

(2014) 02 KAR CK 0248

In the Karnataka High Court

Case No : Writ Petition No. 14185 of 2013 (GM-KSR)

M/s. Comforts Tower Condominium

APPELLANT

Vs

The District Registrar and Dy. Commissioner for Stamps and
The Comforts Tower Owners Association

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Apartment Ownership Act, 1972 — Section 13 16(2)(f)(j) 6(3)(5) 8
Karnataka Societies Registration Act, 1960 — Section 3

Citation : (2014) 2 AKR 179 : (2014) 3 KarLJ 262 : (2014) 2 KCCR 1560

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : S.G. Hegde, for the Appellant; Vijayakumar A. Patil, HCGP for R1 and Ms. Pushpa Y. Nagasampige, for R2, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Bopanna, J.—The petitioner is before this Court seeking, that the endorsement dated 19.02.2013 (Annexure-K) be quashed and further to quash Clause No. 3(h) and (i) of Annexure-F and also Clause No. 4(c) of Annexure - G. In addition, the petitioner is also seeking action to cancel the registration of the second respondent Society. The brief facts are that there is an apartment known as "Comfort Towers" situate opposite to Kalpana Theatre at Udupi. The "flats" in the apartment block is purchased by several persons who are the owners thereof. The owners have accordingly subscribed to the Deed of Declaration as contemplated under The Karnataka Apartment Ownership Act, 1972 ("KAO Act" for short) and registered the same in the name and style as that of the petitioner herein, Sri K. Gopalakrishna Achar claims to be authorized to represent the petitioner in the capacity of being its Manager. When this was the position, an Association in the name and style as that of the second respondent is stated to have been registered by the Owners of the "flats" under the provisions of The Karnataka Societies Registration Act, 1960 ("KSR Act" for short) for the objects enumerated in the bye law which, includes the maintenance of the buildings. The

petitioner has therefore filed a representation to the first respondent seeking action to cancel the registration made under the KSR Act. The first respondent has issued the communication dated 19.02.2013 (Annexure - K) and declined the request made by the petitioner. The petitioner claiming to be aggrieved by the same is before this Court. The second respondent has filed its objection statement and disputed the claim of the petitioner.

2. Heard Sri S.G. Hegde, learned Counsel for the petitioner, Sri. Vijayakumar Patil, learned Government Advocate for first respondent and Ms. Pushpa Y. Nagasampige, learned Counsel for the second respondent and perused the petition papers.

3. The learned Counsel for the petitioner has referred to the scheme of both the Acts noticed above and has made specific reference to Sections 6(3)(5), 8, 13 and 16(2)(f)(j) of the KAO Act and Rule 3 and Form-A in the Rules there under. In that view, it is contended that the Act, Rules and the Memorandum therein acts as a complete Code wherein it provides for subjecting the apartment owners to the Act and also contemplates for the appointment of office bearers and for the maintenance of the buildings. In that context, reference is made to Section 3 of KSR Act to contend that the registration of the Society under that Act can be only for the purposes enumerated therein, which does not provide for the purposes of management and maintenance of the buildings. Hence, the registration of the second respondent with a similar name as that of the petitioner and their bye laws providing with regard to the collection of charges and maintenance thereof is not sustainable is the contention. The provisions made in KAO Act which is a later enactment should prevail is sought to be fortified by relying on the decisions in the case of Dharangadhra Chemical Works Vs. Dharangadhra Municipality and Another, ; in the case of Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama, ; in the case of Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, ; in the case of Jogendra Lal Saha Vs. The State of Bihar and others, and in the case of G.V. Sreerama Reddy and Another Vs. Returning Officer and Others, .

4. The learned Government Advocate also after referring to the object and scheme of the Act has however contended that there is no express bar for application of the other enactments in respect of the Apartment registered under the KAO Act. The society to be registered under KSR Act can be done for all lawful purposes. Inclusion of certain activities in the bye law which is not otherwise unlawful cannot be prevented and in any event, the first respondent cannot prevent such registration. To contend that the provisions contained in the earlier enactment does not become repugnant and that it would have to be reconciled and applied, the decisions in the case of M. Karunanidhi Vs. Union of India and Another, and in the case of Sugalabai Vs. Gundappa A. Maradi and Others, are relied upon.

