

HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

MAIN CASE: **W.P.Nos.19478 & 19481 of 2023**

PROCEEDING SHEET

Sl. No	DATE	ORDER	OFFICE NOTE.
5.	11.08.2023	<u>NJS,J</u> <u>I.A.No.1 of 2023 in W.P.No.19478 of 2023</u> & <u>I.A.No.1 of 2023 in W.P.No.19481 of 2023</u> The writ petitioner, a Company carrying on Chit Fund business for the past six decades, filed these writ petitions, challenging the Public Notice dated 30.07.2023 on various grounds. 2. Dr.Abhishek Manu Singhvi, learned Senior Counsel while stating about reputation of the petitioner having subscribers of above three(3) lakhs with 108 branches in four States including Andhra Pradesh and Telangana made extensive submissions formulating as many as 10 points for examination. 3. Learned Senior Counsel emphasizing that the writ petitioner company is carrying on chit transactions successfully, submits that there is no single complaint by any of the subscribers about payment of chit amount and default except one, induced at the instance of the Government. He contends that the 1st respondent resorted to a series of actions against the petitioner-Company aggrieved by which, writ petitions were filed in the High Court for the State of Telangana <i>vide</i> W.P.Nos.45189 of 2022, 7626 of 2023, 7629 of 2023, 10925 of 2023, 13199 of 2023, and in the said	

	cases while taking note of the aspect that there is no single complaint by the subscribers as also reserves of the petitioner-Company, interim orders were granted and despite the said position, the present action is initiated and the same is vitiated by Legal malice. 4. The learned Senior Counsel contends that the respondents in a <i>mala fide</i> manner through the impugned Notice/s, is seeking to wind up the chit groups which is drastic/draconic and amounts to civil death and it's effect would be humongous. He submits that Notices in respect of several groups are identical, contain grounds similar to those in the winding up orders/final orders stayed in the writ petitions filed by the subscribers <i>vide</i> W.P.No.16766 of 2023 etc., and that there are no changed circumstances. 5. The learned Senior Counsel also contends that the Show Cause Notice is predetermined, preconceived and sham etc., He submits that the respondent authorities got attached movable properties of the petitioner worth Rs.1,050 crores and with an intention to cause damage to the petitioner's reputation as also to close down its business operations, the present action is initiated. Further, referring to exercise of power by the State, the learned Senior Counsel mentions about transfer of a writ petition involving new papers run by two rival groups etc., which is pending before the High Court of Delhi, and contends that the present action is intended to create rumours and lead to collapse of petitioner's business and that will have a cascading effect. Referring to the decision of Hon'ble Supreme Court in Ram	
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	and Shyam Company v. State of Haryana & Others [reported in (1985) 3 SCC 267], he submits that provision of appeal under Section 59 of the Chit Funds Act(for short 'the Act'), is not an effective remedy in the facts and circumstances of the case and it is nothing but from Ceaser to Ceaser's wife. The learned Senior Counsel referring to Para No.31 of the affidavit regarding invocation of Section 48(h) of the Act contends that the same will not apply to the case on hand. He also contends that by virtue of stay of audit granted in W.P.Nos. 10925 of 10925 of 2023, no audit has taken place, that there is no new material and in the absence of same, the issuance of present Notice also supports the plea of Legal malice. 6. The learned Senior Counsel contends that in terms of the provisions of the Act, Foreman is maintaining the reserve fund out of the balance profit of each year equivalent to not less than 10% and accumulated reserves of Rs.1500 crores are available. The learned Senior counsel submits that as per provisions of the Act, the Registrar has to give Commencement Certificate and the same are being issued till now. He submits that the action of the respondents and the Notices impugned in the writ petitions have serious implications directly or indirectly on the business operations of the petitioner's company and seeks interim reliefs. 7. The learned Senior Counsel also relied on judgments of the Hon'ble Supreme Court in Oryx Fisheries Private Limited v. Union of India & Others [(2010) 13	
