

(1998) 07 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8547 of 1998

Mazher Shaheed and others

APPELLANT

Vs

Khaja Moinuddin and others

RESPONDENT

Date of Decision : 23-07-1998

Acts Referred:

Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 — Section 11, 15, 5, 9
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2
Constitution of India, 1950 — Article 226
Rules and Regulations of Madina Educational Society — Rule 3, 6
Societies Registration Act, 1860 — Section 11

Citation : (1998) 5 ALD 240

Hon'ble Judges : Syed Saadatullah Hussaini, J

Bench : Single Bench

Advocate : Mr. Mohd. Osman Shaheed, for the Appellant; Mr. K. Mahipathi Rao, for the Respondent

Judgement

1. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.
2. Both the Counsel agreed to dispose of the main writ petition itself.
3. The learned Counsel for the petitioners submits that the petitioners are the members of Madina Educational Society, Mahaboobnagar, a Muslim Minority institution with the aims and objectives to impart education to the children and youth of the country with an aim to make them good citizens etc. It is stated that the Society is running the educational institutions. It is stated that on invitation of the Executive Committee all the petitioners were enrolled as members of the said Society in the Executive Committee Meeting held on 8-3-1998 as per the resolution adopted in the said meeting. It was unanimously resolved to admit the petitioners as the members of the Madina Educational Society, Mahaboobnagar. The said meeting was attended by the members of the Executive Committee. All the members paid the fee as per the requisition for one

year and for all practical purposes the petitioners were enrolled as members of the Society. The respondents, who were present in the meeting, later on changed their mind at the instigation of third parties and with mala fide intention, they filed a civil suit in OS No.55/98 for declaration that the petitioners are not the members of the Madina Educational Society, Mahaboobnagar and for perpetual injunction restraining them from claiming to be the members of the said Society or from interfering in the affairs of the said Society in any manner.

4. The learned Counsel for the petitioners submits that on the basis of Section 11 of the Societies Registration Act, only the District Judge has the jurisdiction to entertain the suit and not the Junior Civil Judge, Mahaboobnagar, as such, there is inherent or total lack of jurisdiction; as such a writ of prohibition be issued prohibiting the respondent No.4 from proceeding further with the pending suit in OS No.55/98.

5. Mr. K. Mahipathy Rao, learned Counsel appearing for the respondents 1 to 3 submits that the petitioners are not the members of the said Society. Relying on Rule 3 of the Rules and Regulations of Madina Educational Society, Mahaboobnagar, which has been filed in the material papers, he submits that, membership will be on invitation by the Executive Committee of the Society in the interest of the Society and Rule 6 defines the Executive Committee and its functions. The petitioners were made members of the Society on 8-3-1998. He submits that the Executive Committee has not invited the petitioners and has not accepted them as members. He relies on the extracts of the proceedings of the meeting of the Society which was held on 8-3-1998 and in the said meeting, members 4, 5, 6, 7, 9, 11, 12 and 14 have opposed the proposals of taking new members to the Society of which the respondents No.1 to 3 are the members referred to at 5, 6, and 7; as such their membership is not in accordance with the rules and there cannot be the members of the said Society and as such, approached the Junior Civil Judge Mahaboobnagar in OS No.55/98 for declaration and injunction. He relies on the material papers filed, a certified copy of the proceedings of the meeting of the Society held on 8-3-1998 is filed, which evidences that the respondents 1 and 2 opposed the proposal for taking the new members of the Society.

6. Mohd. Osman Shaheed, learned Counsel for the petitioners submits that a copy of the extract of the minutes, which has been filed in material papers at page No.25, is not correct. It does not reflect the entire proceedings and it is unsigned. He further submits that the President has not signed on the said proceedings.

7. In the above inter se allegations between the parties it is significant to note that the petitioners do not dispute the membership of the respondents 1 to 3 of the Society, but respondents 1 to 3 dispute the membership of the petitioners of the Society.

8. Section 11 of the Societies Registration Act, 1860 speaks of dispute regarding

management and it reflects that in the event of any dispute arising between the Managing Committee or the members of the Society, in respect of any management or dissolution of the Society, any member of the Society may file an application in the District Court concerned, and the said Court shall after necessary inquiry pass such order as it shall deem fit.

9. In the instant case, there is no Managing Committee as such of the Society, but there is only an Executive Committee as per Rule 6 and further no dispute has been mentioned with regard to management of the Society or dissolution of the Society, but the dispute that has been raised in the Civil Court is with regard to the legality of the petitioners being the members of the Society.

