

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF JANUARY, 2017

BEFORE

THE HON'BLE MR.JUSTICE B.S.PATIL

**W.P.No.3249/2017 (CS-RES)**

BETWEEN

VISHWABHARATHI HOUSE BUILDING  
CO-OPERATIVE SOCIETY LTD.,  
NO.35, RATNAVILAS ROAD,  
BASAVANAGUDI,  
BANGALORE 560004,  
REP.BY ITS SECRETARY -  
SMT.SARASWATHI KESARKAR. ... PETITIONER

(By Sri JAYAKUMAR S.PATIL, SR.COUNSEL  
A/W SRI SANJEEV B.L., ADV.)

AND

1. THE STATE OF KARNATAKA,  
REP.BY ITS SECRETARY,  
CO-OPERATIVE DEPARTMENT,  
VIDHANA SOUDHA,  
BANGALORE 560001.
2. THE REGISTRAR OF CO-OPERATIVE  
SOCIETIES,  
ALI ASKAR ROAD,  
BANGALORE 560001
3. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,  
BANGALORE REGION,  
B M C BANK BUILDING,  
PAMPAMAHAKAVI ROAD,  
CHAMARAJAPET,  
BANGALORE 560018. ... RESPONDENTS

(By Smt.SHWETHA KRISHNAPPA, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE NOTICE DT:30.11.2016 ISSUED BY THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, BANGALORE REGION, BANGALORE (R-3) VIDE ANNEXURE-P AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

1. In this writ petition, petitioner is challenging the notice issued by the Joint Registrar of Co-operative Societies, Bangalore Region, Bangalore, thereby calling upon the petitioner – Vishwabharathi House Building Co-operative Society Limited to submit its explanation to the allegations leveled against it, failing which, action would be taken in accordance with law based on the available documents treating that petitioner had no say in the matter.

2. Petitioner is a Society registered under the Karnataka Co-operative Societies Act, 1959 (for short 'the Act'). It has formed a layout known as 'IV Phase Layout' at Girinagar, Bangalore. There were allegations of mismanagement and misappropriation of the funds of the society against the previous office bearers. Previous president of the Society was disqualified. Thereafter an enquiry under Section 64 of the Act came to be initiated

against the management which was headed by the previous president. The said matter is pending consideration.

3. Dispute in this petition pertains to the management and affairs of the new management headed by the President and Board of Directors. It appears, certain members of the Society who had not been allotted sites and who had raised objection regarding the seniority list prepared by the Society made allegations before the Joint Registrar alleging certain irregularities in the matter of allotment of sites and management of the affairs of the Society. However, question regarding defects in preparation of the seniority list was taken before this court in W.P.18496/2004 and connected cases. The said writ petition was disposed of directing the Society to prepare the seniority list after calling for objections from the affected persons. Liberty was also reserved to petitioners to agitate their grievance in case they were aggrieved by the seniority list or in case they were aggrieved by the allotment made based on the previous list.

4. A contempt petition was filed before this Court alleging non-compliance of the direction issued by this Court. The contempt proceeding in CCC No.667/2013 connected with

other matters were dropped observing that if there was any mistake or illegality committed in preparing the seniority list, it was open for the aggrieved persons to challenge the same in accordance with law before the Registrar.

5. Subsequently, on 22.02.2016 the Joint Registrar of Co-operative Societies, Bangalore region issued a notice as per Annexure-D initiating enquiry under Section 64 of the Act on the basis of the allegations made regarding allotment of sites ignoring the seniority list and also regarding irregularities committed in preparing the seniority list. The said proceedings were challenged before this Court in W.P.No.13202/2016. This Court disposed of the writ petition observing that the enquiry under Section 64 could not be scuttled and even if the Joint Registrar was to act on the basis of the complaint lodged by several persons before the Lokayukta, there shall be a preliminary enquiry to first of all find out whether there was any non-compliance with any of the directions issued by this Court vide order dated 16.11.2010 in W.P.No.18496/2007 and also with regard to the irregularities, if any in the seniority list. Beyond the same, the Court observed that there was no scope for reopening the closed issues, particularly, with regard to

allegations prior to November 2015. This order was passed on 17.03.2016.