5. The learned counsel for the second respondent on the other hand, with reference to the objection statement has questioned the very maintainability of

the writ petition and considering the legal contentions at the instance of a person who has nothing to do with the petitioner. Apart from vehemently contending with regard to the locus-standi of Sri K. Gopalakrishna Achar to represent the petitioner, it is also pointed out that the petition has not been supported by any resolution of the Association. Hence, it is contended that the petition is liable to be rejected without adverting to the other contentions.

6. In light of the contentions put forth, though the elaborate arguments were heard on all issues arising herein, it is certainly necessary to consider at the outset, as to whether the legal contentions are necessary to be examined at the instance of the petitioner being represented by Sri K. Gopalakrishna Achar when his authority to raise such issues is questioned and in that backdrop, whether there is bonafide in the contention raised by the petitioner. From the cause title, it is seen that he has described himself as the Manager of the petitioner. Clause 22 of the Deed of Declaration (Annexure - A) provides that the Board may employ for the Association, a Manager to perform such duties and services as the Board shall authorize. This would clearly indicate that he is not the owner of a "flat" but can only perform the duties of a Manager as authorized by the Board.

7. In view of the objections raised herein, the petitioner has filed a rejoinder and has produced along with it the appointment letter dated 01.04.2003 (Annexure L). Since the same is dated about a decade ago, the subsequent events also need to be noticed to come to a conclusion as to whether that would be sufficient to establish locus standi when serious objection is raised in that regard. In the objection statement of the second respondent, it is contended that Sri Gopalakrishna Achar is only a promoter/builder and he has been conducting himself contrary to the interest of the owners who have purchased the flats. The second respondent has caused a legal notice dated 11.01.2013 and have also addressed a communication dated 12.12.2012 to the Town Municipality about the illegalities committed by him relating to the property. In fact such action initiated by the owners to protect their interest appears to have triggered the present action from Sri Gopalakrishna Achar by addressing the representation to the first respondent on 23.01.2013. That apart the second respondent has also relied on the Resolution passed in the Special General Body meeting in the name of the petitioner Condominium held on 30.08.2013 resolving with regard to the actions initiated against Sri Gopalakrishna Achar and a communication has also been addressed to him. It is no doubt true that the said actions are subsequent to the filing of this petition and in the rejoinder, it is, contended that the letter-head of the petitioner could not have been used as it was in his custody. If the documents relating to the affairs of the petitioner Association were with him, he should have at least produced the minutes book so as to establish that the Board and the General Body has been meeting and taking decisions and he has been carrying out the same. This has not been done to establish his authority.

8. Be that as it may, when it is seen that there is a serious conflict between the owners of the flats and Sri Gopalakrishna Achar who himself has claimed to be

the Manager and not a owner so as to be a member of the petitioner Condominium and when the members of the petitioner Condominium, who are also the members of the second respondent Association have challenged his right to prosecute this petition and he has chosen to file a rejoinder along with the appointment letter, it was incumbent on him to support his actions with the authorization from the Board of Management of the petitioner or by the members of the petitioner to initiate the present action including to prosecute this petition. In fact the affidavit to verify the contents of the petition and the vakalatnama discloses that he has signed the same as a "mandate holder" of the petitioner Condominium. Such mandate if any, is presently in dispute. When that is the position and when there is no material on record to suggest that Sri Gopalakrishna Achar has instituted this petition as resolved by all, or by majority of the owners who are members of the petitioner and more particularly in the context of there being dispute with regard to the maintenance and such clause being incorporated in the bye law of the second respondent, I am of the considered opinion that the legal contentions urged herein does not arise for consideration when raised by a person who cannot have a say with regard to the same without appropriate authorization from the members of the petitioner Association or its Board of Management. In that view, it is not necessary to advert to the other contentions raised in the instant petition. If at all he has any individual right on other aspects, he can avail the same in accordance with law.

The writ petition is accordingly dismissed, with no order as to costs.