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**(2014) 10 KAR CK 0045**

**In the Karnataka High Court**

**Case No :** Writ Petition Nos. 23816-817/2014 and 41219-378/2014 (GM-RES)

Paton Constructions Private Ltd.

APPELLANT

Vs

The State of Karnataka

RESPONDENT

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**Date of Decision :** 30-10-2014

**Acts Referred:**

**Citation :** (2014) 10 KAR CK 0045

**Hon'ble Judges :** B.S. Patil, J

**Bench :** Single Bench

**Advocate :** Ajesh Kumar S., Advocate for the Appellant; K. Shashikiran Shetty, Sr. Counsel for Faraha Fathima and Latha Shetty, Advocate for the Respondent

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**Judgement**

B.S. Patil, J.—These writ petitions are filed by the petitioners seeking twin reliefs. The first relief sought is for a writ of mandamus against the State and the Registrar of Co-operative Societies to ensure that all the petition schedule lands are allotted only to the eligible members of the 4th respondent - Shanthinagar House Building Co-operative Society in compliance with the directions issued by this Court in W.A. Nos. 881/2006 and 1199/2007 and to take over possession of the excess land, if any in the hands of the 4th respondent - Society. The second relief sought is again for a writ of mandamus against respondents 1 and 2 - State and the Registrar of Co-operative Societies to carry out thorough investigation under the supervision of this Court to ascertain if the 4th respondent -Society has conducted its affairs in accordance with law and also to ensure that the respondent - Society carries out the directions issued by this Court in the writ appeals referred to above.

2. First petitioner is a company incorporated under the Companies Act. Second petitioner is one of the directors of the first petitioner - Company. At the outset, as rightly submitted by the learned counsel appearing for the petitioners no personal grievance is made by the petitioners in these writ petitions nor have they sought for any relief to protect their interests. They are not seeking to enforce any of their fundamental or statutory rights. However, the whole

grievance is made in the background of and on the basis of the allegations made against the 4th respondent - Society that it had indulged in several illegalities in allotting sites in favour of ineligible persons not being genuine members of the Society who in turn had sold the sites allotted to them in favour of a single individual and his family members, thus indulging in illegal activities in the guise of making layout and allotting sites to siteless persons.

3. The narration of facts in the petition would indicate that on 18.04.2011 a memorandum of understating was entered into between the 1st petitioner and the 5th respondent -Company to develop certain lands which are the properties mentioned in the petition schedule. It is further urged that 5th respondent - Company had in turn, entered into a joint development agreement dated 25.11.2006 with the 4th respondent - Society as back as on 25.11.2006 to develop the said property. 1st petitioner had parted with substantial consideration in that regard.

4. It is urged that as differences arose between the petitioner and the 5th respondent - Company, petitioner was constrained to file a suit in O.S. 4329/2013 for specific enforcement of the joint venture agreement and other reliefs. The said suit is pending consideration. In the said suit, in the written statement filed by the 4th respondent - Society, a defense has been taken stating that the 5th respondent -Company with whom joint development agreement was entered into on 25.11.2006 was not a genuine society and that it had no right to deal with the property. Having noticed this, petitioners claim to have made enquiries to learn that there were rival claims between the 4th respondent - Society and another society of the same name which was located at Langford Road and in the said proceedings which culminated in the orders passed in W.A. No. 1199/2007 c/w W.P. No. 10726/2007 disposed of on 23.12.2008 and W.A. No. 881/2006 c/w W.P. No. 7788/2006 disposed of on 06.02.2012 certain directions were issued to the State Government to enquire into the illegalities in the matter of allotment of sites and to ensure that only genuine members were allotted sites.

5. According to the leaned counsel for the petitioners, though such directions were issued by this Court, the State Government and the Registrar of Co-operative Societies have not taken any steps. Therefore, the petitioners got issued a legal notice on 24.02.2014 to the State and the Registrar calling upon them to conduct an enquiry in terms of the directions issued by this Court. As no response was given by the State and the Registrar, petitioners have approached this Court.

6. Learned counsel for the petitioners contends that having regard to the nature of illegalities committed by the Society and having regard to the directions issued by this Court which are not complied with by the State and the Registrar, this Court may have to step in to ensure that the directions are complied with and the illegalities are investigated.

7. Learned Senior counsel appearing for the 4th respondent - Society submits that 4th respondent - Society has been found to be a genuine society and allotments made in favour of 156 persons in the layout have not been disturbed though they were the subject matter of grievance made in the writ proceedings and the writ appeal. He further points out that petitioners had entered into an agreement with a Society which was not a genuine society and it had no right over the property in question which was acquired for the benefit of the 4th respondent - Society and it was the 4th respondent - Society which formed a layout and distributed the sites. He further urges that if at all petitioners have entered into any agreement with the Society which was allegedly located at Langford Road and had parted with some amount through the 5th respondent, it is for the petitioner to agitate its grievance against the said society and the 4th respondent has nothing to do with the said transaction.

8. It is submitted by him that 4th respondent has not entered into any joint venture agreement with the 5th respondent nor it is in any manner accountable to the understanding reached between the petitioner and the 5th respondent. He further points out that direction issued by this Court in the previous proceedings was to conduct an enquiry into the allegations leveled against the officials of the Cooperative Department who had extended helping hand to the 2nd respondent therein regarding the dispute raised by the said society about its identification and genuineness. He, therefore, submits that no question of making any investigation into the affairs of the 4th respondent - Society or as regards the allotments made by the 4th respondent to its members would arise because it was not the subject matter of the said proceedings.

9. Learned Additional Government Advocate submits that the writ petitions are not maintainable having regard to the nature of reliefs sought. He points out that if any direction issued by this Court in the writ petition or writ appeal has been violated, it is for the aggrieved person to enforce the same by taking recourse to such remedies available.

10. Having heard the learned counsel for both parties and on careful perusal of the pleadings and the materials on record, I find that petitioners have no personal grievance in the matter. The reliefs sought are not in any manner intended to protect or enforce any of the rights statutory or fundamental of the petitioners. The whole basis for the grievance of the petitioners appears to be the loss that it has been allegedly subjected to on account of the joint venture agreement which it had entered into with the 5th respondent - Company which in turn had entered into another joint venture agreement with the Society having the same name as that of the 4th respondent operating from Langford Road, Bangalore. The dispute between the 4th respondent - society and the said rival society was the subject matter of the proceedings before this Court which culminated in the order dated 23.12.2008 and 06.02.2012 referred above. The orders passed in the said proceedings have no bearing on the nature of the grievance that the petitioners have made in these writ petitions.

11. Petitioners' right, if any arising under the joint development agreement has to be agitated, worked out and redressed in separate proceedings for which they have admittedly instituted O.S. No. 4329/2013. Question of this Court embarking upon an investigation by issuing directions to the State and the Registrar of Co-operative Societies to unearth the so called illegalities committed in the allotment of sites in favour of 156 persons would not arise. None of these persons are parties to this proceeding. Allotments have been made long ago. The dispute with regard to the said allotments, if any could have been raised by the aggrieved members, if they were denied of an opportunity to get allotments of sites though being eligible senior members. In these writ petitions, no such grievance is made with regard to such violation of the rights of the members.

12. Therefore, the petitions being misconceived are liable to be dismissed. The same are therefore dismissed.