

(2000) 10 AP CK 0036

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14969 of 2000

T.V. Narayana, President, Arya Prathinidhi Sabha

APPELLANT

Vs

G. Devendranath and others

RESPONDENT

Date of Decision : 31-10-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 19(1)
Municipal Act — Section 84, 86
Regulations of the Arya Pratinidhi Sabha — Regulation 12

Citation : (2000) 6 ALD 496 : (2000) 6 ALT 506

Hon'ble Judges : J. Chelameswar, J

Bench : Single Bench

Advocate : Mr. K. Ramakrishna Reddifo Mr. B. Mahender Reddy, for the Appellant; Mr. D. Prakash Reddy, Additional Advocate-General and Mr. Venkata Raghuramulu, for the Respondent

Judgement

1. The petitioner herein is the President for a body called "Arya Pratinidhi Sabha, Andhra Pradesh" which is a society registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1950-Fasli (hereinafter referred to as "The Act") Respondents 1 to 3 are the members of the petitioner-Sabha. Under the Rules and Regulations of the said Arya Pratinidhi Sabha - that Sabha and its members are required to pay faithfully obedience to the commands of a body called "International Aryan League". The said League is declared under Rule 8 of the said Rules, is the Apex body of all the Arya Samajas situated in different continents of the world having its main office at Delhi. Under Regulation 12 of the Regulations of the Arya Pratinidhi Sabha, the Sabha is required to abide by all the directions and instructions given by the International Arya League - the fifth respondent herein.

2. It appears that the elections to the Governing Body of the "Arya Pratinidhi Sabha" of Andhra Pradesh were held on 9-3-1997 and the body so elected was to hold office for a term of 3 years. However, the term of the said elected body

came to be extended for a period of 6 months and the said term would expire on 13-8-2000. On 13-2-2000, the Managing Committee of the said Arya Pratinidhi Sabha passed a resolution to hold the election on or before 13-8-2000 and the Secretary of the said body was authorised to hold the elections. It appears that on 6-2-2000, the Secretary issued a circular calling upon all the constituent branches of the body to send representatives by following the appropriate procedure on or before 30-4-2000. However, by subsequent circular, the same was extended to 8-7-2000 and finally upto 23-7-2000. The 5th respondent herein issued a letter dated 21-7-2000 directing the Arya Pratinidhi Sabha to suspend the process. (The further factual details may not be necessary for deciding the issue in this writ petition).

3. The respondents 1 to 3 herein filed OS.No.3721 of 2000 on the file of the learned VI Junior Civil Judge, City Civil Court, Hyderabad with a prayer as follows:

"The plaintiffs therefore pray that this Hon"ble Court may be pleased to pass a Judgment and Decree:

(a) By declaring the proceedings issued by the Secretary of defendant No.2 dated 21-7-2000 in suspending the election process of defendant No.1 society scheduled on 13-8-2000 or any future date as illegal, arbitrary and contrary to the bye-laws of defendant Nos.1 and 2 societies.

(b) The defendant No.2 be perpetually restrained from interfering, obstructing in the administration, Management and election process of the defendant No.1 society to be held on 13-8-2000 or any future date from time to time as per its bye-laws.

(c) The defendant No.1 and defendant No.2 may be perpetually restrained from admitting and allowing the unelected members as representatives of defendant No.1 society for participating in the election to be held on 13-8-2000 or any future date contrary to the approval of the Managing Committee of defendant No.1 dated 23-7-2000 and bye-laws of defendant No.2 society.

(d) A Mandatory Injunction be passed directing the defendant No.1 to conduct the elections independently without any pressure or influence from defendant No.2 as per the registered bye-laws, to be held on 13-8-2000 or on any future date.

(e) Any other equitable relief or relief's be granted for which the plaintiffs are found entitled.

(f) The costs of the suit be awarded to the Plaintiffs from the defendants."

4. In substance the prayer is that the letter dated 21-7-2000 of the fifth respondent-Apex body in seeking to interfere with the election process of the Arya Pratinidhi Sabha be declared illegal and consequential reliefs were prayed. It appears that along with the said suit, IANo.749 of 2000 was also filed seeking certain interim reliefs, which were also granted, ex parte.

5. Challenging the maintainability of the suit, the present writ petition is filed on

the ground that in view of Section 11 of the above mentioned Act, the suit is barred and the civil Court would lack the jurisdiction to entertain such a suit. At the Interlocutory stage, the matter is posted before me pursuant to the directions of the Honourable The Chief Justice dated 24-10-2000 and with the consent of the parties, the matter was taken up for final hearing.

6. The learned senior Counsel Sri Ramakrishna Ruddy argued that the Arya Pratinidhi Sabha is a registered body under the above said Act; the affairs of such a registered body are to be governed by the provisions of the said Act and Section 11 of the said Act created an exclusive forum for the resolution of the disputes pertaining to the management of the society and in view of the creation of such a special forum, the jurisdiction of the civil Courts in the matters pertaining to the disputes regarding the management of the society is barred by necessary implication. Therefore, the civil Court cannot entertain the suit - OS No.3721 of 2000 filed by the respondents 1 to 3 herein.