10. Mr. Mohd. Osman Shaheed, learned Counsel for the petitioners relies on a Division Bench Judgment of this Court in Pally Ramulu and Others Vs. State of Andhra Pradesh and Others, wherein their Lordships were considering the effect of Sections 5, 9, 11 and 15 of A.P (TA) Public Societies Registration Act, 1950 P., and held that "acceptance of lists of members, resolutions and amendment of Bye-laws of a Society submitted by some members to Inspector General of Registration without enquiry into their validity Not illegal.... It is only a ministerial act and not a statutory function..... High Court cannot entertain writ petition relating to private disputes Such disputes will be resolved by District Court. Their Lordships while considering the effect of the above Sections have held in paragraph 7 as under:

"A close reading of the above statutory provisions makes it clear that no obligation is cast upon the Inspector-General of Registration and Stamps to verify the authenticity of the lists filed u/s 5 of the Registration Act nor the amendments to the bye-laws filed u/s 9. Section 15 incorporates a general right conferred on the public and it has no bearing so far as disputes between members of a Society inter se or between members and the Managing Committee. Section 11 specifically mandates that in respect of disputes between the members of the managing committee inter se or members of the Society inter se, action can be brought in the District Court concerned. The office of the Inspector-General of Registration and Stamps is not intended to scrutinise the applications filed u/s 5 or the resolutions filed u/s 9. It is only obligated to receive the list of members and office bearers and resolutions. At the time of receiving the lists or resolutions in the normal discharge of their ministerial functions if they come across any omissions they may call upon the concerned persons to supply the relevant information. One such instance has been brought to our notice by Sri K.G. Kannabiran, learned Counsel for the petitioners; when a certain resolution of the 2nd petitioner-Society was communicated without the signatures of the members present the same was returned with a request to supply the resolution containing the signatures. It was only performance of a ministerial function and that was not undertaken as part of a statutory duty to enquire into the validity or otherwise of the lists of members or the resolutions passed. The only forum to resolve such disputes is the District Court as

mentioned in Section 11 of the Registration Act. If one set of the people contend that the other set has not been properly elected and that they are usurpers, it is for them to bring a civil action for appropriate relief. Disputes of the present nature cannot be resolved by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India."

11. It is seen from paragraph 7 of the above judgment that what the Division Bench has held is that Section 11 specifically mandates that in respect of disputes between the members of the Managing Committee inter se or members of the Society inter se, action can be brought in the District Court concerned. Further, it is also held that if one set of the people contend that the other set has not been properly elected and that they are usurpers, it is for them to bring a civil action for appropriate relief.

12. Mr. Mahapathi Rao, learned Counsel for the respondents 1 to 3 repelling the said contentions relied upon the decision in *Chintapalli Atchaiah v. P. Gopala Krishna Reddy*, 1991 (2) APLJ 446, wherein this Court has held as under:

"Civil Procedure Code 1908-Order 20, Rule-12-Constitution of India Article 226-Writ of Prohibition interdicting an application under Order 20 Rule 12 filed in a Civil Court is not maintainableWhere the jurisdiction of the Court is questioned the same Court is competent to decide even the question of jurisdictionAn application for the issuance of writ of prohibition is maintainable only when there is total absence of jurisdiction in the inferior Tribunal or Court or when acting in excess of jurisdiction or there is departure from principles or natural justice."

13. The above judgment has been confirmed by the Division Bench of this Court in *Chintapalli Atchaiah Vs. P. Gopala Krishna Reddy and Another*, , wherein their Lordships have held that "it is open for the appellant-petitioner to file an application under Order 14, Rule 2 CPC, if so advised, requesting that the question relating to the maintainability of the IA may be taken up by the Court at the first instance as an issue of law relating to the jurisdiction of the Court. If such an application is filed, the Court may pass orders on the same in accordance with law after hearing both sides. Since we are in agreement with the view taken by the learned single Judge, we dismiss the Writ Appeal in the context of the observations made by us earlier."

14. Mr. Mahipathi Rao relying on the decision of the Supreme Court in *Bhatia Co-operative Housing Society Ltd. Vs. D.C. Patel*, , wherein their Lordships have held that a Civil Court has inherent power to decide the question of its own jurisdiction, although, as a result of its enquiry, it may turn out that it has no jurisdiction over the suit. Thus, a City Civil Court has jurisdiction to decide whether it has jurisdiction to entertain a suit.

15. Basing reliance on the above decision Mr. Mahapathi Rao, learned Counsel submits that, the Junior Civil Judge, Mahaboobnagar has jurisdiction to entertain the suit and the petitioners have right to contest the suit and raise the issue of

jurisdiction of the said Court.

16. As I have already stated that the petitioners have not challenged the membership of respondents 1 to 3 of the Society, but respondents 1 to 3 have challenged the membership of the petitioners to the Society and filed a Civil suit that they have not validly or legally enrolled as members of the Society.

17. In such circumstances and following the judgment of the Supreme Court in *Bhatia Co-operative Housing Society Limited v. D.C. Patel* (supra), I do not think that it is fit case where a writ of prohibition can be issued under Article 226 of the Constitution of India, as the petitioners have always the remedy to raise the issue of jurisdiction before the Civil Court and if such an issue is raised by the petitioners, the Civil Court in the pending suit shall decide the same, as preliminary issue and pass appropriate orders in accordance with law.

18. The writ petition lacks merit and it is accordingly dismissed. No costs.