

Telangana High Court

Sri Sri Kalakuteers Apartment ... vs The State Of Telangana And 3 Others on 10 August, 2020

Bench: K.Lakshman

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

CORAM:

* THE HON'BLE SRI JUSTICE K. LAKSHMAN

+ W.P. No.25713 OF 2019

AND

I.A.No.3 OF 2019 IN W.P. No.25713 OF 2019

% Delivered on:10-08-2020

W.P. No.25713 OF 2019:

Between:

Sri Sri Kalakuteers Apartment Flat Owners
Maintenance Mutually Aided Co-operative Society
Limited, rep.by its Chief Promoter & another .. Petitioners

Vs.

\$ The State of Telangana, rep.by its Prl. Secretary
Cooperation Dept., Secretariat, Hyd. & others ..
Respondents

! For Petitioners : Mr. M. Venkat Divakar

^ For Respondent Nos.1 to 4 : Government Pleader for
Cooperation.

I.A.No.3 OF 2019:

Between:

Sri Sri Kala Kuteer Apartment Owners Cooperative Maintenance society, rep. by its Chief Promoter Avula Vijayalaxmi ... Petitioner Vs.

\$ Sri Sri Kalakuteers Apartment Flat Owners Maintenance Mutually Aided Co-operative Society Limited, rep.by its Chief Promoter & others .. Respondents ! For Petitioner : Sri Laxmaiah Kanchani KL,J ^ For Respondent Nos.1 and 2 : Mr. M. Venkat Divakar For Respondent Nos.3 to 6 : Government Pleader for Cooperation.

< Gist

:

> Head Note :

? Cases Referred :

1. 1998 (4) ALD 41
2. AIR 2011 SC 3298
3. (2015) 8SCC 1
4. ILR 1987 Delhi 323
5. 141 (2007) DLT 321
6. WP (C) No.3757 of 2012, dated 05.07.2013
7. 1968 (1) An. WR 52
8. WP No.3319 of 2013, dated 05.03.2013

KL,J

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

W.P. No.25713 OF 2019

AND

I.A.No.3 OF 2019 IN W.P. No.25713 OF 2019

COMMON ORDER:

This writ petition is filed to declare the Memo

No.Rc.No.7033/2015/HR-2, dated 24.03.2017 and Rc.No.6215/ 2018/HR-4, dated 18.12.2018 issued by the 2nd respondent as illegal and to set aside the proceedings in RC No.2662/2019-MACS, dated 01.11.2019 issued by the 3rd respondent and for a consequential direction to the 3rd respondent to register the 1st petitioner Society under the provisions of the Telangana Mutually Aided Cooperative Societies Act, 1995 (for short 'TMACS Act'). Whereas, I.A. No.3 of 2019 is filed by Sri Sri Kala Kuteer Apartment Owners Cooperative Maintenance Society, rep. by its Chief Promoter Avula Vijayalaxmi, to implead it as 5th respondent in the writ petition.

2. The facts that germane for filing of the present writ petition are as follows:

i) There are 150 flats in Sri Sri Kalakuteer Apartment, a residential complex. Initially, the owners of the said flats have registered a Society under Public Societies Act with registration No.580/2015. They came to know about the recent new enactments with regard to registration of Apartment Flat Owners' Welfare Association under the Cooperative laws. Therefore, the owners of the KL,J flats of the said residential complex have decided to register the maintenance association under the provisions of the MACS Act, 1995. Accordingly, the promoters of the 1st petitioner Society have passed a resolution on 13.09.2019 to register the 1st petitioner Society under the provisions of the

TMACS Act. Pursuant to the said resolution, the 1st petitioner Society submitted an application to the 3rd respondent for registration of the 1st petitioner Society on 14.09.2019.

ii) On receipt of the said application dated 14.09.2019, the 3rd respondent has appointed the 4th respondent to conduct a meeting with the promoters of the 1st petitioner Society on 21.09.2019. Accordingly, the 4th respondent had conducted meeting with the promoters of the 1st petitioner Society and submitted report dated 03.10.2019. In the said report, the 4th respondent informed the 3rd respondent that as per the instructions of the Registrar of TMACS, Telangana State, Hyderabad, vide memo RC No.6215/2018-HR4 dated 18.12.2018, there is no possibility to register the Flat Owners' Maintenance Cooperative Society under the provisions of the TMACS Act. The 4th respondent has further informed the 3rd respondent that he has explained the said instructions to the promoters of the 1st petitioner Society in the said meeting. Thus, the 4th respondent informed the 3rd respondent that the proposals are not recommended for registering the Society under the provisions of the TMACS Act.

