

(2006) 02 KAR CK 0028

In the Karnataka High Court

Case No : Writ Petition No's. 40914 and 47671 of 2003

Scheduled Caste (Harijan) House Building Co-operative
Society Limited and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Constitution of India, 1950 — Article 226, 227
Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (2006) ILR (Kar) 2180 : (2006) 2 KarLJ 267

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : M.S. Padmarajaiah, for R.S. Ravi, in W.P. No. 40914 of 2003 and Mahesh R. Uppin, in W.P. No. 47671 of 2003, for the Appellant; S.Z.A. Khureshi, A.G.A. for Respondents-1 to 3 in W.P. No. 40914 of 2003 and for Respondents-1 and 2 in W.P. No. 47671 of 2003, M.C. Narasimhan, for S.R. Hegde Hudlamane, for Respondent-4 in W.P. No. 40914 of 2003 and for Respondent-3 in W.P. No. 47671 of 2003, R.N. Narasimha Murthy, for Aaren Associates for Respondent-5 in W.P. No. 40914 of 2003 and M.S. Padmarajaiah, for R.S. Ravi, for Respondent-4 in W.P. No. 47671 of 2003, for the Respondent

Judgement

N. Kumar, J.—W.P. No. 40914 of 2003 is filed by Scheduled Caste (Harijan) House Building Co-operative Society Limited, represented by one Sri E. Nagalingam who claims to be the President of the said Society and also in his personal capacity. The address of the said Society is given as No. 24, Kota Complex, J.C. Road, Bangalore 2.

2. W.P. No. 47671 of 2003 is filed by Scheduled Caste (Harijan) House Building Co-operative Society Limited, represented by one S. Pushparaj, who claims to be the Secretary of the said Society. The address of the Society is given as Dodda Bylakhana, No. 15, 25th Main Road, Annaiah Reddy Layout, J.P. Nagar, VI Phase, Bangalore-78.

3. In both these writ petitions what is challenged is the order passed by the Karnataka Appellate Tribunal made in respect of Appeal Nos. 482 and 614 of 2001 dismissing the same and affirming the order passed by the Assistant Registrar of Co-operative Societies, Bangalore in Dispute No. ARB/45/ABN/40/99-2000, dated 12-4-2001. As the questions involved in both these writ petitions as well as the impugned order is one and the same, they are taken up for consideration together and disposed of by this common order.

4. For the purpose of convenience, the parties are referred to as they are referred to in W.P. No. 40914 of 2003.

5. From the material placed on record by way of pleadings, documents, orders passed by various authorities, the facts that emerge are as under.

6. The first petitioner is a Housing Co-operative Society (for short referred to as "Society") registered under the provisions of the Karnataka Co-operative Societies Act, 1959 (for short hereinafter referred to as the "Act") on 15-4-1964 with its registration No., DYP/350/64. A copy of the registration certificate is produced at Annexure-A. According to the averments made in the writ petition, on the date of registration, the address of the Society was Armugam Mudaliyar Street, Kalasipalyam, Bangalore-2. Later it started functioning at No. 18/6, Old Market Road, V.V. Puram, Bangalore. Subsequently, it started functioning at No. 48, Appajappa Garden, Durgamma Temple Street, Kalasipalyam, Bangalore-2. At present it is functioning at No. 24, Kota Complex, J.C. Road, Bangalore-2. This fact is disputed by respondent 4. According to him the Society was originally functioning in Jayanagar, later in 1983, it shifted its office to No. 18/6, Old Market Road, V.V. Puram, Bangalore and from 1988 to the premises No. 94, II Cross, Surveyors" Street, Gandhi Bazaar, Bangalore-4, which is the present address of the Society. The material on record do not clearly disclose from 1964 to 1983 who were the persons managing the Society. But it is not in dispute between the parties that in the year 1983 elections took place to the management of the Society and one P. Venugopal who belongs to Scheduled Caste became the Secretary of the Society and he continued to be the Secretary till 1988. There is no dispute between the parties till 1988 and none of the action of the Society till 1988 is not under challenge.

7. Sri E. Nagalingam, the second petitioner claims that he became a member of the first petitioner-Society in the year 1974, Annexure-D, dated 7-4-1974, a receipt showing the payment of subscription fee is produced. He further claims that in the elections held on 16-5-1999 he was elected as the Director of the Society, and in turn elected as the President of the Society. In the counter filed by the 4th respondent, at paragraph 3, it is specifically stated that the second petitioner, E. Nagalingam is not a member of the Society, the receipt at Annexure-D is a fabricated one, no corresponding entry in the cash book is found or any resolution accepting the membership of E. Nagalingam is found. However, he has forged a resolution copy by adding his name. It is averred in the writ petition at paragraphs 11 and 12 that the 4th respondent, T.C. Ramakrishnaiah

do not belong to Scheduled Caste or Scheduled Tribe. One B, Ramakrishna, a Scheduled Caste person was a member of the Society and his name has been changed by striking off and made as Ramakrishnaiah who was never a member of the Society. However, he is putting forth false claim by describing himself as a Secretary and representing the Society.

