

Andhra Pradesh Co-Operative Societies Act, 1964 - Directions Of The Effective And Proper Functioning For The Co Operative Societies In The State

ANDHRA PRADESH

India

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ANDHRA-PRADESH-CO-OPERATIVE-SOCIETIES-ACT-1964-DIRECTIONS OF 1997

- Published on 3 December 1997
- Commenced on 3 December 1997
- [This is the version of this document from 3 December 1997.]
- [Note: The original publication document is not available and this content could not be verified.]

Andhra Pradesh Co-Operative Societies Act, 1964 - Directions Of The Effective And Proper Functioning For The Co Operative Societies In The State Vide R.C. No. 21636/97/Housing (1) Published in A.P. Gazette, Rs to Part 2 (Ext), dated 3-12-1997.

1.

There are nearly 3,200 Co-operative Housing Societies registered and purported to be functioning through out the State and predominantly in cities, urban agglomerations and district towns. Enormous public funds are invested by the members in these societies with a fond hope of getting a house-site or house. But unfortunately the promoters of the societies who are on the managements indulge in large scale irregularities in respect of acquisition of lands, admission of members and allotment of plots in blatant violation of the Bye-laws, rules and provisions of the Act. Admission of near relatives, family members and allotment of plots, to such members in utter disregard of rules, Bye-laws and other provisions of the Act are rampant. In addition, the managements are indulging in permitting large scale transfer of plots from members to members and non-members, thereby indulging in trading and profiteering. They are also indulging in malpractice of admitting ineligible members just before elections even when the existing eligible members are not able to get required service from the societies. On account of all these irregularities being committed by the managements of Co-operative Housing Societies, the genuine, deserving members are not able to

get any service from the societies and are facing untold hardship.

2.

With an intention to curb the said malpractices and irregularities, to improve the functioning of the societies strictly on co-operative principles and to protect the interests of the genuine members and in the public interest it is decided to issue appropriate statutory directions under Section 4(2) of the Andhra Pradesh Co-operative Societies Act, 1964.

A. Provisional Registration: - It is often noticed that while scrutinising the applications for provisional registration of the society, the promoters are found to be belonging to the same family or having close relationships. They are using the provisions of Co-operative Act, Rules and bye-laws to basically bring their real estates under the cover of co-operative activities and thereby circumvent the ceiling laws or indulge in trading and profiteering. Therefore, it is but necessary to check this tendency of mis-using the provisions of the Co-operative Act and Rules for circumventing the laws of the land. Hence the following direction.

Direction: - The Society shall not admit persons belong to the same family or having close relationship to each other as members, as defined under explanation to Section 6(2)(b). Before admitting any person as member, the society shall obtain a swearing affidavit or non-judicial paper that he does not own any house or house-site in the area of operation of the society in his name or in the name of his family members and that he does not have any of his family members in the said society nor he has any close relationship with any of the members or applicants, intending to become members of the society. The societies shall cancel the membership of any existing members, if they are admitted in violation of the said provisions of the Andhra Pradesh Co-operative Societies Act, 1964 Rules and bye-laws of the society.

B. Final Registration: - At the time of final registration, it must be ensured that the society secured some land or site for allotment to their members within a reasonable time, say one year from the date of provisional registration. The total membership at the time of final registration shall have some relationship and bearing to the total extent of land available with the society. It is often noticed that societies enroll more members than could be actually served, especially just before the elections to the Managing Committee. They often indulge in admitting more members and do not take any effective steps to acquire land, develop it and serve the members within a reasonable time. In order to curb this tendency, it is necessary to restrict the membership of the society depending upon the land available with the society at any given time. More often many co-operative societies approach the Government or Governmental Agencies for alienation or assignment of Government lands at concessional rates. While assigning, the Government often stipulate certain conditions as to the allotment of plots. Some times, Government do direct that bye-laws of the society be amended so as to confirm to the conditions laid down by them while alienating or assigning the lands. But it is often noticed that societies blatantly violate these conditions. In order to contain these gross irregularities, the following direction is given :

Direction: - Final registration of the society shall not be entertained by any competent authority, unless the society is in possession of a reasonable extent of land to subserve the existing members. No new members shall be admitted by any society, unless the existing members are completely served through allotment of houses or house-sites. In case of necessity to admit any new members, prior clearance from Registrar of Co-operative Societies shall be obtained who shall look into the aspect of adequacy of service to the existing members. The society shall amend its bye-laws strictly in accordance with the conditions laid down by the Government while alienating or assigning the site.

It is also hereby directed that under no circumstances, the society shall admit more than 10% of the members already provided with the plots, as members in waiting for the service of the society, at any given time.

