

IN THE HIGH COURT FOR THE STATE OF TELANGANA:
AT HYDERABAD

W.P. NO. 9313 OF 2020

Between:

1. Silver Oak Villas Owners Association,
Rep. by its Secretary, G.Kanaka Rao,
Office at: Sy.Nos.11, 12, 14 to 18 & 294,
Cherlapally Village, Kapra Mandal,
Medchal-Malkajgiri District, Telangana State.
2. G.Kanaka Rao, S/o Late G.Subba Rao,
Aged: 60 Years, Occ: Service,
H.No.1-1-364/18/A, Jawahar Nagar,
RTC X-Roads, Hyderabad-500 020.
3. K. Prabhakar Reddy, S/o K.Padma Reddy,
Aged: 45 Years, Occ: Service,
H.No.2-3-64/10/24, Jaiswal Colony,
Amberpet, Hyderabad – 500 013.

... Petitioners

And

1. The State of Telangana,
Rep by its Principal Secretary,
Municipal Administration and Urban Development (M-1)
Department, Secretariat,
Hyderabad, Telangana State.
2. Commissioner and Inspector General
Registration and Stamps, Hyderabad
Moazam Jahi Road,
Telangana State
3. The District Registrar,
Medchal-Malkajgiri District,
Telangana State.

Respondents

x 

AFFIDAVIT

I, G. Kanaka Rao, S/o.Late G. Subba Rao, Aged: 60 Years, Occ: Service, H.No.1-1-364/18/A, Jawahar Nagar, RTC X-Roads, Hyderabad-500 020, do hereby solemnly affirm and sincerely state on oath as follows:

1. I am the Secretary of the 1st Petitioner Association and as such well acquainted with the facts of the case.

2. It is submitted that I am questioning the action of the 3rd Respondent herein in refusing to register a Society proposed to be registered with the 3rd Respondent on the ground that Circular Memo No. SOC/7124/2018 issued by the 2nd Respondent on 28.01.2019 does not permit registration of a Society proposed to be formed by the owners of Villas, Gated communities, independent housing complexes etc., as arbitrary, illegal and unsustainable. It is relevant to submit here that the circular Memo dated 28.01.2019 is issued by the 2nd respondent as a consequence of the orders passed by this Hon'ble Court in W.P.No.3319 of 2013 dated 5.3.2013 under the assumption that the same disables them from allowing associations or societies to be formed under the provisions of A.P. Societies Registration Act, 2001, by the groups of persons owning units in apartments complexes. I submit that the said judgement does not impose any such limitations on Registration of such societies and the circular memo is issued on a mistaken impression and wrong understanding of the judgement.



3. I submit that the 1st petitioner society is formed with the owners of the Villas in a gated community called Silver Oak Villas constructed by M/s.Modi Properties and Investments in survey No.11, 12,14 to 18 and 24, Cherlapally Village, Kapra Mandal, Medchal-Malkajgiri District. It is submitted that all the members of the Petitioner Society are owners of Villas in the said gated community and they have proposed to form and register a society with the 3rd Respondent for the purpose of encouraging social, educational and cultural activities and also taking care of the welfare of the owners of the Villas and maintenance of the villas .

4. It is submitted that hitherto Apartment complexes and other associations were being registered under the provisions of the A.P. Societies Registration Act, 2000. However, in view of the orders passed by this Hon'ble Court in WP No.3319 of 2013 the Registrar of Societies is refusing to register new societies which are formed by owners of Apartments under a mistaken impression and further the Government of Andhra Pradesh has amended the Rules i.e. A.P. Apartments Permission of construction and Ownership Rules, 1087 which were issued vide G.O.Ms.No.701 by an amendment in G.O.Ms.No.42, dated 02.02.2013 whereby it was provided to register associations of flats or apartment owners as Cooperative Societies.

5. I submit that a perusal of the orders passed by this Hon'ble Court in W.P.No.3319 of 2013 would reveal that the same is passed in the facts and circumstances of the said case only and the same cannot be made applicable



to all the societies which are formed by the owners of the apartments and flats irrespective of the objects and bye-laws of the society. It is submitted that if the objects of a particular society which comprises owners of flats or apartments as its members are that of promoting social, cultural, educational and entertainment activities of the said members then there is absolutely no bar imposed by the said orders of this Hon'ble Court in registering such a society. Infact the maintenance of the apartment complex can be made part of the byelaws as an incidental activity of the society and the same is not barred by the orders of this Hon'ble Court. However, under a mistaken impression the circular dated 28.01.2019 is issued by the 2nd respondent.

6. It is submitted that the Government has issued G.O.Ms.No.42 dated 020.02.2013 whereby the rules issued under the A.P. Apartments promotion of construction and ownership Act of 1987 i.e., A.P. Apartments Promotion of Construction and Ownership Rules, 1987 issued vide G.O.Ms.No.701 dated 05.08.1987 were amended and it was prescribed that any association of flat or apartment owners can be registered by the Commissioner for Co-operation, and Registrar of Co-operative Societies or any other person authorized by him. It is submitted that this amendment of the rules is applicable only to apartments and flats.

