



3. THE ENQUIRY OFFICER
OFFICE OF THE DEPUTY REGISTRAR
OF COOPERATIVE SOCIETIES
RAICHUR.
4. SHARANAPPA

...RESPONDENTS

(BY SRI SHIVAKUMAR R. TENGLI, AGA FOR R1 TO R3;
NOTICE TO R4 DISPENSED WITH V/O DATED 09.06.2023)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN A NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, DIRECTION, QUASHING THE NOTICES DATED 23.05.2022, 16.07.2022 AND 30.07.2022 ISSUED BY THE 2ND RESPONDENT UNDER ANNEXURES-F, F1, F2, IN No.ಉನಿರಾ/ವಿ-5/ಸಂಘ ಸಂಸ್ಥೆ/4/ಲಿ.ನೊ/2022-23 AND APPOINTMENT ORDER DATED 21.03.2023 IN NO. ಉನಿರಾ/ವಿ-4/ಸಂ.ಸಂ/ನೊಎಸ್‌ಟಿಆರ್/32/1977-78/ವಿಜಾ-25/2022-23/6412 ISSUED BY THE 2ND RESPONDENT UNDER ANNEXURE-G AND ANOTHER NOTICE DATED 17.04.2023 IN NO. ಉನಿರಾ/ವಿಚಾರಣಾಧಿಕಾರಿ/ಸಂ.ಸಂಸ್ಥೆ/1/2022-23 UNDER ANNEXURE-H, ISSUED BY THE 3RD RESPONDENT.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. Sri Shivakumar R. Tengli, learned Additional Government Advocate accepts notice for respondent



Nos.1 to 3. Notice to respondent No.4 is dispensed with on account of the proposed order to be passed.

2. The petitioners are before this Court seeking for the following reliefs:

"a) issue a writ in a nature of certiorari or any other appropriate writ, direction, quashing the notices dated 23.05.2022, 16.07.2022 and 30.07.2022 issued by the 2nd respondent under Annexure-F,F1,F2 in No. ಉನಿರಾ/ಐ-5/ಸಂಘ ಸಂಸ್ಥೆ/4/ಲಿ.ನೋ/2022-23 and appointment order dated 21.03.2023 in no ಉನಿರಾ/ಐ-4/ಸಂ.ಸಂ/ನೋಎಸ್‌ಟಿಆರ್/32/1977-78/ಐಜಾ-25/2022-23/6412 issued by the 2nd respondent under Annexure-G and another notice dated 17.04.2023 in no. ಉನಿರಾ/ವಿಚಾರಣಾಧಿಕಾರಿ/ಸಂ.ಸಂಸ್ಥೆ/1/2022-23 under annexure- h, issued by the 3rd respondent, in the interest of justice.

b) such other writ or order as direction as deemed fit as circumstances of the case including an order for cost."

3. The petitioner Nos.2 to 10 are stated to be the Governing Body members of the first petitioner society. A complaint came to be filed by respondent No.4 to the Registrar of Societies alleging various violations and making complaints as regards the running of the first petitioner Society registered under the Karnataka Societies Registration Act, 1960 (hereinafter referred to as 'the Act' for short). The



Registrar instituted an enquiry when notices dated 23.05.2022, 16.07.2022 and 30.07.2022 were issued by the Deputy Registrar for conducting preliminary enquiry, Pursuant thereto, the Enquiry Officer was appointed on 21.03.2023. Another notice has been issued on 17.04.2022 by the third respondent Enquiry Officer to the petitioners. It is aggrieved by the same the petitioners are before this Court.

4. Sri.Amresh S. Roja, learned counsel for the petitioners would submit that the preliminary enquiry be conducted, the appointment of Enquiry Officer and thereafter Enquiry Officer issuing notices to the petitioners is all on the basis of a complaint submitted by respondent No.4 on 11.05.2022 and 02.06.2022. Respondent No.4 not being a member of the society let alone being the member of the Governing Body, the Registrar of Society could not have taken cognizance of the said complaint and institute an enquiry since under Section 25 of Act, it



is only on majority of the Governing Body or 1/3rd majority of the General Body requesting for enquiry, could the Registrar appoint an Enquiry Officer. Alternatively, he submits that the Registrar could at the most *suo moto* conduct an enquiry by appointing an Enquiry Officer. In the present case the appointment of the Enquiry Officer being on the basis of the complaint submitted by respondent No.4, it cannot be said to be *suo moto* and as such, it requires to be quashed.

5. Sri Shivakumar R. Tengli, learned Additional Government Advocate appearing for respondent Nos.1 to 3 submits that though initially complaint of respondent No.4 has been considered by the Registrar of Societies, the Registrar has conducted a preliminary enquiry and having come to a conclusion that detailed enquiry is required to be conducted has appointed the Enquiry Officer. The Enquiry Officer in discharging his duties by issuing necessary notices to



the parties concerned. It is for the parties to cooperate with the Enquiry Officer and assist the Enquiry Officer and conclude the same at the earliest. there is an independent application of mind by the Registrar and as such, the reliefs sought for cannot be granted and the matter may be dismissed at the admission stage itself.