KL,J

iii) It is apt to mention here itself that the 1st respondent vide his proceedings Rc.No.7033/2015/HR2, dated 24.03.2017 informed all the District Cooperative Officers of the State of Telangana to register the Flat Owners' Cooperative Maintenance Societies under Section 6 of the Telangana Cooperative Societies Act, 1964 and Rule 3 of Telangana Cooperative Rules, 1964, provided the proposals to fulfill the criteria mentioned therein i.e., (1) The Members of the Flats are more than 21 and there are 21 Promoters belonging to different families as per provisions of the Telangana Cooperative Societies Act, 1964, and (2) Byelaws framed are as per the provisions of the Telangana Cooperative Societies Act 1964.

iv) The Registrar of Mutually Aided Cooperative Societies Act, Telangana State, vide his proceedings in Rc.No.6215/2018-HR4 dated 18.12.2018 informed the 3rd respondent that vide G.O.Ms.No.42, dated 02.02.2013, the 2nd respondent has been delegated the powers to register the flat owners association under the A.P. Apartment (Promotion of Constructions and Ownership) Act, 1987. Under the said G.O., sub-Rules (c) and (d) to Rule-7 were added. Sub-Rule (d) to Rule-7, which is relevant, is as under:

"Rule-7...

(d) The procedure prescribed in Andhra Pradesh Cooperative Societies Rules, 12964 shall be followed for Registration of Flat or Apartment Owners Association and Bye-laws of the Association of the Flat or apartment owners."

KL,J

v) Pursuant to the report dated 03.10.2019 of the 4th respondent, the 3rd respondent vide his proceedings Rc.No.2661/2019-MACS, dated 01.11.2019 informed the 2nd petitioner that in view of the instructions dated 18.12.2018 issued by the Registrar of

Mutually Aided Cooperative Societies, Telangana State and the report of the 4th respondent, dated 03.10.2019, the proposals of the 1st petitioner to register the 1st petitioner under the provisions of the TMACS Act, is returned. Thus, vide the said proceedings dated 01.11.2019, the 3rd respondent informed the 2nd petitioner that there is no possibility to register Flat Owners' Maintenance Cooperative Society under the provisions of the TMACS Act. Assailing the same, the petitioners filed the present writ petition.

3. Heard Sri M. Venkat Divakar, learned counsel for the petitioners and the learned Government Pleader for Cooperation and Mr. Laxmaiah Kanchani, learned counsel appearing for proposed respondent No.5.

4. Sri M. Venkat Divakar, learned counsel for the petitioners would submit that the proceedings dated 24.03.2017 issued by the 2nd respondent deal with principle parameters and that the byelaws framed by the Associations / Societies shall be in accordance with the provisions of the Telangana Cooperative Societies Act, 1964. There is no instruction/direction in the said proceedings dated 24.03.20217 not to register the Flat Owners' Maintenance Association under the KL,J provisions of the TMACS Act. He would further submit that in the proceedings dated 18.12.2018 issued by the Registrar of TMACS also there is no prohibition to register a Flat Owners' Maintenance Association under the provisions of the TMACS Act. He would further submit that Rule-7 (d) as inserted in G.O.Ms.No.42, dated 02.02.2013, procedure prescribed in A.P. Cooperative Societies Rules, 1964 shall be followed for registration of Flat or Apartment Owners' Association and byelaws of the Association of the Flat or Apartment Owners. There is no prohibition to register the Flat Owners' Maintenance Association under the provision of the TMACS Act.

5. Sri M. Venkat Divakar, learned counsel for the petitioners would further submit that the byelaws of the 1st petitioner Society are in accordance with the aims and objects of the TMACS Act. There is no violation of any provision of TMACS Act in framing the byelaws of the 1st petitioner society. He would further submit that the Flat Owners of the said Sri Sri Kalakuteer Apartment, a residential complex, can register any number of societies within the area of operation of the said society and the owners of the flats of the said residential complex, being the members of the Society, have to take membership in only one Society of their choice. In support of the said contention, learned counsel for the petitioners has relied upon the principle laid down by the High Court of Judicature of Andhra KL,J Pradesh at Hyderabad in the judgment in B. Ramanaiah v. District Collector & Election Authority (Co-operation)¹.

6. Learned counsel for the petitioners would further contend that the respondents being the authorities under the Cooperative Societies Act cannot compel/direct the flat owners of the said apartment, to be member of a particular Society registered under a particular statute. There is no prohibition in any Act compelling the members of a particular society to register its society under a particular statute. In support of his contention, learned counsel for the petitioners has relied upon a decision of the Hon'ble Apex Court in A.P. Dairy Development Corporation Federation v. B. Narasimha Reddy². He would further submit that it is for the Members of a particular Society to register their society under a particular statute, which is beneficial and convenient to them. With the

said contentions, learned counsel for the petitioners would submit that the proceedings dated 01.11.2019 issued by the 3rd respondent rejecting the proposals submitted by the 1st petitioner to register the 1st petitioner under the provisions of the TMACS Act, are illegal and in violation of Articles 14 and 21 of the Constitution of India.