8. The petitioners contend that though the petitioner-Society was exclusively belonging to Scheduled Caste and Scheduled Tribe members, some interested persons asserted that, an amendment to the bye-laws has been made admitting the persons belonging to other community as members of the Society. However, the 4th respondent contends that ever since the inception of the Society, members of all community including Scheduled Caste were enrolled as members so much so by 1990 almost 80% of the membership of the Society consisted of non-Scheduled Caste members. Hence, the General Body of the Society passed an unanimous resolution dated 24-11-1991 to adopt unblock amendment in the bye-laws, incorporating the provisions of the modern bye-laws with respect to House Building Co-operative Society prescribed by the Co-operation Department, including the change of name of the Society as Dodda Bylakhana Griha Nirmana Sahakara Sangha Niyamitha, which amendment was duly approved by the 3rd respondent by his order dated 26-12-1991, a copy of which is produced at Annexure-R3. The resolution discloses that the original bye-laws were lost, and it has to be brought in conformity with the existing law and as about 80% of the members belonging to non-Scheduled and Scheduled Tribe, even the name of the Society requires to be changed. A certificate to that effect was issued u/s 12 of the Act by the authorities. One Puttaswamy and others, filed writ petitions in W.P. Nos. 27741 to 27777 of 1993 challenging the said amendment. However, those writ petitions came to be dismissed on 23-11-1994 holding it as premature.

9. Thereafter, against the aforesaid amendment representations were made to the Government by members belonging to SC and ST. The Registrar issued a notice to the Society calling upon them to show cause why they should not be called upon to amend the name of the Society and also to limit the members of the Society to SC and ST as it existed earlier. He also called upon the Assistant Registrar of the Co-operative Societies to submit his report u/s 65 of the Act. The 4th respondent herein in his capacity as Hon. Secretary of the Society filed his objections contending that the membership of the Society is open to all communities. The original bye-laws of the Society is not available in the office of the Society. Therefore, the amendment carried out is in order. However, on verification of the bye-laws available in the office of the Assistant Registrar of Co-operative Societies, it was seen that the Society's jurisdiction was confined to the limits of Doddabyalakana and the membership was confined to the persons belonging to Scheduled caste only residing in that area. The Assistant Registrar submitted his report pointing out that as on 17-9-1992 the total membership of the Society was 857 of which 184 persons belonging to Harijan and Girijan, 6 persons belonging to schedule caste and 59 persons belonging to other community have been distributed sites. On consideration of the material on

record, the report submitted by the Assistant Registrar and after hearing arguments of the parties and on going through the original file found in the office as well as the bye-laws produced by the Society, the Registrar found that the amendment carried out by the Society changes the original character and the constitution of the Society. According to the original bye-laws the Society has been exclusively registered for the members of the Scheduled Caste, within the jurisdiction of Doddabyalakana area and subsequently persons belonging to other communities have been admitted to the Society. Therefore taking into consideration all aspects, equity, the Registrar passed an order on 2nd January, 1997 directing the Society to pass necessary resolution to remove the contradictions between Bye-laws 3 and 9. However, it was made clear that the existing members of the Society, irrespective of the caste shall continue to enjoy all rights/privileges available as such members of the Society under the provisions of the Act, Rules, bye-laws as they exist now. The result was the name of the Society was restored as Scheduled Caste (Harijan) House Building Co-operative Society Limited and the membership was confined only to persons belonging to Scheduled Caste and Scheduled Tribe in future, and all persons belonging to other communities who were enrolled as members prior to the said date shall continue to be the members of the Society. This order of the Registrar of the Co-operative Societies was challenged before this Court in Writ Petition No. 1822 of 1997 by the Society. After hearing the rival contentions the said writ petition came to be dismissed. Aggrieved by the said order of the learned Single Judge. Writ Appeal No. 2579 of 1997 was filed which came to be withdrawn on 13-1-1999 reserving liberty to raise a dispute u/s 70 of the Act. It appears a dispute is raised to that effect.

10. Yet another aspect which needs to be noticed is Sri P. Venugopal was the Honorary Secretary of the Society from 1983 to 1988. In 1988 one Sri M. Thippaiah was appointed as Returning Officer by the department to conduct election of the Society. He conducted election to the committee of the management of the Society for the years 1987-88 and 1989-90 on 26-6-1988 and declared the results as per Annexure-R1 to the statement of objections. A perusal of the same shows that the said P. Venugopal was not elected. Similarly, E. Nagalingam and T.C. Ramakrishnaiah, were also not elected. The said P. Venugopal and others raised a dispute u/s 70 of the Act challenging the right of the elected members in the aforesaid election to hold the office of the members of the Committee of the management. An interim order was passed by the Arbitrator preventing the elected members from functioning. On an application filed for vacating the order or modifying it, he modified the order imposing three conditions. Aggrieved by conditions 2 and 3 those elected members preferred a revision before the Karnataka Appellate Tribunal in Revision Petition No. 63 of 1988. The said revision petition was allowed by the Tribunal by order dated 24th January, 1989 deleting conditions 2 and 3. Aggrieved by the said order the said P. Venugopal and others preferred a writ petition before this Court in W.P. No. 2101 of 1989. This Court held that the Arbitrator was not justified in granting an

interim order preventing the elected representatives from functioning as members of the Committee of the management and dismissed the writ petition. The said order has become final and even the dispute raised challenging the said election was not pursued further and the election of the aforesaid elected members also became final.

