

(2009) 04 KAR CK 0016
In the Karnataka High Court
Case No : Review Petition No. 52 of 2009

The Shanthinagar House Building Co-op. Society Ltd.	APPELLANT
Vs	
Shanthi Nagar House Building Co-op. Society Ltd. and Others	RESPONDENT

Date of Decision : 24-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 5, 114
Karnataka Co-operative Societies Act, 1959 — Section 64, 70

Citation : (2009) 04 KAR CK 0016

Hon'ble Judges : V. Gopala Gowda, J; K.N. Keshavanarayana, J

Bench : Division Bench

Advocate : Jayakumar S. Patil and H. Ramachandra, for the Appellant; K. Shashi Kiran Shetty, for C/R3, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—In this Review Petition filed under Order 47 Rule 5 r/w. Section 114 of C.P.C., the petitioner has sought review of the judgment dated 23.12.2008 passed by this Court in WA No. 1199 of 2007 c/w. W.P. No. 10726 of 2007 inter alia on the ground that in the said judgment, the rights of the petitioner-Society have been adjudicated upon without impleading it as a party to the said proceedings and without giving an opportunity of being heard to it. Therefore, it is urged that the said judgment is required to be reviewed and the matter may be heard on merits after affording an opportunity to the petitioner-Society and dispose off the same. It is also contended in this petition that this Court having recorded a finding that the question as to the identity or genuineness of a Co-operative Society cannot be the subject of an enquiry either u/s 64 or u/s 70 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the "Act") and that such a dispute will have to be adjudicated only by a Civil Court, it has proceeded to record a finding on the said aspect of the matter and has held the 1st Respondent-Society is the genuine society and therefore, there is an error apparent on the face of the record, as such, the judgment passed by this Court required to be reviewed. Petitioner has filed

application seeking permission to file Review Petition for the reasons stated supra.

2. We have heard Sri. Jayakumar S. Patil, learned Senior Counsel appearing for the petitioner and Sri. K. Shashi Kiran Shetty, learned Counsel appearing for Respondents - 1 and 3/Caveators, who have entered caveat.

3. A few brief facts relevant to appreciate the grounds urged in this Review Petition are stated as under.

Shanthinagar House Building Co-operative Society (hereinafter referred to as "SHBCS" for short) with its head office at No. 35, Victoria Cycle Mart, Shanthinagar, Bangalore, was registered as per the provisions of the Act on 04.05.1965 with Registration No. DRY No. 403/1964-65. With a view to form a lay out of building sites for allotment to its members, the said society entered into an agreement of sale dated 15.10.1975 with one Mr. B.K. Dwarakanath in respect of the lands owned by him in various survey numbers totally measuring 66 acres 22 guntas situated in Srinivaglu, Amanikere and Jakkasawdra Villages, Begur Hobli, Bangalore South Taluk, Bangalore. However, in view of the prohibition in the Karnataka Land Reforms Act, (hereinafter referred to as "KLR Act" for short) the said society with the consent of the land owner, B.K. Dwaranath, submitted a representation to the State Government to acquire the land to an extent of 66 acres 22 guntas in Sy. Nos. 1, 2/1, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 and 12/1 of Srinivagelu, Ammanikere and Jakkasandra Villages, Bangalore South Taluk, Begur Hobli, Bangalore District On the basis of the said representation, the State Government issued the Preliminary Notification dated 12.01.1983 u/s 4(1) of the Land Acquisition (Mysore Amendment Holding) Act, 1961 to acquire 66 acres 22 guntas of land in the aforesaid survey numbers in favour of Respondent No. 3 -Society. The final notification dated 22.05.1983 u/s 6(1) of the Land Acquisition Act also came to be issued and subsequently, consent award was passed on 12.09.1986, determining the total compensation of Rs. 28,88,656.18, which was deposited by the said society with the Deputy Commissioner of the Revenue Department Thereafter, it is the case of the Society that, the State Government took possession of the acquired property and the same is evidenced by notification issued u/s 16(2) of the Land Acquisition Act on 03.11.1988. Thereafter, the Government has transferred the possession of the acquired land to the said society upon depositing further amounts towards the cost of the land and also conversion charges. Thereafter, the society submitted the lay-out plan to the Bangalore Development Authority (hereinafter referred to as "BDA" for short) for sanction, which was also approved and subsequently a modified lay out plan was also sanctioned by the BDA and work orders were issued. It appears, some time during 1994, the Head Office of the Society seems to have been shifted to No. 48, Annaiah Reddy Road, Bangalore, from where the society functioned for number of year and thereafter during the year 1983-84, the registered office was shifted to No. 4307, 3rd Floor, High Point. Palace Road, Bangalore. Later, the Registered Office was shifted to 42/13, 3rd floor, 3rd "E" Main, Jayanagar, Bangalore. It appears, in the audit imports of the said society