7. On the other hand, learned Government Pleader for Cooperation representing respondents 1 to 4 would submit that the Flat Owners of the said residential complex have to register its 1998 (4) ALD 41 AIR 2011 SC 3298 KL,J association only under the provision of the A.P. Apartment (Permission of Construction and Ownership) Act, 1987. Vide G.O.Ms.No.42, dated 02.02.2013, sub-Rule (d) was inserted to Rule - 7 of the A.P. Apartment (Permission of Construction and Ownership) Rules, 1987 as per which the procedure prescribed in A.P. Cooperative Societies Rules, shall be followed for registering Flats or Apartments Owners Association and byelaws of the Association of the Flat or Apartment Owners. He would further submit that the proposals sent by the 1st petitioner Association is not in accordance with the said proceedings and the said fact was informed to the promoters of the 1st petitioner by the 4th respondent in the meeting held on 21.09.2019. The 4th respondent has also submitted his report dated 03.10.2019 to the 3rd respondent informing about the same. Thus, there is no illegality in the proceedings, dated 01.11.2019. With the said contentions, learned Government Pleader sought to dismiss the present writ petition.

8. In the said backdrop of the facts and settled legal position, coming to the facts of the present writ petition, the flat owners of Sri Sri Kalakuteer Apartments, a residential complex, have decided to register the 1st petitioner Association under the provisions of the TMACS Act. According to them, registration of the Society under the provisions of the TMACS Act is more beneficial. The said fact was discussed at length in the meeting of the promoters held on 13.09.2019 and a resolution was passed to register the 1st petitioner KL,J Society under the provisions of the TMACS Act. Accordingly, an application dated 14.09.2019 was submitted to the 3rd respondent for registration of the 1st petitioner Society.

9. It is apt to note that under Article 19 (1) (c) of the Constitution of India, all the citizens shall have a right to form Association or unions including the Cooperative Societies. The word "Cooperative Societies" is inserted in Article 19 (1) (c) by way of Constitutional 97th Amendment. The said formation of association or unions under Cooperative Societies is subject to certain reasonable restrictions under Article 19 (4) of the Constitution of India.

10. That by virtue of the very same Constitutional 97th Amendment, Article 43B was incorporated in directive principles of State Policy which says about promotion of Cooperative Societies. As per the said Article, the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of Cooperative Societies. The said amendment introduced part IX-B to the Constitution of India which deals with formation of Cooperative Societies.

11. As discussed in Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Ltd.³, Navjeevan Cooperative House Building Society v. Delhi Cooperative (2015) 8SCC 1 KL,J Tribunal⁴, Rajib Mukhopadhyaya and ors., v. Registrar, Cooperative Societies⁵ and Saji Cherian v.

State of Kerala⁶, the International Cooperative Alliance Statement on the Cooperative Identity was adopted in Manchester, United Kingdom on 23.09.1995 and the terms "Cooperative and Values" are defined as follows:

"A Co-operative is an autonomous association of persons united voluntarily to meet their common, economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise. The Cooperatives are based on the values of self help, self responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others."

12. The principle that the membership shall be voluntary in the cooperative Society means as follows:

"(1) a person who joins a cooperative society of his own free will, and (2) the society which admits a person into its membership should likewise do so voluntarily.

The principle open membership is that :-

(1) there shall be no artificial restriction on the admission of members;

(2) there shall be no social, political, racial or religious discrimination against persons who wish to join, and (3) membership shall be available to all persons who need and can make use of the society's services and are willing to accept the responsibilities of membership.

ILR 1987 Delhi 323 141 (2007) DLT 321 WP (C) No.3757 of 2012, dated 05.07.2013 KL,J The principle of voluntary open membership would naturally exclude the State from becoming a member of a cooperative Society, and would exclude the State interference in the affairs of the Society.

13. The statement further provides for 'Seven Cooperative Principles' as guidelines by which the Cooperatives put their values into practice. The said seven cooperative principles are as follows:

1st Principle: Voluntary and Open Membership Co-operatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2nd Principle: Democratic Member Control Co-operatives are democratic organizations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organized in

a democratic manner.

3rd Principle: Member Economic Participation Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

4th Principle: Autonomy and Independence Co-operatives are autonomous, self-help organizations controlled by their members. If they enter to agreements with other organizations, including governments, or raise KL,J capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5th Principle: Education, Training and Information Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public-particularly young people and opinion leaders-about the nature and benefits of co-operation.

6th Principle: Co-operation among Co-operatives Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7th Principle: Concern for Community Co-operatives work for the sustainable development of their communities through policies approved by their members.

