

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA**

CIVIL REVISION PETITION NO.2094 OF 2022

The President, Sri Vasavi Kanyaka Parameswari
Arya Vyshya Nithyanna Sathra Sangham,
Yadagirigutta Village and another .. Petitioners

Vs.

Yelakanti Balesh .. Respondent

DATE OF THE JUDGMENT PRONOUNCED: 10.02.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SMT. JUSTICE P. MADHAVI DEVI

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Her Lordship wish to see the fair copy of the judgment? Yes/No

JUSTICE P. MADHAVI DEVI

*** THE HON'BLE SMT. JUSTICE P. MADHAVI DEVI**

+CIVIL REVISION PETITION NO.2094 OF 2022

% DATED 10th FEBRUARY, 2023

The President, Sri Vasavi Kanyaka Parameswari
Arya Vyshya Nithyanna Sathra Sangham,
Yadagirigutta Village and another

.. Petitioners

Vs.

\$ Yelakanti Balesh

.. Respondent

<Gist:

>Head Note:

! Counsel for the petitioners : Sri R.A. Chary

^Counsel for the respondent : Sri Papaiah Peddakula

? CASES REFERRED:

1. 2015 (4) ALT 153
2. 2003 (2) ALD 196
3. (2008) 12 SCC 112 : (2009) 1 SCC (Cri) 328

THE HONOURABLE SMT. JUSTICE P. MADHAVI DEVI**CIVIL REVISION PETITION NO.2094 OF 2022****ORDER**

This Civil Revision Petition has been filed by the respondents in S.O.P.No.179 of 2018 against the order dt.11.08.2022 passed therein by the Principal District Judge at Bhongir.

2. For the sake of convenience, the parties are referred to as they are arrayed in the SOP.

3. Brief facts leading to the filing of the CRP are that the petitioner claiming to be a member of respondent No.2 society has filed S.O.P.No.179 of 2018 before the Principal District Judge's Court, Bhongir under Section 6 of the Societies Registration Act, 1860 seeking to pass a decree granting mandatory injunction/direction to the respondents to convene general body meeting, to conduct general elections and to furnish statements of account and balance sheet of respondent No.2 society to all its members.

4. The respondent No.2 filed its counter/written statement objecting to the S.O.P. on two grounds:

- (i) The petition under Section 6 of the Societies Registration Act, 1860 is not maintainable as the said Act has already been repealed by the Amendment Act 35 of 2001 which was effective from 09.08.2001 and that the same was named as the A.P. Societies Registration Act, 2001.
- (ii) The petitioner in the SOP is not a member of the 2nd respondent society on the date of filing of the petition as he has already been removed from the membership of the society *vide* unanimous resolution passed by the society on 14.08.2017 *vide* resolution No.4/1.

It was thus stated that the petitioner has no *locus standi* to seek any relief against the society.

5. The Principal District Court at Bhongir however allowed the S.O.P. As regards the first objection about the maintainability of the S.O.P. in view of the repeal of the Societies Registration Act, 1860, the Court below observed that mere quoting of a wrong provision of law by the counsel in the petition is not a ground for its rejection and for this purpose, the Court below placed reliance on the decision of this Court in the case of **Payala Gopi Vs. Tiebeam Technologies India Private**

Limited and others¹. As regards the second objection that the petitioner is not a member of the 2nd respondent society, the Civil Court has observed that though the petitioner has not filed any receipt to show that he is a member or executive member of respondent No.2 society, respondent No.1, in his cross-examination has admitted the membership certificate dt.15.07.2008 of the petitioner. Further as regards the removal of the petitioner from the primary membership for his illegal acts by passing a unanimous resolution and therefore the petitioner has no *locus standi* to file the SOP, the Court below has held that the respondents have not filed a copy of the resolution and also have not filed any evidence that respondent No.2 society has followed the due procedure for removal of the petitioner from the membership of the society. Thus, both the objections were rejected and the S.O.P. was allowed. Challenging the same, the present CRP is filed by the respondent society and its President.