7. I submit that the petitioner association is an association of owners of villas in a gated community and the provisions of the Apartment Act or Rules are not applicable to the petitioners or petitioner's association or their gated

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community. That being the case the action of the 2nd and 3rd respondents in refusing to register the association formed by the members of the petitioner is totally arbitrary and illegal.

8. I submit that the impugned circular instructs all the District Registrars in the State that whenever a resident welfare Association of Apartments or buildings presents papers for registration under the Telangana Societies Registration Act, 2001 the District Registrar shall invariably verify the objects of the Association whether they are falling under Section 3 (1) of the Act or not and if they are not falling then the same shall be refused to register under the Telangana Societies Registration Act, 2001 with an advise to present the same before the competent authority as held by Hon'ble High Court in W.P.No.3319 of 2013.

9. I submit that the petitioner Association has filed the application for registration as a society under the provisions of the A.P. Societies Registration Act, 2001, vide application No.152816060020191012 for registration of the petitioner society. However when the petitioner association has searched the Mee Seva portal of the government, it was revealed to the petitioner that the application is returned and the remark / comment was to contact Co-Operative Department for registration of the society. I submit that the petitioner has not received any order with reasons and details from the respondents till date and as such the reason for returning the application of the petitioner is not known to the petitioner. However the petitioner understands

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that the same is returned in view of GO Ms.No.42 dated 02.02.2013 issued by the 1st respondent whereby the Andhra Pradesh Apartments Promotion of Construction of Ownership Rules, 1987, issued vide GO Ms.No.701, Housing, Municipal Administration & Urban Development Department dated 05.08.1987 were amended and it was mandated that any association of flat or apartment owners has to be registered before the Registrar of Co-operative Societies and the procedure prescribed in A.P. Co-operative Rules, 1984 have to be followed. However it is submitted that the petitioner is not an Association formed by the owners of the apartments or flats.

10. I submit that at the first instance the petitioner is not an association formed by owners of apartments or flats and as such the provisions of the said Act and the Rules framed there under are not applicable to the 1st petitioner. Equally the orders passed in W.P.No.3319 of 2013 are also not applicable to the petitioner society even assuming that the same bars registration of a society formed by apartments owners. It is submitted that the said orders also do not bar registration of a society formed by apartment owners if the objects of the society are those provided and permitted under the provisions of the Societies registration Act, 2001. That being the case the action of the 3rd respondent in refusing to register the society formed by the petitioner and its members that the same is contrary to the circular dated 28.01.2019 and the petitioner has to approach any other competent authority is totally arbitrary and illegal. As the petitioner is not a society of apartment owners and as its

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objects are falling very much within the permissible scope of the societies Registration Act, 2001, there is absolutely no bar for registering the petitioner society and the refusal to do so is misconceived and arbitrary and illegal. Thus, the petitioner is constrained to file the present Writ Petition.

11. The Petitioner Society has got no other alternative and effective remedy except to approach this Hon'ble Court under Article 226 of the Constitution of India.

12. The Petitioner Society has not filed any other writ petition or proceedings in any Court or Tribunal for the same relief which is claimed in the present Writ Petition

13. It is necessary that the Hon'ble Court may be pleased to direct the 3rd Respondent to register the 1st Petitioner Society under the provisions of the Telangana Societies Registration Act, 2001, without reference to Circular Memo No. SOC/7124/2018 dated 28.01.2019 issued by the 2nd respondent pending disposal of the writ petition.

14. It is, therefore, prayed that this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ or order or direction declaring the action of the Respondent No.2 and 3 in refusing to register the 1st Petitioner Society under the provisions of the Telangana Societies Registration Act, 2001, on the ground that Circular Memo No. SOC/7124/2018 dated 28.01.2019 issued by the 2nd respondent does not



permit the 1st petitioner Society to be registered under the provisions of
Telangana Societies Registration Act, 2001, as arbitrary, illegal and
consequently direct the Respondent No.2 and 3 to register the 1st petitioner
Society under the provisions of Telangana Societies Registration Act, 2001,
and permit it to operate under the provisions of the Telangana Societies
Registration Act, 2001, in accordance with law and pass such other order or
orders as this Hon'ble Court may deem fit and proper in the circumstances
of the case.

Sworn and signed before me on
this the 4th day of June 2020
at Hyderabad.



Deponent

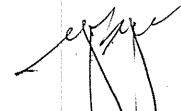
Advocate/Hyderabad

VERIFICATION

I, G. Kanaka Rao s/o Late G. Subba Rao aged 60 Years, Occ- Service, H.No.1-1-364/18/A, Jawahar Nagar, RTC X-Roads, Hyderabad-500 020, do hereby verify and declare that the contents of the above paragraphs are true and correct to the best of my knowledge, information and belief and as per legal advice.

Hence verified on this the 4th day of June 2020 at Hyderabad.

Counsel for the Petitioner


Deponent