14. It is trite note that Sri P. Wearaman, the then Regional Director for South East Asia, International Cooperative Alliance, has written a book titled "Indian Cooperative Laws vis-a-vis cooperative Principles". In the said book, the author has dealt with cooperative principles and according to him a Cooperative Society is thus an association of persons or of societies, which has as its own object and the economic and social betterment of its members, through the satisfaction of their common economic needs by means of a common undertaking based upon mutual aid and profit-elimination, and which confirms to the Cooperative Principles. It also stated that there are six Principles of Cooperation. The six principles form a system and are inseparable. They support and reinforce one another. They can and KL,J should be observed in their entirety by all cooperatives if they claim to belong to the Cooperative Movement. The said six Cooperative principles were stated above.

15. As held by the Hon'ble Supreme Court in Vipulbhai M. Chaudhary (3 supra), the cooperative movement in India started at the beginning of the 20th Century. Though the movements were also

based on some of the values and principles stated above, it appears that the cooperatives in India did not have effective autonomy, democratic functioning and professional management. The National Policy on Cooperatives announced by the Department of Agriculture and Cooperation, Ministry of Agriculture, Government of India adopted in March, 2002, is wholly based on the definition, values and principles stated above. 97th Amendment to the Constitution of India, in fact, gave a constitutional frame to this policy.

16. Providing for the right to form cooperative societies to be a fundamental right under Article 19 of the Constitution of India and insertion of Article 43B under the Directive Principles of State Policy on promotion of cooperative societies, the amendment also introduced a new Part IXB on Cooperative Societies. The Statements and Objects and reasons to the said amendment were also specifically mentioned.

17. As per the said Constitutional mandate, the powers were given to the State Legislators to enact their own legislation on cooperative societies. Thus, the Central Government is committed to ensure that the Cooperative Societies in the country function in a democratic, professional, autonomous and economically sound manner. Thus, it is expected that the said provisions will not only ensure the autonomous and democratic functioning of cooperatives, but also ensure the accountability of management to the members and other stakeholders and shall provide for deterrence for violation of the provisions of law.

18. As stated above, the cooperative societies have been conferred constitutional status by virtue of 97th amendment of the Constitution of India. Thus, by virtue of the said 97th amendment, the whole concept of cooperatives has undertaken major change. The National Policy on Cooperatives announced in March 2002 has recognized the democracy equity, equality and solidarity as values of cooperatives. Cooperative Society has been declared as a democratic institution. Democratic principles have all through been recognized as one of the cooperative principles though the constitutional affirmation of those principles came only in 2012. A cooperative Society is registered on cooperative principles of democracy, equity, equality and solidarity. Democratic accountability, mutual trust, fairness, impartiality, unity or agreement of feeling among the delegates, cooperativeness etc., are some of the cardinal dimensions of the cooperative principles. A body built on such principles cannot be led by a captain in whom the co-sailors have no confidence. The said principle was held by the Apex Court in a decision in Vipulbhai M. Chaudhary³.

19. Thus, the Cooperative Society registered under the Central or State Government is bound to function as a democratic institution and conduct its affairs based on democratic principles. For any violation, the said Society and the promoters/Managing Committee is held responsible for the same, and also liable for penal action.

20. In A.P. Dairy Development Corporation Federation², the Hon'ble Apex Court held that the co-operative movement by its very nature, is a form of voluntary association where individuals unite for mutual benefit in the production and distribution of wealth upon principles of equity, reason and common good. So, the basic purpose of forming a co-operative society remains to promote the economic interest of its members in accordance with the well recognised co-operative principles.

Members of an association have the right to be associated only with those whom they consider eligible to be admitted and have right to deny admission to those with whom they do not want to associate.

21. The right to form an association cannot be infringed by forced inclusion of unwarranted persons in a group. Right to associate is for the purpose of enjoying in expressive activities. The constitutional right to freely associate with others encompasses associational ties designed to further the social, legal and economic KL,J benefits of the members of the association. By statutory interventions, the State is not permitted to change the fundamental character of the association or alter the composition of the society itself. The significant encroachment upon associational freedom cannot be justified on the basis of any interest of the Government. However, when the association gets registered under the Co-operative Societies Act, it is governed by the provisions of the Act and rules framed thereunder. In case the association has an option/choice to get registered under a particular statute, if there is more than one statute operating in the field, the State cannot force the society to get itself registered under a particular statute for which the society has not applied.

22. In the *Viziayanagaram Cooperative Land Mortgage Bank Ltd., v. Bheemunipatnam Co-operative Land Mortgage Bank Ltd.*⁷, a Division Bench of High Court of Judicature of Andhra Pradesh at Hyderabad held that the Cooperative Societies Act does not lay down that more than one society complying with the provisions aforesaid cannot be registered within the same area of operation. The said principle was also reiterated in *B.Ramanaiah* (1 supra).