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	SCC 427] and Siemens Limited v. State of Maharashtra & Others [(2006) 12 SCC 33]. 8. Mr.Naga Muthu, another learned Senior Counsel appearing for the petitioner-Company in W.P.No.19481 of 2023, apart from adopting the arguments of Dr.Singhvi also made further submissions. Referring to Section 2(o) & 46 of the Act, the learned Senior Counsel submits that the Assistant Registrar conducted the inspection before whom the relevant documents were produced and if there are lapses, the same are to be pointed out and thereafter an order under Section 46(3) has to be passed by giving time to the petitioner to rectify the defects. He submits that as there would be an impact on the interest of the subscribers, Section 46(3) of the Act provides for rectification of defects and Section 48 of the Act would come into play after proceedings under Section 46(3) of the Act. 9. The learned Senior Counsel while referring to impugned Notice further contends that the Deputy Registrar of Chits is not competent and that the inspection was not conducted by him. He submits that the Assistant Registrar and Deputy Registrar discharging functions under the scheme of the Act are different entities, any action pursuant to inspection conducted by the Assistant Registrar shall be carried out by him alone. He submits that the Assistant Registrar is a statutory authority independently discharging his functions and unless the Statute provides for submission of report by the Assistant Registrar to Deputy Registrar, no action can be initiated by the Deputy Registrar. He contends	
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	that there is no authority to the Assistant Registrar, who conducted the inspection to submit a report and in such circumstances, issuance of Notice on the basis of the report/recommendation is not sustainable. With regard to delay in payment of chit amount, the learned counsel submits that unless security is furnished and the conditions of the chit agreement are complied with, the prized amount would not be paid and the delay in payment of chit amount, if any may be attributable to the said reasons. He submits that if the Assistant Registrar had raised this issue, the relevant information would have been furnished to him and that as the observations in the report of Assistant Registrar are unilateral, issuance of Notice on the basis of the same is not tenable. 10. The learned Senior Counsel further submits that before commencement of the Chit, deposit of 50% amount is complied with, otherwise the petitioner would not have been permitted to commence the chit group and that from the said amount, the subscribers can be paid. He submits that it is not a case of syphoning of money, that the Notice is vitiated by Legal malice; without jurisdiction and legal foundation. 11. The learned Senior Counsel submits that taking into consideration, <i>prima facie</i> and balance of convenience in favour of the petitioner, interim orders as sought for may be granted. 12. Insofar as W.P.No.19484 of 2023 is concerned, Mr.Dammalapati Srinivas, the learned Senior Counsel advanced arguments referring to the Notice dated	
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	30.07.2023 and contends that though it is mentioned therein to the effect that a tentative decision or <i>prima facie</i> opinion is formed, an Order dated 28.07.2023 was uploaded on 30.07.2023 ordering winding up of chit groups, that too w.e.f., 20.06.2023. He submits that in fact, the Notices which are stereo typed, except the table have been issued in respect of several branches. But in the present case, straightaway an order has been passed. He submits that the Assistant Registrar himself should have initiated any action and that at any rate, the order is not sustainable in Law and liable to be set aside. He also submits that the auction in respect of the subject matter chit groups is scheduled on Saturday i.e., on 12.08.2023 and seeks interim reliefs. The learned counsel also places reliance on the Judgment of the Hon'ble Supreme Court in State Bank of India & Others v. Rajesh Agarwal & Others [2023(6) SCC 1]. 13. The learned Advocate General, in reply to the contentions raised by the learned Senior Counsel on the other side, made detailed submissions. He submits that Show Cause Notices were issued to various chit groups in relation to different branches, for violation of regulatory provisions of the Act. He submits that summary adjudication is sought for, in respect of Show Cause Notices while seeking alternatively on the accuracy/flaws in each of the Show Cause Notices. He submits that it is a fact intrinsic writ petition, substantial portion of the affidavit and grounds is based on foundational and factual allegations contained in the Show Cause Notices. While contending that the writ petitions are not maintainable,	
