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In the Andhra Pradesh High Court

Case No : Writ Petition No. 3319 of 2013

M/s. Nugget Estates Private Limited — APPELLANT

Vs

Government of Andhra Pradesh, The Registrar General of Societies/Commissioner of Stamps and Registrations, The Registrar of Societies and Belvedere Resident''s Welfare Association — RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Andhra Pradesh and Telangana Societies Registration Act, 2001 — Section 18, 3, 3(1)

Citation : (2013) 5 ALD 108 : (2013) 5 ALT 685 : (2013) ALT(Rev) 418

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : Prabhakar Sripada, , S. Lakshminarayana Reddy,

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.

This Writ Petition is filed for a certiorari to quash registration No. 10 of 2013, dated 5-1-2013, whereby respondent No. 3 has registered respondent No. 4 as a Society under the provisions of the A.P. Societies Registration Act, 2001 (for short "the Act"). The petitioner is a Company which constructed certain residential flats in the name of Belvedere Residents Welfare Association, at Road No. 8, PJR Enclave, Madhavapuri Hills, Madinaguda, Hyderabad. The purchasers of the apartments have formed into an Association and approached respondent No. 3 for registration. Respondent No. 3 has accordingly registered the Association. This action of respondent No. 3 has been questioned in this writ petition.

2. At the hearing, Sri Prabhakar Sripada, learned counsel for the petitioner, submitted that an Association can be registered as a Society under the Act for any

of the objects mentioned in Section 3 thereof. He has referred to Clause 4 of the Bye-laws of the Association which contains the objects and powers of Association and submitted that none of the objects for which the Association has been registered, falls within the objects mentioned in Section 3 of the Act and that therefore respondent No. 3 has committed a serious illegality in registering respondent No. 4-Society.

3. A counter affidavit is filed by respondent No. 4, wherein it sought to justify the registration.

4. Section 3(1) of the Act, which is relevant for the present purpose, reads as under:

Any seven or more persons forming a society which has for its object the promotion of art, fine art, charity, crafts, religion, sports (excluding games of chance), literature, culture, science, political education, philosophy or diffusion of any knowledge or any public purpose may be registered under this Act.

5. As rightly pointed out by the learned counsel for the petitioner, the objects for which a society can be registered under the Act are specifically incorporated in Section 3 thereof and unless an association is formed for one or more of the objects mentioned in the said provision, such an association cannot be registered under the provisions of the Act.

6. Clause 4 of the Bye-Laws of respondent No. 4-Association, which contains its objects, is reproduced hereunder:

• The objects of the Association shall be: The Flat Owners Association claims herewith all the proprietary rights on the Stilt and Terrace areas as per Andhra Pradesh Apartment Act.

• To be and to act as Association of Apartment Owners of the building called BELVEDERE at Plot No. 409, 410 & 411 of Madhavapuri Hills, Madinaguda, Hyderabad, who have filed their respective declarations submitting their apartments to the provisions of the Act.

• To invest or deposit money in a Nationalised Banks/Post Office F.Ds.

• To provide for the Maintenance. Repair, and Replacement of the common areas and facilities by contributions from the apartment owners, and if necessary, by raising loans for the purpose, subject to a limited amount to be ratified by General Bodies.

• To provide for and do all or any of the matters, prescribed in Sub-section (2) of Sec. 18 of the Act.

• To frame rules, with the approval of the General Body Meeting of the Association and after consulting the, COMPETENT AUTHORITY and may establish a provident fund, gratuity fund, if necessary, for the benefit of the employees of the Association.

• To do all things necessary and or otherwise provide for their welfare expedient for the attainment of the objects specified in these bye-laws.

• The Association shall not act beyond the scope of its objects without, duly amending the provisions of these byelaws for the purpose.

7. The learned counsel for respondent No. 4 submitted that the objects contained in Clause No. 4 of the Bye-laws reproduced above satisfies the term "any public purpose" envisaged in Section 3(1) of the Act. I am afraid, this submission cannot be accepted.

8. In Hamabai F. Petit and Moosa Haji Hassam Vs. The Secretary of State for India in Council, , the High Court of Judicature of Bombay held that the phrase ''public purpose'' must include a purpose i.e., an object or aim in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned. On appeal, this view was upheld by the Privy Council AIR 1914 P.C. 20.

9. While dealing with the phrase ''public purpose'' a Constitution Bench of the Supreme Court in The State of Bihar Vs. Sir Kameshwar Singh, held as under:

...The expression ''public purpose'' is not capable of a precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. In other words, the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs. The point to be determined in each case is whether the acquisition is in the general interest of the community as distinguished from the private interest of an individual.

(Emphasis supplied)

10. The members of respondent No. 4-Association are private individuals who came together for the purpose of maintenance of the apartments purchased by them. Even if the term ''any public purpose'' is stretched to its widest amplitude, none of the objects with which respondent No. 4-Association has been formed, would satisfy the said term, for, ''public purpose'' necessarily involves the interests of community at large and their well-being. In the context in which the phrase ''public purpose'' is used in Section 3(1) of the Act, by no stretch of imagination it can be held that it intended to cover a group of residents of a residential apartment.

11. For the above mentioned reasons, the impugned registration cannot be sustained under the provisions of the Act and accordingly the same is quashed. This order, however, does not preclude respondent No. 4-Association from registering itself under any other enactment, under which such registration is permissible. Subject to the above observation, the Writ Petition is allowed.