

B. Umesh and Another Vs. Vinayaka Seva Samithi and Another

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Court : Karnataka

Decided On : Dec-26-2013

Judge : A.N. Venugopala Gowda

Appeal No. : Writ Petition Nos. 58978-58979 of 2013 (GM-RES)

Appellant : B. Umesh and Another

Respondent : Vinayaka Seva Samithi and Another

Judgement :

(Prayer: These Writ Petitions Are Filed Under Articles 226 and 227 of the Constitution of India Praying To Quash The Impugned Order Dated 9/12/2013 Passed By Respondent-Society, As It Relates To The Petitioners (Who Are At Sl.No.2 And 3 In The Said Impugned Order) Vide Annexure-A.)

1. The petitioners claim that they are the founder members of the 1st respondent, a Society registered under the Karnataka Societies Registration Act, 1960, established with an object of running devotional and cultural center, to gather and hold lectures etc., In the annual general body meeting of the 1st respondent held OP 10.11.2013, a resolution having been passed to cancel the life membership of the petitioners and a publication with regard to cancellation of the petitioners' life membership of the 1st respondent having appeared in a newspaper, vide Annexure-D, these writ petitions have been filed, to quash a communication dated 09.12.2013, as at Annexure-A and for grant of consequential reliefs.

2. Sri. M.S. Rudraiah, learned advocate for the petitioners, by placing reliance on the decision in the case of Dr. Asramia vs. The Yirajpet Town Co-operative Bank Ltd., and others, 1969 (2) Mysore Law Journal 336, contended that the communication, as at Annexure-A is illegal and liable to be quashed. He submitted that the memorandum of association of the 1st respondent does not provide for removal of existing members and hence, the resolution passed by the general body on 10.11.2013 being arbitrary, incompetent and without jurisdiction, cannot be given effect to by issue of communication, as at Annexure-A and the publication in the newspaper, vide Annexure -D.

3. Byelaws of the Society regulate the management of the society and govern relationship between the society and members inter-se. They are in the nature of Articles of Association of a Company, registered under the Companies Act. Unless the Byelaws are inconsistent with the Acts and Rules, the members are bound by the Byelaws.

4. Annexure-B is the memorandum of association of the 1st respondent. It contains the Rules and Regulations. It contains the provisions with regard to membership and removal. Under the heading membership, the following is relevant

"5. Members who are found to be working against the interests of the Samithi shall be removed by 3A majority of the members present at the General Body meeting convened for the purpose."

5. Sri. M.S. Rudraiah, was unable to point out as to how the provision extracted supra, is inconsistent with the provisions of Karnataka Societies Registration Act, 1960, under which, the 1st respondent has been registered. Thus, the memorandum of association of the 1st respondent provides for removal of members, who are found to be working against the interest of Samithi, by 3/4th majority of the members present at the general body meeting convened for the purpose.

6. In these writ petitions, there is no prayer to quash the general body resolution dated 10.11.2013, removing the petitioners from the life membership of the 1st

respondent. Only a communication, dated 09.12.2013, vide Annexure-A has been questioned.

7. Keeping in view the grievance of the petitioners, there appears to be factual disputes involved and therefore, it would be appropriate for the petitioners to approach a Civil Court and seek relief, if any.

8. The decision on which, Sri. M.S. Rudraiah placed the reliance, noticed supra, in my view, has no application to the instant case.

9. Since the petitioners can avail alternate remedy and seek decree of declaration and consequential reliefs, as against the general body resolution dated 10.11.2013 of the 1st respondent, the writ petitions cannot be entertained.

10. Without making any averments and seeking any relief, the 2nd respondent has been impleaded, which appears to be for the purpose of filing of the writ petitions, by-passing the remedy a suit before the Civil Court.

In the circumstances, these writ petitions are rejected, reserving the liberty to the petitioners to institute suit as against the 1st respondent and seek relief. It is made clear that the rejection of these writ petitions would not come in the way of the petitioners approaching the Civil Court for the relief as against the decision for removal of their life membership of the 1st respondent Society. All the contentions of the petitioners as against their removal from life membership of the 1st respondent are kept open for adjudication by the competent Civil Court.

No costs.

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