11. The petitioner herein claims that as per Order bearing No. ARB.45.GBM:RO:113/98-99, dated 10-3-1999 one B.M. Rangaramaiah was appointed as the Returning Officer to hold elections of the committee of the management of the Society. The Returning Officer notified the calendar of events. He and nine others filed nominations to the post of nine directors. As there was no contest, all the nine persons who had filed nominations including the second petitioner were declared as elected directors to the Society for the years 1999-2000 to 2003-2004. Thereafter, the office-bearers were elected from amongst the directors of the Society. The second petitioner was elected as the President of the Society and he continued to be the President even now. One of the member by name Sri Kamal Khandelwal challenged the said election u/s 70 of the Act in No. ARS:45:ABN:37/99-2000, which came to be disposed of on 24-12-2001 as withdrawn. Fourth respondent also raised a dispute in No. ARB:2:DIS:23/98-99 challenging the said election and for cancellation of the resolution which is pending consideration.

12. Fourth respondent, T.C. Ramakrishnaiah claims that he was elected as member of the Committee of the management of the Society on 24-6-1996. One K.B. Nayak was elected as President of the said Society. When the said K.B. Nayak died, Executive Committee meeting was convened in which meeting he was elected as the Honorary Secretary of the Society, on 17-4-1999. Therefore, he is the validly elected Secretary of the Society who is performing the said function from the date of his election.

13. Yet another aspect which requires to be noticed is about 10 members claiming to be the members of the Society filed writ petition before this Court in W.P. No. 3124 of 1998 in public interest against the State of Karnataka and Registrar of Co-operative Societies and described the Society as Doddabylakana House Building Co-operative Society Limited, No. 94, 2nd Cross, Surveyor Street, Gandhi Bazar, Bangalore-5th respondent and described the Society as Scheduled Caste (Harijan) House Building Co-operative Society Limited as the 6th respondent and impleaded respondents 7 to 81 persons claiming to be the members of the said Society who are running a parallel Society. Their grievance was there are two sets of office-bearers in respect of same Society and they have started registering the sites in the name of allottees contrary to the bye-laws.

14. This Court after hearing all the parties held that the question which Society is the proper Society which has got recognition from the Registrar of Co-operative Society which is validly functioning are all the questions to be decided by the concerned authority under the Co-operative Societies Act. Therefore, by an order

dated 7-2-1998, this Court directed the petitioners to file a petition before the Assistant Registrar of Co-operative Societies, for adjudication of such disputes who was directed to issue notice to the concerned authorities including respondents 5 and 6 and hear them and pass appropriate orders and if he felt that the sale of plots are being made violating the provisions of law and bye-laws of the Society he could take appropriate action.

15. Thereafter those petitioners instituted a dispute before the third respondent requesting him to resolve the issue which was registered as No. AR.45.ABN.04.98-99. However, the said dispute was withdrawn by the said petitioners. It is thereafter the Society represented by T.C. Ramakrishnaiah, the 4th respondent raised a dispute u/s 70 of the Act which is numbered as No. ARB/45/ABN/40/99-2000. To the said dispute the very same Society was made a party respondent. But the address of the Society was given as No. 24, Kota Complex, J.C. Road, Bangalore, whereas the address of the petitioner-Society was given as No. 94, 2nd Cross, Surveyor Street, Gandhi Bazar, Bangalore-4, represented by its Hon. Secretary, In the said dispute raised, at paragraph 4 it is categorically stated that E. Nagalingam who claims to be the Hon. Secretary of the petitioner-Society is not even a primary member of the petitioner-Society. He has set out the facts narrated supra. In addition it was alleged that E. Nagalingam took some strangers to the Sub-Registrar Office who claimed to be the owners of sites intended for cancellation, and with their signature for consent, he executed cancellation deeds for Site Nos. 7, 8, 9, 14, 15, 18, 19, 24, 25, 26, 33 and 49 and has re-registered them to his associates, which is illegal. It was contended that election held in 1996 was valid and the committee elected in the said election is validly constituted committee. The second petitioner has no right to represent the Society and execute any deeds as has been done. Therefore, he sought for the following reliefs in the said dispute:

(1) The report of the Deputy Registrar recognising the petitioner-Society which is being run at No. 48, Appajappa Garden, Durgamma Temple Street, Kalasipalyam, Bangalore-2 is illegal, invalid and infructuous;

(2) The Society which is being run by the 4th respondent at No. 94, 2nd Cross, Surveyor Street, Gandhi Bazar, Bangalore-4 be declared as legally functioning Society and the members of the Society as found from its official records, cash books and resolution books duly audited in 1984-85 and 1992 is the genuine members of the Society;

(3) The cancellation deeds executed by E. Nagalingam be declared as illegal and void;

(4) A direction be issued to the Sub-Registrar to delete the cancellation deeds.

