugned order of the second Respondent. The Petitioner has no grievance against the order of the second Respondent directing the fourth Respondent to consider about the requirement of paid Secretary, since by virtue of the government order a Special Officer was appointed to the fourth Respondent/society, and also with regard to the further direction given by the second Respondent to find out the legality of the newly inducted members, stated to have been numbering around 302, which necessarily has to be done in the light of the amendment to the bye-laws.

12. As submitted by the learned Counsel for the fourth Respondent, if really the affairs of the fourth Respondent/society are carried out by either the Special Officer or the persons who are in-charge against the interest of the society, including the committing of misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice, or mismanagement, it is not as if the Petitioner has no remedy available under the Act. Section 81(1) of the Act, which is as follows:

Section 81. Inquiry.- (1) The Registrar may, of his own motion and shall, on the application of a majority of the board or of not less than one-third of the members or on the request of the financing bank or of the District Collector, hold an inquiry or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial conditions of a registered society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice, or mis-management in relation to that society or into any particular aspect of the working of that society.

empowers the Registrar of Co-operative Societies even to suo moto conduct inquiry and in cases where required number of members apply, which is majority of the Board of Directors or members not less than one-third of the total number of members, the Registrar can always look into the mismanagement if at all having been committed in the affairs of the fourth Respondent/society.

13. In fact, when such inquiry is conducted u/s 81 of the Act, the persons who are responsible for causing monetary loss to the society can always be surcharged u/s 87 of the Act, making them liable to indemnify the loss caused to the society by their conduct. When such an effective alternative remedy is available, it is not known as to why the Petitioner has chosen to file the writ petition in respect of the alleged mismanagement.

14. Admittedly, the impugned order was passed by the second Respondent, as an appellate authority u/s 152 of the Act, in an appeal filed by the Petitioner. u/s 153 of the Act, a revision power has been given to the Government as against the order of the Registrar, if the legality of the order passed by the Registrar is questioned. Section 153 of the Act is as follows:

Section 153. Revision - (1) The Registrar may of his own motion or on application, call for and examine the record of any officer subordinate to him or of the board or any officer of a registered society or of the competent authority constituted under Sub-section (3) of Section 75 and the Government may, of their own motion or on application, call for and examine the record of the Registrar, in respect of any proceedings under this Act or the Rules or the bye-laws not being a proceeding in respect of which an appeal to the Tribunal is provided by Sub-section (1) of Section 152 to satisfy himself or themselves as to the regularity of such proceedings, or the correctness, legality or propriety of any decision passed or order made therein; and, if in any case, it appears to the Registrar or the Government that any such decision or order should be modified, annulled, reversed or remitted for consideration, he or they may pass orders accordingly:

Provided that every application to the Registrar or the Government for the exercise of the powers under this section shall be preferred within ninety days from the date on which the proceedings, decision or order to which the application relates was communicated to the applicant.

(2) No order prejudicial to any person shall be passed under Sub-section (1) unless such person has been given an opportunity of making his representations.

(3) The Registrar or the Government, as the case may be, may suspend the execution of the decision or order pending the exercise of his or their power under Sub-section (1) in respect thereof.

(4) The Registrar or the Government may award costs in any proceedings under this section to be paid either out of the funds of the society or by such party to the application for revision as the Registrar or the Government may deem fit.

15. It is no doubt true that as against the order of the second Respondent the Petitioner should have filed such revision u/s 153 of the Act within 90 days, viz., on or before 2.7.2003. But, in the meantime, without resorting to the said remedy, the Petitioner has filed this writ petition. When it is the case of the Petitioner that the

object of the fourth Respondent/society is only for the purpose of construction of the houses and flats and that object has been achieved and therefore, it does not require addition of any new members and if on that basis the order of the second Respondent is assailed as not legal, it is for him to workout his remedy by filing revision before the Government. Moreover, such finding requires appreciation of various material facts, which, in my considered view, cannot be done by exchange of affidavits under Article 226 of the Constitution of India.

16. Taking note of the fact that the Petitioner without approaching the Government by filing revision u/s 153 of the Act has approached this Court by filing writ petition and the writ petition is pending in these years, I am of the considered view that since the claim of the Petitioner survives, which requires a substantial decision by appreciation of evidence, the Petitioner must be permitted to file a revision to the Government.

Under such circumstances, the writ petition stands dismissed, however with liberty to the Petitioner to file revision before the Government against the order of the second Respondent u/s 153 of the Act and if such revision is filed within a period of two weeks from the date of receipt of a copy of this order, the Government shall receive the same and decide on merits and in accordance with law, after giving opportunity to the Petitioner, without rejecting the revision on the ground of limitation. No costs.