6. Learned counsel for the revision petitioners, Sri R.A.Chary, while reiterating the grounds raised in the CRP and also the contentions raised in the counter filed by the respondents in the S.O.P., submitted that the reliance of the Court below on the decision of this Court in the case of

¹ 2015 (4) ALT 153

Payala Gopi Vs. Tiebeam Technologies India Private Limited and others (1 supra) is misplaced. He submitted that in the said case, the facts were totally different and the Hon'ble High Court was considering the case where an interim application was made by misquoting the provision of law, but the said principles cannot be applied to an application which is filed under a repealed Act. He further placed reliance upon the decision of this Court in the case of **Kanigolla Lakshmana Rao Vs. Gudimetla Ratna Manikyamba and another**² for the proposition that the petition would have to be filed only under Section 23 of the A.P. Societies Registration Act, 2001 and not under the old and repealed Act. He has also taken the ground that the petitioner in the S.O.P. was not a member of the society at the time of filing the petition and therefore did not have the *locus standi* to file the SOP before the Court below.

7. Learned counsel for the respondent herein/petitioner in the S.O.P., Sri Papaiah Peddakula, however, supported the order of the Court below and submitted that mere mentioning of a wrong provision of law would not be a justifiable ground for rejection of the S.O.P. He submitted that the District Court has jurisdiction to try the petitions both under Section

² 2003 (2) ALD 196

6 of the Societies Registration Act, 1860 and also under Section 23 of the A.P. Societies Registration Act, 2001 and therefore, the S.O.P. was rightly entertained and allowed by the Court below. As regards the issue of membership of the petitioner in SOP, he placed reliance upon the finding of the Court below that the respondent society failed to file any document to show that the petitioner was validly removed from the membership of the society.

8. Having regard to the rival contentions and the material on record, this Court finds that the basic issue before this Court is whether the Court below was justified in entertaining the petition filed under Section 6 of the Societies Registration Act, 1860 after repeal of the said Act and after introduction of the A.P. Societies Registration Act, 2001.

9. Admittedly, respondent No.2 society was registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act 1350F and the said Act was repealed by virtue of the Andhra Pradesh Societies Registration Act, 2001 (Act 35 of 2001). The said Act has subsequently been renamed as the Telangana Societies Registration Act, 2001 *vide* G.O.Ms.No.20, Revenue (Registration II) Department dt.18.08.2014. Prior to the enactment of Act 35 of 2001, the law relating to the societies and their registration had been governed by the

Societies Registration Act, 1860 (Central Act 21 of 1860) in the Andhra and by Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli (Act of 1350 Fasli) in the Telangana area of the State of Andhra Pradesh. It is stated that in order to have a comprehensive law and to secure uniformity in the laws applicable to the Societies throughout the State, Act 35 of 2001 was enacted to provide for Registration of Societies formed for the purposes mentioned therein.

10. The petitioner filed S.O.P.No.179 of 2018 under Section 6 of the Societies Registration Act of 1860, whereas he ought to have filed the SOP under Section 7 of the Andhra Pradesh (Telangana Area) Public Societies Registration Act 1350F in respect of the SOP against the 2nd respondent society. Section 6 of the Societies Registration Act of 1860 and Section 7 of the Andhra Pradesh (Telangana Area) Public Societies Registration Act 1350F are *pari materia* similarly worded, which are reproduced as under:

“Section 6 of Societies Registration Act, 1860:

6. Suits by and against Societies:- Every Society registered under this Act may sue or be sued in the name of the President, Chairman, or Principal Secretary, or Trustees, as shall be determined by the rules and regulations of the Society, and, in default of such determination in the name of such person as shall be appointed by the governing body for the occasion:

Provided that it shall be competent for any person having a claim or demand against the Society, to sue the President or Chairman, or Principal Secretary or the Trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.”