16. The petitioners herein who are the respondents in the said dispute appeared in pursuance of the notice issued, filed detailed counter contesting the claim asserting it is their Society which is genuine as set out above. Both the parties adduced evidence, oral and documentary. On appreciation of oral and

documentary evidence and the arguments canvassed, the Assistant Registrar held that the present dispute filed, asserting its genuineness, touches the constitution, management and business of the Society and therefore the dispute clearly falls within the ambit of Section 70 of the Act and is maintainable. Sri T.C. Ramakrishnaiah is the member of the Society, he has been assigned the membership No. 582, he has been allotted site No. 72 and the contention with respect to not writing his full name is only a clerical error and it is not a case of altering the name of T.C. Ramakrishna as T.C. Ramakrishnaiah as alleged by the opposite parties. As per Ex. P. 25, T.C. Ramakrishnaiah was elected as Director on 24-6-1996 and on 17-4-1999 he was elected as Hon. Secretary on the death of K.B. Nayak whereas there is nothing on record to prove how and by virtue of which election the second petitioner was elected the member of the committee to take charge of the Society. The report submitted by the Deputy Registrar which is marked as Ex. R. 3 is only an administrative report submitted to the higher officer and therefore it remains a report which does not bar the jurisdiction of the Court to hear the case and determine the genuineness of the Society independently u/s 70 of the Act. He went on to hold that E. Nagalingam has played fraud on members using the name of the Society keeping its address at No. 48, Appajappa Garden, Durgamma Temple Street, Kalasipalyam, Bangalore 2, which is none other than his residential address. The membership of the Society was never confined to Scheduled Caste persons, only the name of the Society indicates that it is a Harijan Society. However, as the membership is since restricted to Scheduled Caste as per the order of the Registrar at Ex. P. 18, from the date of the said order, the same is binding on all the parties. Therefore, he proceeded to pass the order dated 12th April, 2001 declaring the Society functioning at No. 94, 2nd Cross, Surveyor Street, Gandhi Bazar, Bangalore-4 and represented by T.C. Ramakrishnaiah as the legally functioning and genuine Society. The membership of the petitioner-Society as found from the original records like Cash Book, resolution book, share ledgers, audit report for the years 1963-64 to 1983-84 are the genuine members of the petitioner-Society and further declared that cancellation deeds executed by the first respondent-E. Nagalingam on 11-2-1999 as Hon. Secretary of the Society are bad in law, illegal and void.

17. Aggrieved by the said order of the Assistant Registrar, the petitioners in both these writ petitions preferred an appeal in Appeal Nos. 482 and 614 of 2001 before the Karnataka Appellate Tribunal, Bangalore. In the appeal filed by the present petitioners, T.C. Ramakrishnaiah was shown as the first respondent claiming to be the Hon. Secretary of the Society and the Society itself was not made a party. In the appeal filed by S. Pushparaj claiming the Secretary of the Society he described the Society as Doddabyalakana House Building Co-operative Society and did not make T.C. Ramakrishnaiah as party though he made E. Nagalingam as party-3rd respondent to the proceedings. Appeals were heard by the Tribunal. The appeal filed by S. Pushparaj in Appeal No. 614 of 2001 was held to be not maintainable as he was not a party to the original order.

18. While dealing with the appeal filed by the petitioner it was held that in view of the order of the Hon'ble High Court directing ARCS to decide which is the genuine Society, the contention of the petitioners that the dispute filed by the respondents was not maintainable was negated. On reappraisal of the entire evidence it held that when the Registrar issued a direction to the Society represented by T.C. Ramakrishnaiah to amend the bye-law of the Society by deleting the amended portions, by restoring to the original position, the Society represented by him has been recognised as a legally functioning Society. As elections were held under the supervision of one Appajigowda who was appointed as Returning Officer by ARCS, II Circle on 24-6-1996 and in the said election Appaiah was elected as President and K.B. Nayak was elected as Hon. Secretary. After the death of K.B. Nayak, T.C. Ramakrishnaiah was elected as Hon. Secretary who had been elected as the member and therefore Society represented by him is a genuine Society. Therefore, the Appellate Tribunal did not find any justification to interfere with the order passed by the Registrar of Co-operative Societies. Accordingly the appeal came to be dismissed. Aggrieved by the said order dated 3rd July, 2003, these writ petitions are filed.

19. At the time of hearing of the writ petition it was noticed that the petitioners have not made the Society as a party but has made T.C. Ramakrishnaiah as a party claiming to represent the said Society. Therefore, on 4-7-2005, I.A. No. 3 of 2005 was filed to implead the Society as party-respondent to this proceedings. Notice was ordered. After service of notice the Society entered appearance through its Counsel. They had no objection for allowing the impleading application. I.A. No. 3 of 2005 was allowed. Petition was amended. After allowing of the said application I.A. No. 2 of 2005 was filed for striking out respondent 4. The same was not pressed. Accordingly, it was dismissed on 26-8-2005.

20. Respondents 4 and 5 have filed separate statement of objections traversing all the allegations, denying the claim of the petitioner, to which already reference is made supra.

21. Sri M.S. Padmarajaiah, learned Senior Counsel appearing for the petitioners contend that, the dispute raised by the 4th and 5th respondents is not maintainable u/s 70 of the Act. The Assistant Registrar has no jurisdiction to decide the nature of the dispute raised in the said dispute. Secondly, he contended that the Assistant Registrar had no jurisdiction to order for cancellation of cancellation deeds executed by the second petitioner in a proceedings u/s 70 of the Act. Lastly, it was contended that the oral and documentary evidence adduced on record clearly established that it is the first petitioner represented by the second petitioner is the legally constituted Society and the findings recorded by two authorities contrary to the same is illegal and liable to be quashed.