Section 11 of the Act reads as follows:

"11. Dispute regarding management :-- In the event of any dispute arising among the Managing Committee or the members of the Society, in respect of any management or dissolution of the Society, any member of the Society may file an application in the District Court concerned, and the said Court shall after necessary inquiry pass such order as it shall deem fit."

7. A reading of the above section discloses that a separate Forum is created for the resolution of the disputes referred to in the said Act. The question is what exactly are the kinds of disputes that are required to be resolved by the said special forum created under the Act. The various kinds of disputes that are required to be resolved by the said Special Forum, in my view, are: (1) any disputes arising among the members of the Managing Committee or (2) any dispute arising among the members of the society or (3) any dispute pertaining to the dissolution of the society. With reference to the first two categories of the disputes mentioned above, the disputes must also be one in respect of the management of the society. In other words, every dispute between a member including the private disputes of the members or the private disputes of the members of the Managing Committee, cannot be the subject matter for the resolution u/s 11; it is only those disputes which pertain to the management of the society which are required to be resolved by the said Special Forum.

8. The question whether a dispute in respect of holding or non-holding of the elections to the Managing Committee of the society is certainly held to be a dispute falling within the ambit of Section 11 of the Act by a decision of a Division Bench of this Court reported in The Andhra Pradesh Football Association and Others Vs. Kurnool District Football Association, . In the circumstances, the learned Counsel for the petitioner argued that the jurisdiction of the civil Courts is barred by necessary implication and the learned VI Junior Civil Judge, City Civil Court, Hyderabad does not have the necessary jurisdiction or competence to

entertain the suit or to proceed further with the matter.

9. On the other hand, the learned Additional Advocate General - Sri D. Prakash Reddy appearing for the respondents 1 to 3 herein argued that the jurisdiction of the civil Courts in the matter pertaining to the disputes between the members of the society is not expressly ousted and by a long line of decisions, it is a settled principle that the ouster of the jurisdiction of the civil Courts by necessary implication is not to be readily inferred unless the situation clearly warrants such an inference. Secondly, he submitted that assuming that such an ouster could be inferred having regard to the language of Section 11 or the Scheme of the Act, the ouster of such a jurisdiction should strictly be limited to the category of the disputes expressly mentioned u/s 11 and any dispute which does not strictly fall within the enumerated categories of the disputes u/s 11 should necessarily be resolved by a competent civil Court. The learned Additional Advocate-General further argued that having regard to the facts of the case, the dispute on hand is one arising out of a communication issued by a body which is not a member of the society and the dispute is not one of the disputes contemplated u/s 11 of the above mentioned Act and therefore the jurisdiction of the civil Court is still available for the resolution of the dispute, in the cause of the resolution the dispute, if incidentally, some of the questions pertaining to the Management of the society are to be resolved, such a situation, by itself, would not debar the civil Court entertaining the suit.

10. To answer the question raised in the present writ petition, a brief survey of the .Scheme of the above Act is required. Section 2 of the Act provides that any 5 or more persons forming the society with various objects indicated in the said section could get such a society registered under the Act. Section 3 stipulates that the members forming the society shall furnish the information indicated in the section to the Registrar. Section 4 deals with the registration fee. Section 5 requires that every year the society be required to furnish a list of members and details of the Managing Committee to the Registrar. Section 6 provides for the vesting of the properties in the society. Section 7 deals with the manner in which the society is to sue and be sued. Section 8 provides for the recovery of the arrears of subscription from the members. Section 9 provides for procedure to amend the objects of the society. Section 10 deals with the dissolution. Any enquiry into the other provisions of the Act may not be relevant for the purpose of deciding the issue in controversy.

11. The right of association is one of the fundamental rights guaranteed by the Constitution of India under Article 19(1)(c). Section 2 of the Act recognises this right and provides for the recognition of the exercise of such a fundamental right. Once an association decides to have its existence, registered and recognised by the State, such recognition would be accorded in terms of the other provisions of the Act and subject to such conditions and restrictions provided under the Act. It is worthwhile to notice that the Act does not prohibit formation of any society, but only seeks to regulate the activities of the society to some extent, if any such

society wishes to get itself, registered under the Act. Once such a society decides to get it registered under the Act, the subsequent conduct of the society is required to be in accordance with the provisions of the Act.

12. The lawmakers in their wisdom realised that in any body like the societies registered under the Act there are likely to be disputes regarding the management of the affairs of such body among its members. The lawmakers in their wisdom further thought it fit to provide a Forum for the resolution of such disputes arising among the members of such registered society. Though the lawmakers were specific, as already noticed, about the categories of the disputes arising among the members of the society, they did not make an express declaration that the jurisdiction of the civil Courts for resolving such disputes is ousted.

