

(2014) 09 KAR CK 0305

In the Karnataka High Court

Case No : Writ Petition Nos. 37570-71/2011 (GM-KSR)

Ramesh C. Shetty

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Societies Registration Act, 1960 — Section 10, 10(2), 27(A), 6, 6(2)

Citation : (2014) ILR 5662 : (2015) 1 KarLJ 635 : (2014) 4 KCCR 3650

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

Bench : Single Bench

Advocate : Jayakumar S. Patil, Sr. Counsel and S. Vishwajith Shetty, Advocate for the Appellant; D. Aswathappa, AGA and M. Viswajith Rai, Advocate for the Respondent

Judgement

B.S. Patil, J.—Petitioners are members of the 4th respondent society. They have filed these writ petitions challenging the endorsement Annexure-A dated 16.09.2011 issued by the Deputy Registrar of Co-operative Societies, Dakshina Kannada District, Mangalore, certifying the amendment to the Rules and Regulations proposed by the 4th respondent - Society to its bye-laws and registering the same under Section 10 of the Karnataka Societies Registration Act, 1960 (for short "the Act").

2. 4th respondent - Society held a Special General Body Meeting on 07.08.2011 at Kundapur for considering the proposal for amendment of the bye-laws of the Society. In the said meeting, a resolution was passed as per Annexure-P dated 07.08.2011 to amend the bye-laws. Petitioner has challenged the said resolution Annexure-P dated 07.08.2011 also in the writ petition. A writ of mandamus is also sought against the 1st respondent to appoint an administrator to the 4th respondent - Society exercising powers under Section 27(A) of the Act.

3. At the outset, Sri Jayakumar S. Patial, learned Senior counsel submits that the relief of mandamus seeking appointment of administrator is not pressed because

subsequent to the filing of this writ petition, elections were held and a new Board has been duly elected which has been looking after the affairs of the Society.

4. The main contention based on which the aforementioned reliefs are sought is that the Special General Body Meeting held at Kundapur is contrary to bye-law No. 7(D) of the Bye-laws of the Society which require that Special General Body meeting shall be held within the limits of the Taluk wherein the head quarters of the Society is located. The head quarters of the Society is located at Mangalore and therefore, the meeting held at Kundapur, it is urged, is against the said bye-laws.

5. The second contention urged is that there was an interim order directing the society and its office bearers to maintain status quo with regard to the proposed amendment to be discussed in the Special General Body Meeting scheduled on 07.08.2011, despite the said interim order and in violation of the same, the society went ahead with the meeting and passed the impugned resolution Annexure-P which is illegal.

6. The last contention urged is that there was no resolution passed in the executive committee in the meeting held on 14.06.2011 to convene the meeting at Kundapur and indeed, 33 out of 58 members of the executive committee have filed affidavits before this Court on 13.01.2012 stating that no resolution proposing to amend the bye-law and to hold the meeting at Kundapur was passed.

7. With regard to the question whether the writ petition is maintainable which indeed is the preliminary objection raised by the learned Senior Counsel - Sri Ashok Haranahalli appearing for the impleading respondent, Sri Jayakumar S. Patil, learned senior counsel invites the attention of the Court to Sections 6, 8 and 10 of the Act and contends that the Registrar is required to satisfy himself that amendment to the bye-laws sought to be made is in accordance with the provisions of the Act and the Karnataka Societies Registration Rules, 1964 (for short "the Rules") and only thereafter, he can register the amendment which will have effect from the date of the resolution passed by the Society. This satisfaction, it is urged, has to be shown to have been recorded after applying the mind to the relevant factors and after satisfying himself about the holding of the meeting in accordance with law and in terms mandated by the bye-laws at the place required to be held as per the bye-law. In this regard, he submits that the memorandum of association of every society is required to be registered as per Section 6(2) of the Act and they have to contain provisions relating to the admission of members, general meetings, its proceedings at such meeting etc. Therefore, unless the memorandum of association and the rules and regulations in the form of bye-laws are registered in accordance with Section 6(2) of the Act, the society cannot function. Hence, it would become the duty of the Registrar to satisfy himself as to whether the resolution amending the bye-laws has been passed in accordance with such rules and regulations/bye-laws of the Society. In this regard, he also points out referring to Section 8 of the Act that registration

of the societies would be done only after the Registrar duly satisfies himself that all the requirements of the Act and the Rules are complied with and thereafter, he will retain and register the memorandum of association and the rules and regulations and will certify under his hand that the Society has been duly registered.