6. Heard Sri.Amresh S. Roja, learned counsel for the petitioners and Sri Shivakumar R. Tengli, learned Additional Government Advocate for respondent Nos.1 to 3 and perused the records.
7. The short question that arises for consideration in the present matter is whether the Registrar of Societies under Section 25 of the Act, can initiate an enquiry based on complaint received by him or his powers are restricted to only three circumstances: namely (i) suo moto; (ii) complaint by majority of the governing



Body or (iii) complaint by not less than 1/3rd of the General body?

8. Section 25 of the Act, reads as under:

"(1) The Registrar may on his own motion and shall on the application of the majority of the members of the governing body or of not less than one-third of the members of the society, hold an enquiry or direct some person authorised by him by order in writing in accordance with the rules made in this behalf to hold an enquiry into the constitution, working and financial condition of a registered society."

(2) The Registrar or the person authorised by him under sub-section

(1) shall have the following powers, namely,-

(a) he shall, at all reasonable times, have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may summon any person in possession or responsible for the custody of any such books, accounts, documents securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof;

(b) he may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath;

(c) (i) he may, notwithstanding anything contained in this Act or in any rule or regulation prescribing the period of notice for a general meeting of the society, require the



governing body of the society to call a general meeting at such time and place at the headquarters of the society or any branch thereof and to determine such matters as may be directed by him. If the governing body of the society refuses or fails to call a meeting, he shall have power to call it himself;

(ii) any meeting called under sub-clause (i) shall have all the powers of a general meeting called under the rules or regulations of the society and its proceedings shall be regulated by such rules or regulations;

(iii) when an enquiry is made under this section, the Registrar shall communicate the result of the enquiry to the society concerned."

9. A perusal of the above Section would indicate that the Registrar may on his own motion and shall on an application of the majority of the members of the Governing Body or of not less than 1/3rd of the members of the society, hold an enquiry or direct some person authorised by him by order in writing to hold an enquiry into the constitution, working and financial condition of the registered society.

10. The submission of learned counsel for the petitioners is that it is only in these three circumstances that an Enquiry Officer could be appointed and any complaint



received by the Registrar would have to be only from the majority of the members of the Governing Body and not less than of 1/3rd general body. A complaint lodged by third party non-member like respondent No.4 could not be the basis for exercising of power under Section 25 of the Act.

11. The alternate submission is that the Registrar may on his own motion initiate enquiry and in this regard, no reference or reliance could be placed, on a complaint made by a third party non-member.
12. In my considered opinion, sub-Section (1) of Section 25 of the Act can be segregated into three categories: (i) Firstly, Registrar on his own motion may institute enquiry; (ii) Secondly, the Registrar shall on the application of majority of the members of the Governing Body institute enquiry and (iii) thirdly, the Registrar shall on the application made by not



less than 1/3rd of the members of the society institute enquiry.

13. In the latter two cases, no discretion is vested with the Registrar. On an application received in those two cases enquiry is mandatorily required to be instituted.

14. As regards first category, the Registrar may on his own motion institute an enquiry. It is the mean and purport of "on his own motion" which is up for consideration in the present matter. Merely because the third party were to submit a complaint, the Registrar cannot initiate an enquiry without application of his mind. If a complaint is received by the Registrar and if the Registrar on perusal of the said complaint were to be of the opinion that enquiry is to be instituted, then he can order to do so and when such an order is made by the Registrar, it can



only be said to be on his own motion, since there is an independent application of mind by the Registrar.

15. It is only in the event of the non-application of mind by the Registrar and or the Registrar blindly following the complaint lodged by a third party that there is an embargo under Sub Section (1) to Section 25 of the Act and such an enquiry would not come within the purview of Sub Section (1) to Section 25 of the Act.

16. In the present case, as could be seen from the order of appointment of Enquiry Officer, on receipt of a complaint, the Registrar issued two notices for a preliminary enquiry and to find out whether there is *prima facie* truth in the allegations. It s upon receipt of the said report that the Registrar applied his mind to the report and came to an independent conclusion that an enquiry is required to be held. Thus the appointment of Enquiry Officer in the present case is not based on the complaint received but the registrar



has acted upon it by instituting a preliminary enquiry and acted upon the preliminary enquiry as regards which he applied his mind. This application of mind, in my considered opinion, would constitute "on his own motion".

17. As such, I am of the opinion that no grounds are made out in the present petition. Hence, the petition is ***dismissed*** at the admission stage itself.

**Sd/-
JUDGE**

VNR
List No.: 1 SI No.: 25