23. Thus, in *A.P. Dairy Development Corporation Federation*², the Hon'ble Apex Court held that the State cannot force the Society to get itself registered under a particular statute for which 1968 (1) An. WR 52 KL,J the society has not applied. In the *Vizianagaram Cooperative Land Mortgage Bank Ltd.*, (7 supra) and *B.Ramaiah* (1 supra), this Court held that it is for the members of a society to choose one or more societies which according to them can cater to their needs and objectives. The member can take membership of any of the societies of his choice.

24. In the backdrop of the above said factual and legal position, coming to the case on hand, as discussed supra, the owners of the flats of Sri Sri Kalakuteer Apartment, a residential complex, have initially registered its association under the provisions of the Public Societies Act vide registration No.580/2015. It is relevant to note that the said society was dissolved in terms of the directions of the 2nd respondent vide Memo dated 24.07.2019. They came to know about other enactments and its benefits and they have decided to register its maintenance association under the provisions of the TMACS Act, 1995. Accordingly, the promoters meeting was held on 13.09.2019 and a resolution was passed to register the 1st petitioner association under the provisions of TMACS Act. Pursuant to the said decision, the promoters of the 1st petitioner association have submitted an application dated 14.09.2019 to the 3rd respondent for registration of the 1st petitioner society under the provisions of the TMACS Act. The 3rd respondent has appointed the 4th respondent to convene the promoters meeting and submit report. Accordingly, the 4th respondent convened a meeting of the promoters on 21.09.2019 and KL,J submitted a report dated 03.10.2019. In the said report, the 4th respondent has informed that the proposals submitted by the promoters of the 1st petitioner society for registration of the Society under the provisions of the TMACS Act is not possible in view of the

instructions issued by the Registrar of Mutually Aided Cooperative Societies, Telangana State in Memo Rc.No.6215/2018-HR4, dated 18.12.2018. Thus, the 4th respondent did not recommend the proposals submitted by the promoters of the 1st petitioner Society for registering the Society under the provisions of the TMACS Act 1995.

25. In the proceedings Rc.No.7033/2015-HR-2, dated 24.03.2017, issued by the 2nd respondent, it is specifically mentioned that the Members of the Flats are more than 21 and there are 21 promoters belonging to the different families as per the Act, 1964 and the byelaws framed are as per the Act, 1964. Vide G.O.Ms.No.42, dated 02.02.2013 sub-Rule (d) to Rule 7 of the A.P. Apartment (Promotion of Construction and Ownership) Rules, 1987, which says that the procedure prescribed in the A.P. Cooperative Societies Rules, 1964 shall be followed for registration of Flat or Apartment Owners Association and Byelaws Association of the flat owners.

26. In the proceedings R. No.6215/2018-HR4, dated 18.12.2018, issued by the Registrar, TMACS, it is mentioned that as per G.O.Ms.No.42, dated 02.02.2013, the 2nd respondent has delegated powers to Register the Flat or Apartment Owners Association under the A.P. Apartment (Promotion of Construction KL,J and Ownership) Act, 1987 duly following the procedure prescribed in the TCS Rules, 1964. In the above said proceedings including G.O.Ms.No.42, there is no prohibition of registering a flat owners' maintenance society as per the provisions of the TMACS Act, 1995. But, the 4th respondent in his report dated 03.10.2019 relied upon the proceedings dated 18.12.2018 and informed the 3rd respondent that in view of the said proceedings, dated 18.12.2018 there is no possibility to register the Flat Owners' Maintenance Cooperative Society under the provisions of TMACS Act, 1995. Therefore, the finding of the 4th respondent in his report dated 03.10.2019 is without any legal basis, contrary to constitutional mandate and also violation of basic cooperative principles.

27. As rightly contended by the learned counsel for the petitioners that there is no prohibition in any of the Acts including Telangana Cooperative Societies Act, 1964, Telangana Mutually Aided Cooperative Societies Act, 1995 and the Telangana Apartments (Promotion of Construction and Ownership) Act, 1987 to register the 1st petitioner society under the provisions of the TMACS Act. As held by the Apex Court in A.P. Dairy Development Corporation Federation², that in case, the Society has an option/choice to get registered under a particular statute, if there is more than one statute operating in the field, the State cannot force the Society to get itself registered under a particular statute for which the Society has not applied. Whereas in the present case, as discussed KL,J supra, in proceedings including the proceedings dated 24.03.2017, 18.12.2018 and G.O.Ms.42, dated 02.02.2013, there is no prohibition of registration of 1st petitioner society under the provisions of TMACS Act. Even, if there is prohibition also, it is not permissible as held by the Apex Court in A.P. Dairy Development Corporation Federation².