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	he submits that the contention that the Show Cause Notice is completely without jurisdiction and not sustainable on the ground of Legal malice, is one of the factual flaws. He submits that the plea of Legal malice is lacking in foundational pleading and ample material is available on record to issue the Show Cause Notices. 14. The learned Advocate General referring to the order passed in W.P.No.40880 of 2022 dated 26.12.2022 submits that subsequent to the orders passed in the writ petition, Notice dated 20.12.2022 was issued to the petitioner-Company and thereafter the Assistant Registrar passed orders under Section 46(3) of the Act. He submits that the said order was not challenged and issuance of Show Cause Notice under such circumstances is well founded. While mentioning about the orders passed by the High Court of Telangana, the learned Advocate General also submits that there is no stay of enquiry by any of the orders passed. He submits that after conducting lawful inspection and recording Panchanama, material was seized from 15.11.2022 to March, 2023 in respect of almost all the branches of petitioner-Company. He further submits that the grounds which were indicated in the proceedings under Section 46(3) of the Act, can be found in the present Show Cause Notices. 15. The learned Advocate General further emphatically contends that Section 48 of the Act provides for <i>suo motu</i> action and it is not a case of lack of jurisdiction. Referring to the orders under Section 46(3) of the Act, he submits that the same contains the violations which were not complied	
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	with and on the basis of the same, the Registrar can initiate action under Section 48(h) of the Act. It is his contention to the effect that absence of complaint by any subscriber would not denude the Deputy Registrar of his powers and further that the said provision should not be read in redundancy. Laying much emphasis on the proceedings under Section 46(3) of Act dated 09.03.2023 and non-compliance of the matters set out therein, the learned Advocate General also made submissions to the effect that failure to deposit the amount required to be deposited would also enable the Registrar to take action for winding up and the issuance of Show Cause Notice is therefore justified. Apart from the said submissions, the learned Advocate General also contends that as per the Draft proceedings of the Registrar of Chits dated 24.12.2008, duties of the Registrar are delegated to the Deputy Registrars and Assistant Registrars and insofar as power under Section 48 of the Act is concerned, the same is specifically conferred on the Deputy Registrars and therefore the issuance of Show Cause Notice is well within their jurisdiction. 16. The learned Advocate General, further referring to the interim orders of this Court dated 18.07.2023 in W.P.Nos.16766 of 2023 etc., filed by the subscribers, made submissions to the effect that, Notices before initiating action have been issued and opportunity was afforded and despite the same, the present writ petitions have been filed. In this regard, the Advocate General also made submissions to the effect that the details are kept in the website, so that the grounds on which action is initiated can be met with by filing	
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	objections. The learned Advocate General citing a fleet of cases including the judgment of the Hon'ble Supreme Court upholding the provisions of the Act, opposed granting of interim orders, while reiterating that the writ petitions are not maintainable and devoid of factual and legal foundation. 17. Insofar as W.P.No.19484 of 2023 is concerned, it is the submission of the learned Advocate General to the effect that typographical errors occurred and therefore either the said proceedings would be withdrawn or orders as the Court thinks may be passed. 18. In his short reply to the arguments advanced by the learned Advocate General, Mr.Naga Muthu, learned Senior Counsel reiterated his contentions with regard submission of report by Assistant Registrar, in the absence of any authority conferred under the Act etc., and pressed for granting interim reliefs sought for. 19. This Court has given a thoughtful consideration of the matters. At the outset, it may be noted that filing of various writ petitions by the petitioner-Company and granting of interim orders in the said writ petitions viz., W.P.No.7626 of 2023 etc., is matter of record and the said writ petitions are pending; apart from W.P.No.40880 of 2022 on the file of this Court filed by the Company herein and W.P.Nos.16766 of 2023 etc., filed by the subscribers. 20. Referring to the orders passed in the pending writ petitions, learned Senior Counsel raised a plea of Legal	
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	malice apart from other contentions. Mr.Naga Muthu, learned Senior Counsel raised contentions with reference to the Assistant Registrar submitting a report to Deputy Registrar without any statutory obligation and continuation of action, if any by the Assistant Registrar, but not by the Deputy Registrar etc. The learned Advocate General vehemently opposed the submissions made on behalf of the petitioners with reference to the material on record and the case Law relied on by him which includes: a) S.R.Venkataraman v. Union of India & Another[(1979) 2 SCC 491] b) Kalabharati Advertising v. Hemant Vimalnath Narichania & Others [(2010) 9 SCC 437] c) State of Rajasthan & Ors., v. Sharwan Kumar Kumawat etc. [2023 SCC OnLine SC 898] d) IFB Agro Industries Limited v. Sicgil India Limited & Others [(2023) 4 SCC 209] e) Shriram Chits & Investment (P) Ltd., v. Union of India & Others[1993 Supp.(4) SCC 226] f) Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Others [(1996) 1 SCC 327] g) Union of India & Others v. Coastal Container Association & Others [(2019) 20 SCC 446] h) Union of India & Another v. Vicco Laboratories [(2007) 13 SCC 270] i) State of A.P., v. Southern Rocks & Minerals Pvt. Ltd.(W.A.No.218 of 2021 & batch) [2021 SCC OnLine AP 3064] 21. Thus, the line and length of arguments advanced by the respective counsel on both sides leaves no manner of doubt that several contentious issues are required to be	