“Section 7 of the Andhra Pradesh (Telangana Area) Public Societies Registration Act 1350F:

7. Suits by and against Society:- Any such registered Society may sue or be sued in the name of the Chairman or Secretary or Trustees, as shall be determined by the rules of the Society, and if there are no rules in this behalf, in the name of such person as shall be nominated by the managing committee for this purpose:

Provided that when a suit is instituted against such Society, the plaintiff shall apply to the managing committee of the Society to nominate any person to be made the defendant, and if the managing committee fails to nominate any person within a month or if, in the circumstances, the matter cannot be deferred so long, the plaintiff may sue the Society’s Chairman or Secretary of Trustees.”

11. Therefore, it was under these circumstances that the Court below has held that mere mentioning of a wrong provision would not vitiate the proceedings. However, the question is whether the petitioner can file under the repealed Acts, after the new Act has come into effect. Section 32 of the Act 35 of 2001 deals with Repeals and Savings of the repealed Acts. Section 6 of the General Clauses Act, 1897 also provides for protecting the repealed provisions or Regulations or Acts and saves a

right accrued or a liability incurred under the repealed Acts, but does not create a right. When Section 6 of the General Clauses Act applies, only an existing right is saved thereby, and the existing right of a party has to be determined on the basis of the statute which was applicable at the relevant point of time and not under the new one. If a new Act confers a right, it does so with prospective effect when it comes into force, unless expressly stated otherwise, as held by the Hon'ble Supreme Court of India in the case of **State of Punjab Vs. Bhajan Kaur**³. Therefore, by repeal of the earlier Act of 1350F, the acts done by the society under the old Act and also the liabilities incurred thereunder are saved.

12. However, in this case, the petitioner is seeking recourse against the 2nd respondent society in view of the acts done in the year 2014 and thereafter. By the said date, new Act 35 of 2001 has come into force. Therefore, the petitioner can only seek redressal under Act 35 of 2001 and not under the old Act of 1860. Under the new Act 35 of 2001, it is under Section 23 that the petitioner would have to seek redressal and the Forums made available thereunder for such redressal are: (1) the Forum under the provisions of the Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996), before which proceedings may be initiated; or

³ (2008) 12 SCC 112 : (2009) 1 SCC (Cri) 328

(2) the District Court under whose jurisdiction the society is functioning, before which an application may be filed. Section 23 of the Telangana Societies Registration Act, 2001 (Act 35 of 2001) is extracted as under:

“23. Dispute regarding management—In the event of any dispute arising among the committee or the members of the society, in respect of any matter relating to the affairs of the society, any member of the society may proceed with the dispute under the provisions of the Arbitration and Conciliation Act, 1996, (Central Act 26 of 1996) or may file an application in the District Court concerned and the said Court shall after necessary inquiry pass such order as it may deem fit.”

Thus, under both the earlier Act as well as the amended new Act, Civil Court has been given the jurisdiction, but not only the provision of law under which the SOP can be filed has been amended, but also the facts and circumstances under which challenge can be made and the parties who can challenge have been amended.

13. Thus, the petition filed by the petitioner has to be filed under the subsisting Act 35 of 2001 and cannot be filed under the repealed Act of 1860. The judgment relied upon by the Court below would be applicable if the petitioner had filed the SOP under the amended new Act but by quoting the earlier provision of law and when the language used in both the provisions is materially same. However, the SOP has been filed

under an Act which has since been repealed and therefore, the Court below ought not to have entertained the application and should have returned the Society Original Petition (SOP) for presentation under the appropriate provision of law. The respondents have taken a preliminary objection before the Court below regarding the same and in spite of the same, the Court below has erroneously entertained the petition.

14. In view of the same, the order in S.O.P.No.179 of 2018 dt.11.08.2022 of the Principal District Judge at Bhongir is set aside. However, liberty is given to the respondent herein/petitioner in the S.O.P. to file the petition/SOP under the correct provision of law.

15. The Civil Revision Petition is accordingly allowed. No order as to costs.

16. Pending miscellaneous petitions, if any, in this CRP shall stand closed.

JUSTICE P. MADHAVI DEVI

Date: 10.02.2023

Note: L.R. copies to be marked.
B/o SvV