28. In the very same judgment, the Hon'ble Apex Court on a comparative study of statutory provisions of 1964 Act with that of 1995 Act, made certain observations in paragraph Nos.38 to 43. The said paragraphs of the said judgment, which are relevant in deciding the lis involved in the present writ petition, are extracted below:

"38. After the incorporation of the cooperative principles in Section 4 of the A.P. Cooperative Societies Act, 1964 read with Rule 2(a) of the A.P. Cooperative Societies Rules, 1964, by Amendment Act No. 22 of 2001, the extensive control of cooperative societies by the Registrar under the Act 1964 has become incompatible and inconsistent with the said cooperative principles which mandate ensuring democratic member control and autonomy and independence in the manner of functioning of the cooperatives. These two, namely, extensive State control and ensuring operation of cooperative principles cannot be done at the same time....

39. Comparative study of the statutory provisions of the Act 1964 with that of Act 1995 makes it crystal clear that Government has much more control over the co-operative societies registered under the Act 1964 and minimal under the Act 1995. The principles of co-operation adopted at international level have been incorporated in the Act 1995 itself, while no reference of any co-operative principle has been made in the Act 1964. The Government is empowered to make rules on every subject covered by the Act 1964, while no such power has been conferred on the Government to make rules under the Act 1995. The affairs of the co-operatives are to be regulated by the provisions of the Act 1995 and by the bye-laws made by the individual co-operative society. The Act 1995 provide for multiplicity of organisations and the statutory authorities have no right to classify the co-operative societies, while under the Act 1964 the Registrar can refuse because of non-viability, KL,J conflict of area of jurisdiction or for some class of co-operative. Under the Act 1964, it is the Registrar who has to approve the staffing pattern, service conditions, salaries etc. and his approval is required for taking some one from the Government on deputation, while under the Act 1995 the staff is accountable only to the society. Deputation etc. is possible only if a co-operative so desires. The size, term and composition of board fixed under the Act 1964 and the Registrar is the ultimate authority for elections etc. and he can also provide for reservations in the board. Under the Act 1995, the size, term and composition of the board depend upon bye-laws of the particular society. For admission and expulsion of a member, Registrar is the final authority under the Act 1964, while all such matters fall within the exclusive prerogative of the co-operative society under the Act 1995. The Government and other non-members may contribute share capital in the societies registered under the Act 1964, wherein members alone can contribute share capital in a society registered under the Act 1995. Mobilisation of funds of co-operative society is permissible only within the limits fixed by the Registrar under the Act 1964, while such mobilisation is permissible within the limits fixed by the bye-laws in a co-operative society under the Act 1995. Subsidiary organisations may be up by a co-operative under the Act 1995, while it is not no permissible under the Act 1964. In resolving of disputes, Registrar or his nominee is the sole arbitrator under the Act 1964, while the subject is exclusively governed by the bye-laws under the Act 1995. Role of the Government and Registrar under the Act 1964 is much more than under the Act 1995 as under the Act 1964, the Registrar can postpone the elections; nominate directors to Board; can appoint persons in-charge for State level federations; frame rules; and handle appeals/revisions/reviews; can give directions to co-operatives regarding reservations on staff and set up Special Courts and Tribunals, while so much control is not under the Act 1995. Similarly, Registrar has more say under the Act 1964 in respect of registering of bye-laws; approval of transfer of assets and liabilities or division or amalgamation or in respect of transfer of all members or disqualification of members etc.

40. Statement of objects and reasons of the Act 1995 clearly stipulate that State participation in the financing and management of cooperatives in the past had led to an unfortunate situation and the cooperative societies were not governed/guided by the universally accepted principles of cooperation. Thus, the purpose to enact the Act 1995 was to provide more freedom to conduct the affairs of the cooperative societies by its members. Clause 7 thereof clearly described the salient features of the legislation, inter-alia, to enunciate the cooperative principles which primarily place an assent on voluntarily self-financing autonomous bodies for removal from State control; to accept the cooperative societies to regulate their functioning by framing bye-laws subject to the provisions of the Act and to change the form or extent to their liability, to transfer their assets and liabilities to provide for the constitution of board and functions of the board of directors.

Principles of co-operation as incorporated in Section 3 and given effect to in the other provisions of the Act 1995 permit better democratic functioning of the society than under the Act 1964. Whereas the Act 1995 provides for State regulation to the barest minimum, the Act 1964 provides for extensive State control and regulation of cooperative societies which is inconsistent with the national policy with regard to cooperative societies evolved in consultation and collaboration with the States which stands accepted by the State of A.P. and reflected in the Scheme of the Act 1995 which is based on the model law recommended by the Planning Commission of India.

Thus, reverting back to the cooperative societies under the Act 1964 is a retrograding process by which the government would enhance its control of these societies registered under the Act 1995. They would be deprived not only of benefits under the said Act, but rights accrued under the Act 1995 would also be taken away with retrospective effect.