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	adjudicated in these cases; perhaps after filing of the counter affidavits by the concerned respondents. However, some of the arguments advanced by the learned counsel requires consideration with reference to the interim reliefs sought for and objection as to the maintainability of the writ petitions. 22. In this regard it may be pertinent to note that some of the contentions vis-à-vis the action of winding up of some chit groups in the absence of Notice to the subscribers were dealt with by this Court and interim orders were granted in W.P.No.16767 of 2023 etc., on 18.07.2023, while not accepting some of the similar contentions addressed by the learned Advocate General, for the reasons elaborated therein; including about remedy of appeal provided under Section 59 of the Act. However, it may be apposite to refer to some of the <i>prima facie</i> conclusions arrived by this Court in the interim order dated 18.07.2023, which reads thus: “So far as the contention that granting of interim relief would be prejudicial to the interest of subscribers as the company would continue its transactions in violation of the provisions of the Act, the matter requires examination on filing of the counter-affidavits and as to whether the alleged violations/infractions are curable or serious so as to warrant winding up of chit groups. In the event of complaints which may lead to a situation like SAHARA or AGRI GOLD, as sought to be impressed upon by the learned Advocate General, the authorities under the Act can initiate appropriate action. In the present case, no such complaints of defaults in payment of prized money/chit amount to the detriment of the subscribers/petitioners are present. Therefore, the justification of passing an order to wind up chit groups in which the petitioners are subscribers needs to be examined in a broader perspective.”	
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	23. As contended by the learned Senior Counsel Dr.Singhvi, there appears to be no changed circumstances, except a solitary instance of default, which is stated to be on the inducement of the Government. In such circumstances, initiation of proposed action by issuing impugned Notice/s, more particularly in the light of orders referred to above, supports the plea of Legal malice etc., and merits acceptance. Therefore, in the <i>prima facie</i> view of this Court, the writ petitions are maintainable. 24. Though this Court see some considerable force in the submissions made by the learned Advocate General about competency of the Deputy Registrars in initiation of action on the strength of the Draft proceedings dated 24.12.2008 produced by him, the same needs to be examined after filing of counter affidavit and as observed earlier several issues involved in the matter would have to be dealt with comprehensively. Therefore, this Court is not proposing to delve further on the various other submissions addressed by both sides with reference to legal precedents, at this stage. 25. This Court is also of the opinion that issues with regard to the proposed action of winding up in the present writ petitions are interlinked with the writ petitions filed by the subscribers in W.P.No.16766 of 2023 etc., and it would be expedient to hear the matters along with said cases. 26. Coming to the interim reliefs sought for, this Court, on an appreciation of relevant aspects, is of the <i>prima</i>	
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	<i>facie</i> view that balance of convenience and irreparable prejudice is in favour of the petitioners. Orders of winding up in respect of some chit groups, were already suspended in the writ petitions filed by the subscribers <i>inter alia</i> keeping in view their commitments and any further action pursuant to the Notice/s impugned herein, would affect the chit subscribers at large in various groups/branches, apart from cascading effect on the company as pleaded. 27. In such view of the matter, there shall be stay of all further proceedings pursuant to the impugned Notice/s. List these cases along with W.P.No.16766 of 2023 etc., after four (4) weeks for filing counters. BLV _____ NJS, J	
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