8. Per contra, it is pointed out by the learned Senior counsel Sri Ashok Haranahalli that only two of the members of the 4th respondent - Society are making a grievance against the amendment of the bye-laws challenging the resolution passed by the Society amending the bye-laws; such a writ petition cannot be maintained, particularly, because the satisfaction of the Registrar under Section 10(2) is confined to the compliance of the provisions of the Act and the Rules framed under the Act and not for other aspects mentioned in the bye-laws.

9. The learned Additional Government Advocate supports the contentions urged by the impleading applicant.

10. Having heard the learned counsel for both parties and on perusal of the materials on record, it is necessary to examine the scope of the provisions enacted under Section 10(2) of the Act with regard to the satisfaction of the Registrar in approving the amendment of the bye-laws of the Society. Sub-section (2) of Section 10 of the Act states that, if the Registrar is satisfied that the amendment made under sub-section (1) is in accordance with the provisions of the Act and the rules made thereunder, he shall register it and thereafter, such amendment will have effect from the date of resolution passed by the Society as per sub-section (1) of Section 10.

11. The satisfaction to be reached by the Registrar is with regard to the amendment having been made in accordance with the provisions of the Act and Rules framed thereunder. It is well established principle of construction of the statute that where the provisions are clear and unambiguous, the meaning to be given to the provisions has to be with reference to the words used and the intention expressed therein. Keeping in mind this principle, if the requirement as stated in sub-section (2) of Section 10 of the Act is examined then it will be clear that the satisfaction of the Registrar is as regards the amendment being in accordance with the provisions of the Act and the Rules. Thus the satisfaction of the Registrar is confined to the amendment being in accordance with the provisions of the Act and the Rules.

12. The requirement, as spelt out in sub-section (1) of Section 10 is that the Rules and Regulations of a Society may be amended by a resolution passed at a special general body meeting convened for the purpose for which written and printed notice shall have to be delivered or sent by post to every member of the society 21 days prior to the date of the said meeting and the resolution proposing the amendment is passed by the votes cast in favour of the resolution by members being entitled to cast their votes either in person or by proxy and

such votes should not be less than three times the number of votes, if any, cast against the resolution by the members so entitled.

13. It is not the case of the petitioner that there is violation of the provisions contained under sub-section (1) of Section 10. On the other hand, it is urged that the meeting was not held at the place at which it ought to have been held as per the bye-law. It is also contended that the meeting was held ignoring the order of status quo granted. Therefore, when the satisfaction to be recorded by the Registrar before ordering registration of the amendment is as regards the amendment having been passed by the Society in accordance with the Act and the Rules, as long as there is no violation of the said provisions of the Act and the Rules, the mere fact of some of the bye-laws not being adhered to while passing the resolution resolving to amend the existing bye-laws cannot be made a ground to approach the Writ Court invoking Article 226 of the Constitution of India and requiring its intervention. It may be a ground for the members or the society for that matter to agitate the same before an appropriate forum. For the purpose of exercising judicial review, the power under Article 226 of the Constitution of India is confined, to find out whether the Registrar has taken note of the relevant factors as stated in sub-section (2) of Section 10 before reaching his satisfaction that the amendment was in accordance with the Act and the Rules.

14. The exercise of power under Article 226 has to be limited only to examine the aforementioned aspect and not more than that as otherwise it will tantamount to opening the remedy of approaching this Court to each member of the Society who might want to make a grievance that the resolution passed and registration of amendment of the bye-laws and the order passed by the Registrar directing registration of such amendment, were in violation of the bye-laws and the other rules and regulations of the society. Such a consequence cannot be brought about by interpreting sub-section (2) of Section 10 without reference to the words used therein which make it clear that satisfaction to be reached has to be as regards the requirement of examining whether the resolution was in accordance with the provisions of the Karnataka Societies Registration Act, 1960 and the Karnataka Societies Registration Rules, 1964.

15. In the light of the above, I find that this writ petition cannot be maintained.

16. As regards the status quo order passed by the Civil Court which is stated to have been violated, it is made clear that the said factor also can be agitated before the appropriate forum by the petitioners. I do not find it just and appropriate to examine the same in exercise of writ jurisdiction.

17. Hence, the writ petitions are dismissed reserving liberty to the petitioners to agitate their grievance before the appropriate forum in accordance with law.