41. Cooperative law is based on voluntary action of its members. Once a society is formed and its members voluntarily take a decision to get it registered under the Act X, the registration authority may reject the registration application if conditions prescribed under Act X are not fulfilled or for any other permissible reason. The registration authority does not have a right to register the said society under Act Y or even a superior authority is not competent to pass an order that the society would be registered under the Act Y. Such an order, if passed, would be in violation of the first basic cooperative principle that every action shall be as desired by its members voluntarily. Introducing such a concept of compulsion would violate Article 19(1)(c) of the Constitution of India. It is not permissible in law to do something indirectly, if it is not permissible to be done directly. (See: Sant Lal Gupta and Ors. v. Modern Co-operative Group Housing Society Ltd. and Ors. MANU/SC/0859/2010 : JT 2010 (11) SC 273)

42.The co-operative society under the Act 1999 would be a democratic organisation as its affairs would be administered by persons elected or appointed in a manner agreed by members and accountable to them.

43. The legislature has a right to amend the Act 1995 or repeal the same. Even for the sake of the argument, if it is considered that legislature was competent to exclude the milk cooperative dairies from the operation of the Act 1995 and such an Act was valid i.e. not being violative of Article 14 of the Constitution etc., the question does arise as to whether legislature could force the society

registered under the Act 1995 to work under the Act 1964. Importing the fiction to the extent that the societies registered under the Act 1995, could be deemed to have been registered under the Act 1964 tantamounts to forcing the members of the society to act under compulsion/direction of the State rather than on their free will. Such a provision is violative of the very first basic principles of cooperatives. More so, the Act is vitiated by non-application of mind and irrelevant and extraneous considerations."

29. Thus, there is minimal control of the Government over the Society registered under TMACS Act, 1995. Therefore, as contended by the learned counsel for the petitioners, the Flat owners of the above said residential complex have decided to register the 1st petitioner society under the provisions of the TMACS Act. They have the right to choose one or the other society which according to them can cater to their needs as held by this Court in Vizianagaram Cooperative Land Mortgage Bank Ltd., (7 supra) and B. Ramaiah (1 supra). In the present case, though the Flat Owners initially registered its Association under the provisions of the Public Societies Act, the said society was dissolved in terms of the directions issued by the 2nd respondent in memo dated 24.07.2019, now they have decided to register the Maintenance Society under the provisions of the 1995 Act. Accordingly, they have prepared byelaws in terms of aims and objects as mentioned in 1995 Act. There is no violation of any provision of the TMACS Act in framing the byelaws by the 1st petitioner society.

30. It is also trite to note that the High Court of Judicature of Andhra Pradesh at Hyderabad in M/s. Nugget Estates Private KL,J Limited v. Government of Andhra Pradesh⁸ held that any association formed to act contrary to the objects of a particular statute is not sustainable. In the said judgment, the principle held by the Apex Court in Hamabai Framjee Petit v. Secretary of State for India in Council (1911 13 BLR 1097) and State of Bihar v. Kameshwar Singh (AIR 1952 SC 252) was relied upon. Whereas in the present case, as discussed supra, the 1st petitioner society has framed its aims and objects in accordance with the provisions of the TMACS Act, 1995, more particularly Section 3 of the Act. There is no violation of any provision of TMACS Act in framing the byelaws of the 1st petitioner society.

31. As already stated above, Sri Sri Kala Kuteer Apartment Owners Cooperative Maintenance Society, represented by its Chief Promoter Avula Vijayalaxmi filed I.A. No.3 of 2019 to implead it as respondent No.5 in the writ petition.

32. Mr. Laxmaiah Kanchani, learned counsel for the proposed respondent No.5 would submit that in terms of provisions of the A.P. (Promotion of Construction and Ownership) Act, every apartment shall have an association for the welfare of the flat owners. Accordingly, a society was formed under the provisions of the Societies Registration Act, 2001 vide Registration No.580/2015. The said society was dissolved in terms of the directions by the 2nd respondent in Memo dated 24.07.2019.

. WP No.3319 of 2013, dated 05.03.2013 KL,J

33. Pursuant to the said proceedings, dated 24.07.2019 of the 2nd respondent, the flat owners of the said residential complex conducted a meeting on 19.05.2019 and in the said General Body Meeting,

the attendees have unanimously resolved to form an association in the name and style "Sri Sri Kalakuteer Owners' Cooperative Maintenance Society". Proposed respondent No.5 has also referred to about certain proceedings, made allegations against owner of a flat who is now Additional Registrar in Cooperative Department, Ex-President of the earlier Society and sought to implead in the present writ petition. It has opposed the registration of the 1st petitioner society

34. On perusal of I.A. No.3 of 2019, the description of the petitioner therein is mentioned as "Sri Sri Kala Kuteer Apartment Owners Cooperative Maintenance Society," whereas the 1st petitioner in the writ petition is "Sri Sri Kalakuteers Apartment Flat Owners Maintenance Mutually Aided Co-operative Society Limited." Thus, it is clear that both the 1st petitioner society and the proposed 5th respondent society are different.