for the year 1987-88 onwards, the Registration Number of the society was mentioned as DRGN 10385/1964-65. Sometime during the year 2004 one G.P. Reddy, a Real Estate Agent claiming to be the P.A. holder of Sri B.K. Dwaranath appears to have given a representation to the then Hon"ble Chief Minister of Karnataka, requesting him to revert back possession of the aforesaid lands in question in favour of B.K. Dwarakanath and on the basis of the said representation, the Revenue Department of the State Government issued a notice dated 20.12.2004. The said notice was not served on the SHBCS with its registered office at Jayanagar, but the said notice appears to have served on the 4th respondent herein Sri. K. Laxman, who claimed to be the President of Shanthinagar, House Building Co-operative Society with its Registered Office at No. 120, Long Ford Road, Shanthinagar, Bangalore. In response to the said notice, the said K. Laxman appears to have given a representation in the name of the society stating that the society is not in a position to develop the lands and form lay-out to allot the sites to its members and therefore, the society has no objection to de-notify the lands. After coming to know of the said representation submitted by the said K. Laxman and also the notice issued by the Government, the society having its registered office at Jayanagar, filed its objection before the Revenue Department and also filed a writ petition before this Court in W.P.6951 of 2005 questioning the legality of the said show-cause-notice dated 20.12.2004. By Urn order dated 14.12 2005 passed in the said writ petition all further proceedings before the Revenue Authorities pursuant to the said show-cause notice were stayed and ultimately, the said writ petition was partly allowed by the order dated 19.04.2006 holding that the lands having vested absolutely in the State, free from all encumbrances and transferred in favour of Respondent No. 3 ? Society, the State cannot de-notify the lands in favour of the land owner especially when the State has transferred the lands to the Society to allot the sites to its members after formation of sites. In that view of the matter, the learned Single Judge had restrained the State from resuming the lands without holding an enquiry as warranted deemed fit under relevant statutory provisions to justify its action. That portion of the order permitting enquiry has been questioned by the 1st respondent-Society by filing an appeal in W.A. No. 881 of 2006, wherein, the order of the learned Single Judge permitting an enquiry, has been stayed. In the meanwhile the Registrar of Co-operative Societies, Bangalore, passed an order dated 17.11.2006 declaring the SHBCS having its registered office situate at No. 120, Long Ford Road, Bangalore, is the genuine society and the said order came to be passed on the basis of the letter dated 18.10.2006 submitted by the 4st respondent K. Laxman claiming to be the President of the said Society. The said order dated 17.11.2006 passed by the Registrar of Co-operative Societies, Bangalore, was impugned by the 1st respondent-society in W.P. No. 16904 of 2006 interalia on the ground that the said order is violative of principles of natural justice in as much as no show cause notice was issued to it before passing the said order. In the said writ petition, the Registrar of Co-operative Societies and X. Laxman, were made parties. The said writ petition was opposed by the Registrar of Co-operative Societies, mainly

contending that K. Laxman, heads the genuine society and the Society having its registered office at Jayanagar is the bogus one. The learned Single Judge, who had heard the said writ petition, on coming to the conclusion that the impugned order dated 17.11.2006 has been passed without affording an opportunity to the petitioner-society therein held that the impugned order is violative of the principles of natural justice and therefore, it has quashed that order by allowing writ petition and the matter was remanded to the Competent Authority to hold an enquiry after issuing notices to the parties. The order of remand for enquiry by the Competent Authority was questioned by the 1st Respondent-Society herein in W.A. No. 1199 of 2007. In the meanwhile, pursuant to the order passed in W.P. 16904/2006, the Joint Registrar of Cooperative Societies passed an order dated 23.06.2007 to the effect that in exercise of his power u/s 64 of the K.C.S. Act he has decided to hold an enquiry by himself as to which of the two society is genuine one and issued a notice of hearing to the parties. The said order dated 23.06.2007 and the subsequent notice issued were questioned by the 1st Respondent-Society by filing W.P. 10726 of 2007 seeking to quash the said order and the notice issued therein. The said writ petition No. 10726 of 2007 was tagged on to the W.A. No. 1199 of 2007. Both the Writ Appeal and Writ Petition were heard together by consent of the learned Counsel for the parties by this Court and by the Judgment dated 23.12.2008, this Court has allowed the writ appeal as well as the writ petition by passing common judgment and quashed all the proceedings before the Registrar as well as Joint Registrar of Co-operative Societies. This Court having regard to the materials placed on record and on perusal of the original file produced by the State Government and also the Cooperative Department has held that the 1st respondent-society registered with Registration No. DRY 403/1964-65 presently having its registered office at Jayanagar, Bangalore, is the society for whose benefit the lands were acquired and at no point of time, the registered office of the said society was shifted to No. 120, Longford Road, Shanthinagar, Bangalore.