C. Area of Operation: - While registering the societies both provisionally and at the time of final registration, the promoters indicate certain area of operation. However, later they approach for amending the bye-laws to extend the area of operation, with a view to facilitate admission of certain members who are otherwise ineligible to become members. It has also come to the notice that persons owning houses in twin cities of Hyderabad and Secunderabad will be eligible to become members of the co-operative societies, when the area of operation is restricted to peripheral urban agglomerations. Some time the area of operation of the society shall be restricted limiting it to the just outskirts of the cities, and peripheral urban agglomeration to enable the residents of the cities who are otherwise ineligible to become members if the city is also included in the area of operation. It is also noticed that some times very large extents of plots are laid out and allotted to the members giving them undue advantage especially to circumvent the urban Ceiling Laws. Hence the following direction :**Direction:** - The area of operation of the societies in urban areas must include generally the entire urban agglomeration. The area of operation of any society in urban areas, on the other hand shall not be confined to only outskirts and peripheral areas. Generally, the area of operation shall include municipal area and surrounding urban agglomeration. In respect of twin cities, it must necessarily include the limits of Hyderabad Municipal Corporation and Cantonment Board at least. In respect of area of operation of other societies, it may be confined to erstwhile taluk or present Mandal. Under no circumstances, the area of operation shall be later extended or curtailed with a view to get benefit in the surrounding urban areas. The extent of plots shall be so restricted as to not to exceed the urban ceiling limits if any or 1,000 Sq. yards whichever is less.

D. Residential Qualifications: - It is often noticed that Managing Committees of the Societies indulge in admitting members who do not ordinarily reside in the area of operation or atleast who do not have immovable properties or other business or other interests in the area of operation with an intention to settle there permanently. The result is that members who are from far away places including from other States and even foreign countries acquire the sites through the society depriving the genuine members with a motive to only acquire properly and to indulge in trading and profiteering at a later date. In order to curtail these malpractices the following direction is given :**Direction:** - No society shall entertain any application for membership from persons who do not ordinarily reside in the area of its operation, or atleast have immovable properties or business interests in the area of operation, with an intention to settle there permanently at a later date. A sworn in affidavit in the appropriate form shall be taken on non judicial stamp paper to this effect along with application. All Deputy Registrars shall strictly enforce the residential and property qualifications as per provisions of bye-laws of the society and Sections 6(2)(c), 6(2)(cc), 19(2)(ii) read with Section 21(3) of the Andhra Pradesh Co-operative Societies Act and relevant Rules. Membership of all members obtained in violation of the provisions of bye-laws, Rules and Act shall be cancelled forthwith following the due procedure.

E. Procedure for Applying for Membership: - Societies are entertaining applications for membership in a prescribed form, but without admission fees and initial minimum share-capital accompanying the application, without which the application is not valid. Bye-laws of the some of the societies are so framed as to permit paying of admission fees and initial minimum share capital only after intimation from the society that the applicant is admitted as member. This procedure is leading to benami transactions and the Managing Committee is often admitting members en mass at their own will especially just before elections by paying cash themselves