35. As held in the Vizianagaram Cooperative Land Mortgage Bank Ltd., (7 supra) and B. Ramanaiah (1 supra), the Members can chose one society or the other which according to them can cater to their needs. Thus, in the area of operation, there can be more than one cooperative society. There is no prohibition to register KL,J more than one cooperative society either under the provisions of the 1964 Act or under the provisions of the 1995 Act. Therefore, the proposed 5th respondent, which is an unregistered society, cannot object for registration of the 1st petitioner society under the provisions of the TMACS Act. Registration of the 1st petitioner society is between the 1st petitioner society and the 3rd respondent. As discussed supra, the members of the said residential complex can form any number of societies within the area of operation of the said society. A member can take membership in any of the society of their choice.

36. The petitioners filed the present writ petition assailing the proceedings dated 01.11.2019 issued by the 3rd respondent rejecting the proposals of the 1st petitioner society to register it under the provisions of TMACS Act. Therefore, according to this Court, the proposed 5th respondent is not a necessary party to the present writ petition and it cannot oppose the registration of the 1st petitioner society under the provisions of the TMACS Act. Thus, I.A. No.3 of 2019 is dismissed.

37. As discussed supra, there is no prohibition of 1964 Act, 1987 Act and 1995 Act to register the owners of a Flat under the provisions of the TMACS Act. The proceedings dated 24.03.2017, 18.12.2018 and G.O.Ms.No.42, dated 02.02.2013 also there is no prohibition that the owners of Flats of a residential complex/apartment to register its Maintenance Society under the KL,J provisions of the TMACS Act. Rule 7 (3) (d) of the Telangana Apartment (Promotion of Construction and Ownership) Rules, 1987 says that the procedure prescribed under the Telangana Cooperative Rules, 1964 shall be followed for registration of Flat or Apartment Owners Association or byelaws of the Flat or Apartment Owners Association under the Rules. Thus, there is no prohibition in any of the proceedings or statues referred to supra to register the 1st petitioner society under the provisions of TMACS Act 1995. The report dated 03.10.2019 submitted by the 4th respondent to the 3rd respondent relying upon the proceedings dated 18.12.2018 issued by the 2nd respondent stating that the 4th respondent is not recommending the proposals of the promoters of the 1st petitioner society to register under the provisions of the TMACS Act is not sustainable and it is violative of basic principles of cooperatives. The consequential proceedings dated 01.11.2019 issued by the 3rd respondent returning the proposals submitted by the promoters of the 1st petitioner society are also

not sustainable and liable to be set aside.

38. In view of the foregoing discussion, the present Writ Petition is allowed holding that:

a) in case, the Society has an option to get registered under a particular Statute, if there is more than one Statute operating in the field, the State cannot impose any restriction or force the Society to get itself registered under a particular Statute for which the Society has not applied. If any such restriction is KL,J imposed, it amounts to violation of fundamental right of a citizen guaranteed under Article 19 (1) (c) of the Constitution of India and also contrary to Article 43B of the Constitution of India and also violation of the first basic cooperative principle that every action shall be as desired by its members voluntarily;

b) it is for the Members of a Society to choose one or more Societies which according to them can cater to their needs within the area of operation. The Member can take membership of any Society of his choice;

c) the proceedings in Rc. No.2661/2019-MACS, dated 01.11.2019 issued by the 3rd respondent refusing to register the 1st petitioner society under the provisions of Telangana Mutually Aided Cooperative Societies Act, 1995 are illegal, in violation of fundamental right of a citizen guaranteed under Article 19 (1) (c) of the Constitution of India and also contrary to Article 43B of the Constitution of India and also spirit of the Constitutional 97th Amendment, therefore, they are not sustainable and the same are set aside;

d) the report in Rc. No.2/MACS/APT/2019, dated 03.10.2019 submitted by the 4th respondent to the 3rd respondent is also set aside declaring it as without any legal basis; and

e) the 3rd respondent is directed to register the 1st petitioner society under the provisions of the Telangana State Mutually Aided Cooperative Societies Act, 1995 if the application dated KL,J 14.09.2019 submitted by the 1st petitioner society is otherwise in order within a period of one month from the date of receipt of a copy of this order.

In the circumstances of the case, there shall be no order as to costs. As a sequel, miscellaneous petitions, pending if any, shall stand closed.

_____ K. LAKSHMAN, J 10th August, 2020.

Note:

Whether L.R. to be marked: Yes (B/O.) KTL/Mgr