4. As could be seen from the grounds urged in this review petition, the main contention of the petitioner is that the finding of this Court that the dispute with regard to the genuineness of the society cannot be the subject of an enquiry either u/s 64 or u/s 70 of the Act is erroneous in law and it is an error apparent on the face of the record and that this Court having held that the Joint Registrar is not the Competent Authority to inquire into the dispute with regard to the genuineness of the society, this Court has erred in assuming such power in itself in exercise of its power under Article 226 and 227 of the Constitution of India and in giving a finding that Respondent No. 1 is the genuine society. This Court ought to have restricted its power only to quash the orders passed by the authorities and it should have left the matter to be agitated by the parties before the competent forum with regard to the question as to which of the society is genuine and that the finding of this Court that the 1st respondent is the genuine society, in the absence of the petitioner society, has substantially affected the rights of the petitioner-society, as such, the judgment of this Court required to

be reviewed.

5. Sri. Jayakumar S. Patil, learned Senior Counsel urged only one point in support of his argument that the petitioners are entitled for the permission to be accorded by this Court to file a review petition. According to the learned Senior Counsel, this Court is justified in holding that the question as to the genuineness or identity of the co-operative society cannot be the subject of an enquiry u/s 64 or Section 70 of the Act. However, according to the learned Senior Counsel, this Court having held, that the question as to the genuineness or identity of the society will have to be adjudicated upon by the Civil Court, ought not to have proceeded further to consider the question as to which of the society is genuine one, that too in the absence of the petitioner-society. On the other hand, learned Counsel for the respondent/caveators brought to our notice that this very petitioner had filed SLP before the Hon"ble Supreme Court in SLP C.C. No. 888-889/2009 with an application seeking permission to file the SLP and after addressing argument, the said application seeking permission to file SLP was withdrawn. Therefore, the application filed before this Court seeking permission to file review petition is not maintainable in law. He has contended that there is no error apparent on the face of the record in the judgment of this Court and this Court having regard to the facts and circumstances of the case and on the basis of the original file produced by the State Government, has examined the contentious issue as to whether the registered office of the Society was at any time located at No. 120, Langford Road, Shanthinagar, Bangalore, and therefore, the judgment of this Court does not warrant review.

6. This Court after examining the legal position held that, the enquiry as to the genuineness of the cooperative society cannot be the subject of the enquiry u/s 64 of the Act and such a dispute cannot also be the subject matter of Section 70 of the Act. This legal position was considered to find out as to whether the contemplated enquiry initiated by the Registrar/Joint Registrar of Co-operative Societies is valid or not and also to find out as to whether the learned Single Judge was justified in remitting the proceedings to the appropriate authority for enquiry. After holding so, this Court having regard to the materials placed on record and having regard to the submissions made at the Bar, proceeded to consider as to whether at any time, the registered office of the society was located at No. 120 Longford Road, Shanthinagar, Bangalore, which was held to be genuine society by the Registrar of the Co-operative Societies. On perusal of the various correspondences emanating from the State Government and other statutory bodies, this Court noticed that at the beginning the Registered Office of the SHBCS registered as DRY 403/1964-65 was in No. 35, Victoria Cycle Mail, Shanthinagar, Bangalore and thereafter, it was shifted to No. 48, Annaiah Road, then to No. 4307, 3rd Floor, High Point, Palace Road, Bangalore and finally to No. 42/13, 3rd E Main, Jayanagar, Bangalore. This Court has also noticed that at no point of time there was any communication either to the State Government or to the Co-operative Department about the registered office of the Society having been shifted to No. 120, Long Ford Road, Shanthinagar, Bangalore. This Court

has also examined the mistake crept-in while mentioning the Registration number of the society by the Audit Wing of the Co-operative Department in the Audit Reports for the years 1987-88 onwards and its subsequent rectification by the very same office. This Court has also noticed that some un-authorised persons claiming themselves to be authorised persons representing SHBCS showing its registered office at No. 120, Long Ford Road, Shanthinagar, Bangalore, have committed certain acts, which are completely prejudicial to the interests of the Society and that such acts cannot, bind the society. This Court has noticed the relevant undisputed facts that the person claiming to represent the society had gone to the extent of giving "No Objection" to the State Government pursuant to the notice issued by it for de-notification of the acquired lands in favour of the land owner with a deliberate intention to deprive the property of the society. The person who claimed representing the society namely, K. Laxman was a party to the proceedings. Since there was no registered society having its registered office at No. 120, Longford Road, Shanthinagar, Bangalore, the question of making such a society as a party to the proceedings, did not arise. Therefore, we do not think that the judgment of this Court has in any way affected the rights of the society. In our considered view, the petitioner which claims to be the genuine society has not made out any ground for grant of permission to present the review petition. There is no error apparent on the face of the record warranting review of the judgment, of this Court In this view of the matter, we find no ground to grant permission to the petitioner for filing this review petition to review our judgment.

7. Admittedly the petitioner has approached the Hon"ble Supreme Court in SLP and for the reasons best known to it, has withdrawn the same. In this view of the matter, we see no ground to grant permission to the petitioner to file this Review Petition and we also find that no ground is made out by the petitioner in the Review Petition to review our judgment.

8. The application filed for permission to file review petition is rejected and consequently, the Review Petition is also rejected.