towards admission fees, share-capital etc. In order to curb this malpractice and fraud, the following direction is given :Direction: - No society shall entertain any application for membership, from any person unless the same is in the prescribed form accompanied by a cheque or draft towards admission fees, share-capital etc. and on receipt of the application acknowledgement in the prescribed form shall be given to the applicant. Thereafter, the application shall be entered in the application register maintained for the purpose according to seniority of its time and date and a receipt issued for the cheque or draft received.F. Allotment of Plots by Drawal of Lots: - Many of the societies while framing Bye-laws do not provide for transparent, fair and democratic system of allotment of plots. Courts have often held that allotment should be on the basis of seniority of the membership. Further it is noticed that societies do not give equitable size of plots to all members. Therefore, it is necessary that the Bye-laws of societies must provide for clear and transparent system to give fair opportunity to members to choose the size of their plots and witness drawing of lots in fair and transparent manner. Reasonable opportunity should be given to the members to pay necessary dues and charges. Hence the following direction:Direction: - Allotment of plots to the members must be done in an open and transparent manner with due and sufficient intimation to the members. They shall give reasonable opportunity to choose the size of the plots, to pay necessary dues and charges and also give them fair opportunity to participate and witness the drawal of lots. The society shall give advance intimation to the concerned Deputy Registrar about the drawal of lots for allotment of plots, to enable the latter to send his officers to supervise the drawal of lots.G. Transfer of Plots: - Strictly speaking, allowing members to transfer the plots to other members or non-members, is against the spirit of Co-operative principles. Membership in a society is meant for persons who do not have house or house-site in the area of operation. Hence transfer of plot after getting the same through the society amounts to fraud, unless there are compelling reasons for such transfer. Under those circumstances the transfer shall be restricted that it shall go to the other member in waiting, according to the seniority, or the society, exercises its right to purchase the plot, for future allotment to its members. Transfer of plots by members for profiteering is assuming alarming proportions. Hence the following direction:Direction: - Transfer of plot to any other member or non-member shall not be permitted by the society, except to the legal heirs by inheritance. For any compelling reasons, if the member wants to transfer the plot, he shall surrender the same to the society which shall pay back to the member the fees and charges collected from him along with interest, from the date of possession of the plot by the member. The society shall accept such surrender of the plot and allot it to other eligible members, according to seniority and recover the costs ,and charges, if any, for such transfer from the transferer. If any member wants to transfer the plot within 15 years of possession, the society shall have the first right of conveyance. No member shall be allowed to transfer his plot without the concurrence of the Managing Committee and without registering the sale or transfer deed in his favour. Any transfer of plots in violation of the Bye-laws shall be treated as illegal and the transferee shall be treated as trespasser or encroacher.H. Acquisition of Land by Private Negotiations by the Society: - It is noticed that societies when acquiring the land for house-sites either out of negligence or otherwise enter into transactions with the land owners of questionable titles. There are two aspects to this issue. The land owners who try to take advantage of disputed title by selling the lands to co-operative society, thereby either circumventing the law or creating trouble for others. This is also resulting in land grabbing of Government and Municipal lands by the unscrupulous elements. In order to curb the malpractice, the following direction is given :Direction: - The Society shall before entering into

agreement with the land owners, invariably obtain the legal opinion and also the opinion of the Revenue, Municipal and Town Planning authorities about the title of the land. The society shall also obtain permission of the Registrar of Co-operative Societies under Section 48 of the Andhra Pradesh Co-operative Societies Act, before entering into such agreements. They shall also take prior permission of the RCS, before developing or undertaking any developmental work, by submitting plans and estimates for the approval of the RCS.

I. Admissions of Ineligible Members: - It has often come to the notice that certain co-operative societies are registered for exclusive members of employees or certain class or category of members. But it is often noticed that they sometimes admit even members who do not belong to that class or category. Hence the following direction :**Direction:** - Housing societies which are exclusively registered for certain class or category of members, shall admit only that class or category of members but not others. They shall not amend their bye-laws at a later date to circumvent the rules and admit other class of members. All the Deputy Registrars are directed to see that right class of members alone are admitted and members who do not belong to that class or category shall be removed from the membership forthwith.

J. Deemed Membership: - It has often come to the notice, that the Managing Committees are not considering the applications filed for membership of the societies within reasonable time keeping them pending for long. Some of the Managing Committees are admitting them enmass at a convenient time under "deemed provision". In order to curtail this malpractice, the following direction is given:**Direction:** - The Managing Committee of any society shall pass appropriate orders on any application filed for membership in accordance with rules and Bye-laws within two meetings of the Managing Committee after the application for admission is filed or within sixty days from the date of application, whichever is earlier and shall intimate the orders to the members immediately thereafter. If no such action is taken by the Managing Committee, the applicant shall approach the concerned Deputy Registrar for considering his application, upon which the latter shall consider his application for admission for membership, as per the rules and Bye-laws and admit him as member if found otherwise eligible under compulsory provisions of APCS Act. There shall not be any scope given by the society for admission of members under deemed provision, hereinafter. If no action is taken to place the admission of membership in the next two Managing Committee Meetings or within 60 days, penal provision of superseding the committee under Section 34 simultaneously disqualification under Section 21 of the APCS Act will be initiated by this Department.

K. Eligibility of Members to Vote: - It is often noticed that Managing Committees are admitting members on large scale even when there is no scope for serving the existing members, with a view to get elected through their votes. This is resulting in injustice and undue hardship to the existing members and the unscrupulous Managing Committee trying to entrench themselves on the Committee. In order to protect the interests of the existing members, the following direction is given :**Direction:** - No society shall admit any new members to be in waiting for service except to the extent of maximum of 10% of members provided with plots at any given time. No member of a society who is not allotted a house or house-site, shall be eligible to vote in the ensuing elections, unless he completes at least one year as a member in the society. The Election Authorities shall take into consideration this aspect while preparing the electoral list of the members of the society.

3.

All the Co-operative Housing Societies in the State are hereby directed under Section 4(2) of the Andhra Pradesh Co-operative Societies Act, 1964 to comply with the above directions by suitably amending their bye-laws within 3 months from the date of these directions failing which action shall be taken against them in accordance with the law.