22. Per contra, Sri R.N. Narasimha Murthy, learned Senior Counsel appearing for the 5th respondent contended that in the appeal filed before the Appellate Authority the 5th respondent was not made a party to the appeal; the order

passed by the Assistant Registrar in favour of the 5th respondent has become final and the petitioners have acquiesced in the said order. The said order passed is one with jurisdiction and he referred to Sections 9, 118 and 70 of the Act and also relied on the judgments and contended that when a validity passed order is not challenged in a manner known to law and has become final, the writ petition challenging the said order is not maintainable.

23. Sri M.C. Narasimhan, learned Senior Counsel and Sri Hegde Hudlamane appearing for the 4th respondent contended that the second petitioner herein is not even a member of the Society. He claims to be the Secretary and functioning from his residence. He has executed cancellation deeds cancelling the sale deeds which are validly executed by the Society. Under those circumstances and in view of the judgment of this Court in the Public Interest Litigation, the 4th respondent was constrained to approach the Assistant Registrar of Co-operative Society for a declaration to declare which is the legally constituted Society and who is legally entitled to represent such a Society and for cancellation of cancellation deeds executed by the second petitioner. The authorities on appreciation of oral and documentary evidence, by a considered order have held that the petitioners have no right to the Society, and it is not open for this Court to go into these concurrent finding of facts in its writ jurisdiction under Article 226 of the Constitution. They contend that in view of the directions issued by the Division Bench of this Court the dispute raised is maintainable. Therefore, the writ petition is liable to be dismissed.

24. From the aforesaid pleadings and the orders passed by the two authorities, the points that arise for my consideration are:

- (1) In a proceedings u/s 70 of the Co-operative Societies Act, is it open for the authorities to declare which Society is a genuine Society registered under the provisions of the Karnataka Co-operative Societies Act?
- (2) Whether the finding recorded by the two authorities that the Society represented by T.C. Ramakrishnaiah is a genuine Society is valid and legal?
- (3) Whether the order passed by the authorities for cancellation of the cancellation deeds is valid and legal?

25. In order to appreciate the scope and ambit of Section 70 of the Act, it is necessary to carefully construe the words used in the section. Section 70 of the Act reads as under:

70. Disputes which may be referred to Registrar for decision.--(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative Society arises.--

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the Society, its committee or any officer, agent or employee of the Society; or

(c) between the Society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs, or legal representatives of any deceased officer, deceased agent or deceased employee of the Society; or

(d) between the Society and any other co-operative Society or a credit agency.

such dispute shall be referred to the Registrar for decision and no Civil or Labour or Revenue Court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purposes of Sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative Society, namely.--

(a) a claim by the Society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the Society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or Member of Committee of the Society;

(d) any dispute between a Co-operative Society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a co-operative Society notwithstanding anything contrary contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947);

(e) a claim by a Co-operative Society for any deficiency caused in the assets of the co-operative Society by a member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or deceased servant or by its committee, past or present whether such loss be admitted or not.

(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the Constitution, management or the business of a co-operative

Society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

A reading of Section 70 of the Act makes it very clear that Sub-section (1) of Section 70 deal with the parties to the disputes, whereas, Sub-section (2) deals with what a dispute is and Sub-section (3) states that if any question arises where a dispute referred to the Registrar under the section is a dispute or not, the decision thereon of the Registrar shall be final and shall not be called in question in the Court. Therefore, for application of Section 70, firstly the dispute should be between persons who satisfy the requirements mentioned in Section 70(1) of the Act and the dispute should fall within the categories mentioned in Section 70(2) of the Act. A careful of Section 70(1) of the Act discloses that the dispute touching the constitution, management or the business of a co-operative Society should arise among members, past members and persons claiming through members, past members and deceased members or between the aforesaid category of persons or between the Society or its committee and any past committee, any present or past officer, agent or employee or nominees, legal representatives of the deceased officer, agent or employee or between the Society and any other co-operative Society. Unless a dispute is between the aforesaid category of persons, the Registrar would get no jurisdiction to entertain a dispute u/s 70 of the Act. If it is averred in the dispute that the opposite party is not a member of the Society at all, the question whether the opposite party is a member of the Society or not cannot be gone into in a dispute u/s 70 of the Act. The principles embodied under Order 7, Rule 11 of the CPC squarely applies to such a situation. In other words, if the dispute do not disclose the aforesaid jurisdictional aspect, the dispute shall be rejected at the threshold. As it is settled law to find out whether the dispute is maintainable or not what is to be seen is only the averments in the dispute and not the averments in the statement of objections filed by way of defence. Similarly, if the petitioner avers that the respondent is not a member and the respondent avers that the petitioner is not a member of the Society, unless this jurisdictional question or membership is decided first, the Registrar would not get jurisdiction to entertain the dispute. He is not the competent person to decide that issue also. It would be in the nature of declaration of statutes of the parties. Therefore, a dispute regarding membership of the Society is outside the purview of the dispute u/s 70 of the Act.

26. It was contended, in the public interest litigation filed, Division Bench of this Court has passed orders directing the petitioners therein to raise a dispute u/s 70 of the Act, where the question which Society is the proper Society, which has got recognition from the Registrar of Co-operative Societies, which can legally function, has to be gone into. Therefore, it was contended the dispute raised is maintainable.