13. Then the question is whether the jurisdiction of the civil Courts is ousted by necessary implication as per Section 9 of the Code of Civil Procedure, recognises the omnibus jurisdiction of the civil Court to decide any dispute of civil nature, unless it is expressly or by necessary implication excludes.

14. While dealing with the exclusion of the jurisdiction of the civil Court by necessary implication, their Lordships of the Supreme Court held in *Raja Ram Kumar v. Union of India* ATR 1988 SC 752, as follows:

".....Generally speaking, the board guiding considerations are that wherever a right, not pre-existing in common-law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created *uno flatu* and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the civil Court's jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the civil Court's jurisdiction, then both the common-law and the statutory remedies might become concurrent remedies leaving open an element of election to the persons of inherence....."

15. To understand whether the jurisdiction of the civil Court is barred by necessary implication in the light of the principle laid down by the Supreme Court in *Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI)*, referred to above, it becomes necessary to analyse the nature of the rights of the parties to the litigation.

16. As already noticed, the right to form an association by whatever name it is called as society or otherwise, is not created under the Societies Registration Act, 1860-Fasli. Such a right exists independently under the Constitution. Once such a right is recognised under the Constitution, the further right to manage the affairs of such a body is an incidental right. The question whether such an incidental right is also a fundamental right or not, perhaps is not required to be considered in this case, though it is brought to my notice by the learned Counsel

for the petitioner a decision of this Court reported in Jeevakaruna Annadana Samajam, Chittoor Vs. Assistant Commissioner, Endowments, Chittoor and Others, , wherein this Court held that such an incidental right is not a fundamental right. Justice P.A. Chowdary held as follows:

".....It, therefore, appears to me that the applicability of Article 19(1)(c) does not extend beyond the exercise of individual right to form an association. To put it in other words, while Article 19(1)(c) guarantees the right to form an association, it does not hold out any such guarantee regarding management of such association. That area is left free to law to march upon....."

17. The right to manage the affairs of the society is an incidental right to the right to form the society, and it exists independent of the Act whether existing under common law or created under the Constitution. Therefore, the cases such as the one here fall under the later part of the principle enunciated by the Supreme Court in Raja Ram Kumar's case (supra) that where an independent right is recognised by the statute and the statute does not contain any express provision for the exclusion of the civil Court's jurisdiction, then both the common law and statutory remedies are available to the aggrieved party.

18. The learned Counsel for the petitioner, however, placed before me the various decisions of the Supreme Court i.e., Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, and Munshi Ram and Others Vs. Municipal Committee, Chheharta, , where the question was whether the jurisdiction of the civil Court was excluded in the matters of revenue disputes. In fact, the learned Judges of the Supreme Court in Raja Ram Kumar's case (supra) did examine these two earlier judgments of the Supreme Court and laid down the principle as extracted above.

19. The decision reported in Munshi Ram and Others Vs. Municipal Committee, Chheharta, , however, deals with the same issue with slight difference. While dealing with an enactment pertaining to the revenue, their Lordships held at Para 24 :

"It is well-recognised that where a Revenue Statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all other forums and modes of seeking it are excluded. Construed in the light of this principle, it is clear that Sections 84 and 86 of the Municipal Act bar, by inevitable implication, the jurisdiction of the civil Court where the grievance of the party relates to an assessment or the principle of assessment under this Act."

20. As pointed out by their Lordships, Revenue Statutes are a separate class and the principles governing the interpretation of the Revenue Statute cannot be imported automatically into the interpretative process of a general Statute.;

21. Coming to the decision reported in Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, , it was a case where their Lordships were dealing with the question, whether the enforcement of certain rights arising out of the Industrial Disputes Act could not be achieved by resorting to a civil suit. In my view, the issue which fell for consideration of their Lordships falls squarely under the first part of the principle laid down by their Lordships in Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI), . The rights in dispute before their Lordships are created under the statute and therefore the enforcement of the rights are required to be in accordance with the terms of the statute, which created the right.

22. Apart from that a reading of the plaint filed in OS No.3721 of 2000 would clearly show that the dispute is not one, pure and simple among the members of the Society concerning the management of the Society. The dispute arose because certain directions issued by the 5th respondent who is not a member of the Society and the Society as a body agreed to abide by certain directions given by the fifth respondent, which was recognised by the Society to be an Apex body exercising control over bodies, similar to the "Arya Pratinidhi Sabha". In which case, the dispute, in my view, is not within the ambit of Section 11 of the Act.

23. Looked at any angle, I am of the opinion that the civil Court could try the subject matter of the dispute in this suit -OS No.3721 of 2000 and the jurisdiction of the civil Courts is not barred either expressly or by necessary implication. The writ petition is therefore dismissed.

24. It is represented by the learned Counsel for the petitioner that the petitioner had already filed an implead petition in OS No.3721 of 2000 and the same is said to be pending consideration by the civil Court and in view of the interim order passed by this Court earlier, the proceedings were suspended. In the circumstances, the learned VI Junior Civil Judge, City Civil Court, Hyderabad is directed to consider the application of the petitioner and pass appropriate orders on it in accordance with law expeditiously.