6. Thereafter, on 22.06.2016, the Joint Registrar initiated fresh proceedings under Section 64 of the Act with regard to the very allegations pertaining to illegal allotments made in favour of some members ignoring the seniority list. It is submitted that the said proceedings initiated vide Annexure-H has been challenged before this Court and the matter is pending in W.P.No.42512/2016. It is urged that this Court has granted an interim order staying the said proceedings. This was followed by a notice dated 09.08.2016 vide Annexure-K issued by the very Joint Registrar regarding the alleged illegal allotment made by the Society with reference to individual allottees. This notice is produced at Annexure-K. The said notice is also challenged before this court in W.P.No.46952/2016 which is also pending consideration and an interim order of stay has been granted.

7. By the impugned notice, petitioner has been called upon to show cause why action shall not be initiated against petitioner – Society with regard to ignoring seniority in the matter of allotment and several other aspects. A perusal of Annexure-P impugned notice discloses that allegations made

range to irregularities in the matter of maintenance of accounts; maintenance of seniority list and allotment of sites formed in the layout in favour of members.

8. Main contention urged by the learned senior counsel appearing for petitioner – Society is that the Joint Registrar has been repeatedly subjecting the petitioner to the ordeal of facing enquiry in respect of matters which were the subject matter of dispute before this Court and in respect whereof the party aggrieved is required to initiate proceedings under Section 70 of the Act. It is his submission that controversy regarding seniority of the members and the consequent allotment of sites was subject matter in the writ petition and observations made in the order disposing of the writ petition and as also the order disposing of the contempt proceedings would make it clear that aggrieved persons had to agitate their grievance before the Registrar which would only mean that they have to resort to the remedy under Section 70 of the Act.

9. It is also pointed out by the learned Senior counsel that all the other allegations for which reply is sought from the Society with a view to initiate enquiry were matters that cannot be subject matter of enquiry by the Joint Registrar because

they were subject matter of enquiry under Section 70 of the Act. It is submitted that if such a dispute is adjudicated as contemplated under Section 70 and an award is passed the Society would be in a position to proceed in accordance with law either to implement the award or to assail the same in case it becomes necessary. Instead of resorting to such a legal recourse, the society, it is submitted, has been subjected to repeated enquiries by issuing notice one after another. Indeed, jurisdiction of the respondent - authority in subjecting the society to such an enquiry itself is challenged keeping in mind the observations made in the decisions rendered by this Court referred to supra.

10. Learned Additional Government Advocate strongly urges that the writ petition is not maintainable as only show cause notice is challenged and enquiry sought to be initiated had nothing to do with the subject matter of the writ petition and the contempt proceeding.

11. Upon hearing the learned counsel for both parties, I am of the view that in the facts and circumstances of this case having regard to the orders already passed by this Court in couple of writ petitions and also in the contempt petition and

keeping in mind the nature of defence taken by petitioner – Society in those proceedings and the nature of allegations that are made as per the impugned notice, the Joint Registrar has to first consider whether he has to proceed in the matter to conduct an enquiry and if so, in respect of what allegations. This, he has to do by considering the effect of the orders passed by this Court in the two writ petitions and after considering the preliminary objections that petitioner has raised regarding the power and authority of the Joint Registrar to proceed to hold an enquiry.

12. Petitioner is given three weeks time from the date of receipt of a copy of this order to raise such preliminary objections as are sought to be canvassed before this Court by presenting the same before the Joint Registrar – respondent No.2 herein. Thereafter, the Joint Registrar shall pass an order by considering the objections raised and in the light of the order passed by this Court as to whether at all he has to proceed in the matter to conduct an enquiry and if so in respect of what allegations.



13. Writ petition is, accordingly, disposed of. Contentions on merits are kept open.

**Sd/-  
JUDGE**

SBN/VP