27. In the aforesaid writ proceedings the petitioners and the respondents admittedly were the members of the Society. It was filed against the Society and other members complaining that, persons who are not duly authorised to represent a Society are claiming to be the office-bearers of the Society and performing certain acts which are illegal and detrimental to the interest of the

Society. In the said proceedings, they had made Doddabylakana House Building Co-operative Society as 5th respondent and Scheduled Caste (Harijan) House Building Co-operative Society as 6th respondent and about 75 members as respondents 7 to 81. It is in pursuance of the said directions, the petitioners therein, did raise a dispute u/s 70 of the Act. It was maintainable. However, the said dispute was withdrawn. It is after the withdrawal of the said dispute, the present dispute is raised. In the first place, it the aforesaid order passed by this Court, direction was issued to the petitioners in the said writ petition to raise the dispute. No such direction was issued to respondents 5 and 6. Therefore, they cannot claim the benefit of the said order and contend that the maintainability of the dispute cannot be raised. Secondly, the dispute raised is for a declaration that the Society which is functioning at address No. 94, 2nd Cross, Surveyor's Street, Gandhinagar, Bangalore is the legally functioning Society. In this regard, it has to be noticed that there are no two societies in existence. The Society is only one and it bears the registration No. DYR/350/64 which was established in 1964. Merely because the addressees of the said Society is changed from time to time by persons who claim to represent the Society, the genuineness of the said Society cannot be decided with reference to the address from which it was functioning. As set out earlier, the petitioner 2 and the 4th respondent have given several addresses in which the Society is functioning according to them. They have produced various correspondences to show how the authorities have corresponded with the Society and the address mentioned in the said correspondence. It is on that basis each one of them contend that the Society is functioning at the address mentioned by them which is the legally functioning Society. Once it is not disputed that the Society is only one, the question that arises for consideration is who are the legally authorised persons to represent the said Society and conduct its business. If there is a dispute in respect of the said question and two factions of the Society or two set of members assert their respective rights, then the dispute would be who among them are entitled to represent the Society. In substance, it would be a dispute between members of the Society regarding management, constitution, and business of the Society and therefore it falls u/s 70 of the Act. That is not the dispute raised in the instant case.

28. The learned Senior Counsel Sri R.N. Narasimha Murthy submitted that if the entire material on record and the pleadings are looked into, in substance it amounts to a dispute between two rival factions in a Society and therefore the dispute raised by them u/s 70 of the Act is maintainable. Even if the entire material is looked into, there is no indication that two factions in a Society are agitating the matter. It is only two individuals viz., the second petitioner and the 4th respondent who are agitating the matter. Even it has to be construed that two factions are agitating the matter, it must be admitted that both the factions are members of the Society, and, the dispute should be only regarding their right to hold the office and managing the affairs of the Society. But in the instant case, the respondent who raised the dispute asserts in the petition filed, that the

second petitioner is not a member of the Society at all. In reply the second petitioner asserts that the 4th respondent is not a member of the Society at all. The question whether the second petitioner and the 4th respondent are members of the Society do not fall within the ambit of Section 70 of the Act. When a dispute is filed asserting that the opposite party is not a member, then it is not a dispute among or between members and therefore on the face of it, such a dispute is not maintainable and is liable to be rejected at the threshold.

29. It is also not a case between two societies which fall within the ambit of Section 70 of the Act. What Section 70(1)(d) provides is, any dispute by which the constitution management or the business of a cooperative Society arising between the Society and any other co-operative Society or a credit agency, they it falls within Section 70 of the Act. The condition precedent for application of this provision is, that there must be two societies which are independent legal entities and a dispute between them is to be agitated u/s 70 of the Act. As pointed out earlier, in the instant case, there are no two societies, the Society is only one. It is the second petitioner and the 4th respondent who are trying to claim the said Society functioning at the address mentioned by them is the legally functioning Society and not the other one. Therefore, in view of the language employed in Section 70 of the Act, the dispute of the nature which is raised falls outside the scope of Section 70 and the dispute itself is not maintainable.

30. It was contended that when once the Assistant Registrar after adjudication of the dispute holding that the dispute is maintainable and granted the relief sought for in the appeal filed, the petitioner-Society who had filed the petition was not made a party at all the therefore insofar as the 5th respondent-Society in this case is concerned the said order has become final. Though an appeal is provided against the said order, the said remedy was not availed of and in those circumstances the present writ petition filed challenging the said order is not maintainable and this Court should not interfere with the said finding. Though this argument looks attractive, but a closure scrutiny of the material on record shows that, against the order of the Assistant Registrar, the petitioners who are aggrieved by the same did prefer a statutory appeal. It is a fact that in the said statutory appeal, they did not make the 5th respondent-Society eo nomine a party. It is because of misconception, that if 5th respondent is made a party, which may amount to accepting the fact that the 5th respondent is a legally functioning Society. Therefore, what they did was they made 4th respondent as a party by name and they described him as claiming to be the Honorary Secretary of Harijan House Building Co-operative Society and prosecuted the appeal. The said T.C. Ramakrishnaiah has no independent case to put forth. It is the said T.C. Ramakrishnaiah who had preferred the dispute before the Assistant Registrar representing the Society. Therefore, he contested the matter successfully and on such consideration the appeal filed by the petitioners came to be dismissed. Even before this Court only T.C. Ramakrishnaiah was made a party and not the Society. It is only at the hearing stage realising the mistake, the 5th respondent

was made a party and then an attempt was made to delete T.C. Ramakrishnaiah. These facts speak for themselves. Under these circumstances, on the ground that 5th respondent was not made a party eo nomine before the Appellate Court, it cannot be said that the petitioners have acquiesced and accepted the order of the Assistant Registrar and the said order has become final and that this Court has no jurisdiction to interfere with the said order. Therefore, I do not find any substance in the said contention also.

31. In view of the aforesaid discussion when the dispute filed u/s 70 of the Act was not maintainable at all, the finding recorded by both the authorities is one without jurisdiction. Therefore, the ultimate finding recorded by these two authorities that the Society represented by Sri T.C. Ramakrishnaiah is a genuine Society and that he was duly elected and was validly exercising his power as an office-bearer of the Society and his actions as such office-bearer is valid and legal is also a finding without jurisdiction and is liable to be set aside. Accordingly, it is set aside.

32. The material on record discloses that till 1988 there was no dispute regarding the office-bearers of the Society. It is only thereafter when Venugopal the previous Secretary lost the election, the dispute arose. At the inception, the Society was named as Scheduled Caste (Harijan) House Building Co-operative Society Limited. The original bye-laws available show that the said bye-laws are in Kannada and the membership of the Society confined only to persons belonging to Scheduled Caste. Admittedly persons belonging to other communities were enrolled as members. The Society acquired land for formation of a residential layout for its members. In an area of 4 acres 23 guntas in Sy. No. 32 of Marenahalli, J.P. Nagar, layout was formed after obtaining the requisite sanction from the appropriate authorities. After formation of the layout, sites have been sold to its members and registered sale deeds have been executed in their favour. Out of the members to whom the sale deeds have been executed, six belong to Scheduled Caste and all the remaining members to whom the sites have been allotted and the sale deeds have been executed belong to other communities. In the year 1991, the General Body of the Society passed an unanimous resolution dated 24-11-1991 to amend the bye-laws which included the change of name of the Society as Doddabylakana Gruha Nirmana Sahakara Sangha Niyamitha which amendment was duly approved by the General Body and was approved by the Competent Authority on 26-11-1991. The main reason for such amendment was as on that day 80% of the members belong to non-Scheduled Caste and Scheduled Tribe and therefore there was a necessity to change the name of the Society. One Puttaswamy and others challenged this amendment before this Court by way of a writ petition which came to be dismissed. Thereafter complaints were lodged with the Registrar of Societies bringing to his notice the illegalities committed in passing the amendment and in granting approval by the authorities. Thereafter proceedings were initiated on such complaint and the Society was notified and an enquiry was held for u/s 65 of the Act. Society filed its objections and after hearing the parties considering

the report submitted, the Registrar noticed that out of the total membership of 857 only, 184 are belonging to Harijan Community and rest belong to other communities, six sites have been allotted to Scheduled Caste and Scheduled Tribe Community and 59 sites have been allotted to others. The matter was debated in the floor of assembly where on behalf of the Government an assurance was given to take suitable steps to undo injustice done to the Scheduled Caste members of the Society. Therefore by virtue of the power conferred on the Registrar u/s 12(5) of the Act, he directed the Society to restore the name of the Society to its original name and also limit the members only to Scheduled Caste persons. However he took note of the fact that in the interregnum period the members belonging to other communities were enrolled, as well as sale deeds have been executed in their favour and therefore he found it inequitable to pass any orders affecting their interest. Therefore, it was made clear that those members who do not belong to Scheduled Caste and Scheduled Tribe shall continue to enjoy all rights/privileges available to such members of the Society under the provisions of the Act, Rules and bye-laws as they existed then. This order of the Registrar dated 2-1-1997 was challenged before this Court by the 5th respondent in W.P. No. 1822 of 1997 which upheld the said order by its order dated 5-6-1998. The appeal filed against the said order was later withdrawn, thus the said proceedings have reached a finality.

33. In view of the finality of the aforesaid proceedings all transactions between the Society and its members irrespective of the community to which they belong to, prior to 1998, has become final. That cannot be reopened or unsettled. It appears that, what is sought to be done by the second petitioner herein claiming to be the Secretary of the Society is to execute the cancellation deeds cancelling the earlier deeds executed in favour of various members. Similarly, the 4th respondent claiming to be the Secretary of the Society and thereafter as the President, started exercising his power from 1996 onwards. Both of them claim to have been elected in an election conducted by an official of the Co-operative Department who was duly appointed under the Act. Each election has been conducted behind the other and both have not contested in both elections. Both the second petitioner and the 4th respondent are continuing to claim to be the office-bearers of the Society up till now. Each one of them denied the other the very membership of the Society. Their membership dispute is yet to be decided in an appropriate form. However, according to them they have enjoyed the office and they continued to enjoy the office and they continued to exercise their powers under the Act beyond the terms stipulated under law. The entire dispute between the parties revolves round the sale of sites belonging to the Society. Each one of them is trying to hijack the Society, outsmart the other, the meddle with these sites. There appears to be no concern regarding the interest of the members or the Society at large. Various proceedings are initiated in different forums and they assert their rights to their present position on the basis of these proceedings. If as they contend that they are not members of the Society at all and the elections on which they rely on are not valid and legal, all their actions

are without jurisdiction. However, that is a matter which has to be adjudicated in an appropriate forum. Suffice it to say, the 5th respondent is a Co-operative Society registered under the Act. The way the affairs of the Society are being conducted for the last two decades only shows that the authorities are not prompt in discharging their statutory obligation in respect of this Society. In utter disregard to the statutory provisions, depending upon whims and fancies of the members, Returning Officers were appointed to hold elections. At the request of these two persons elections have been held without knowledge to the other person. In spite of all these irregularities, complaints, and even the matter is being discussed in the Assembly no corrective step is taken by the authorities. By the acts of these two persons the interest of the members is being affected. That is why an attempt was made to set right things by filing a public interest litigation which came to be rejected reserving liberty to the parties to approach the competent forum. Though they raised a dispute, for reasons best known to them, they have withdrawn the same and therefore the said dispute is yet to be resolved.

34. Under Sub-section (4) of Section 28-A of the Act, the term of office of the members of the committee of management shall be five co-operative years and they shall be deemed to have vacated the office as such members of the Committee on the date of completion of the said term. If the case of the second petitioner is to be believed he was elected as officer-bearer for the years 1999-2000 to 2003-04 whereas the fourth respondent was elected on 24-6-1996 as a member of the Committee and on 17-4-1999 as a honorary secretary. Both of them are holding the said post for five co-operative years and their term has come to an end long back and they are deemed to have vacated the office as such members of the committee. They have not taken any steps to conduct the election also. Under the circumstances, the best way of resolving the dispute would be, by resorting to democratic way, by holding a fresh election, giving an opportunity to all the members of the Society to select their representative and handover the Society to such a duly elected body, so that the Society could be saved from the clutches of these two individuals viz., the second petitioner and the 4th respondent. As these two persons, according to them, have enjoyed the power for a period more than what they are eligible, they cannot have any grievance whatsoever. In fact, their membership right itself is to be adjudicated upon in an appropriate forum and till such time in the interest of the Society and its members, they should be kept away from the affairs of the Society.

35. Though the dispute before the authorities was not maintainable, now it has come to the notice of this Court, the way the affairs of the Co-operative Society has been conducted, how the second petitioner took some strangers to the Sub-Registrar Office who claimed to be the owners of sites, readily agreed for its cancellation and gave their consent for cancellation of sale deeds of site Nos. 7, 8, 9, 14, 15, 18, 19, 24, 25, 26, 33 and 49. In Bangalore when the site values are soaring sky high and if sites are acquired by way of registered sale deeds from a Housing Co-operative Society, such owners of sites walking into the Sub-

Registrar's Office and giving their consent for cancellation of such sale deeds without consideration is unimaginable. After cancelling the aforesaid sale deeds, it is alleged that the second petitioner has executed sale deeds in respect of the very same sites to its associates. On the face of it the action of the second petitioner is illegal and opposed to law. Once a sale deed is executed, assuming that the beneficiary of the sale deed wants to give up his rights in the said sale, it can only be done, by way of re-conveyance favour of the Society and not by way of consenting for cancellation of a sale deed. Therefore, such a cancellation deed is totally opposed to law, admittedly without consideration and unbelievable. This Court cannot shut its eyes when such illegalities are brought to its notice. Therefore, in exercise of the power under Articles 226 and 227, in the interest of justice, it would be appropriate to order for cancellation of those cancellation deeds executed by the second petitioner and direct the Sub-Registrar to delete those cancellation deeds. Similarly, the action of the fourth respondent also requires to be reviewed in accordance with law.

36. Therefore, during the interregnum period, the affairs of the Society has to be entrusted to the custody of a neutral person, an Administrator. The said Administrator shall hold the election to the Society on the basis of the membership, which is upheld and accepted in W.P. No. 1822 of 1997 and handover the management of the Society to such newly elected body. Hence, I pass the following.--

ORDER

- (1) Writ Petition No. 40914 of 2003 is allowed. Rule made absolute;
- (2) The dispute raised by the fourth respondent u/s 70 of the Act is not maintainable and accordingly the dispute is rejected;
- (3) All the findings recorded by respondents 2 and 3, in the proceedings before them are hereby quashed;
- (4) The Registrar of Co-operative Society, Karnataka, is directed to appoint an Administrator to the Society, within two weeks from the date of receipt of the copy of this order, with a direction to hold the election to the Society in accordance with law, within six months from the date of such appointment;
- (5) Till the membership dispute between the second petitioner and the fourth respondent is resolved in an appropriate forum, they should be kept out of the election process. In other words election process could go on excluding them;
- (6) All the cancellation deeds executed by the second petitioner are hereby cancelled and the Sub-Registrar is directed to delete those cancellation deeds in the Register;
- (7) It is open to the new Managing Committee to review and take appropriate action in respect of all the acts, omissions, of the fourth respondent and second petitioner, after they assumed the office of Secretary and President of the Society

respectively from 1999 till the appointment of Administrator, in accordance with law;

(8) In view of the above, W.P. No. 47671 of 2003 does not survive for consideration and it is dismissed as having become infructuous;

(9) Office is directed to send a copy of this order to the jurisdictional Sub-Registrar, for needful action;

(10) No costs.