

Court No. - 32

Case :- WRIT - C No. - 35547 of 2023

Petitioner :- Ran Singh Tomar

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Gavendra Kumar Mishra

Counsel for Respondent :- C.S.C.,Sunil Kumar Misra

Hon'ble Salil Kumar Rai,J.

Hon'ble Surendra Singh-I,J.

Heard the counsel for the petitioner and Shri Pramod Kumar Singh, Advocate, holding brief of Shri Sunil Kumar Mishra, Advocate, representing the respondent No. 2.

The petitioner is functioning as Secretary of Sainik Sahkari Avas Samiti Ltd. Meerut, w.e.f. 1.2.2023.

The Additional Registrar/Additional Commissioner, Housing, Lucknow exercising powers under Section 38(1) of the Uttar Pradesh Co-operative Societies Act, 1965 (hereinafter referred to as, 'Act, 1965') has vide his order dated 5.9.2023 directed the Committee of Management of the Society to remove the petitioner from the post of Secretary of the Society and by his order of the same date has also directed the Society to re-consider the resolutions dated 20.12.2022 and 15.9.2022 passed by the Committee of Management of the Society. The said orders have been challenged in the present petition.

Under Section 38(1) of the Act, 1965, the Committee of Management of the Society is not bound to pass an order of removal as directed by the Registrar under Section 38(1) of the Act, 1965. Under the aforesaid provision, the Society on the instructions of the Registrar, is required to pass an order *which it deems fit* after giving an opportunity of hearing to the concerned officer and it is not necessary that the Society should pass an order of removal of officer concerned. In case the Society refuses to pass an order of removal of the officer, the Registrar has the power to pass an order of removal under Section 38(2) of the Act, 1965. Similarly, under Section 128 of the Act, 1965, the Registrar may annul any resolution passed by the Committee for Management or General Body of the Co-operative Society and also empowered under the 1st Proviso of Section 128 of the Act, 1965 that before making any order annulling or cancelling the resolution, the Registrar may ask the Committee of Management or the General Body of the Society to re-consider the resolution within such period as he may fix.

Apparently, the orders passed by the Registrar under Section 38(1) of the Act, 1965 or the 1st Proviso of Section 128 of the Act, 1965 do not finally determine the rights of the parties and no cause of action accrues either in the officer concerned or the Committee of Management of the Society to challenge the orders of the Registrar passed under Section 38(1) of the Act, 1965 or 1st Proviso to Section 128 of the Act, 1965. It is only when the Registrar passes a final order under Section 38(2) of the Act, 1965 or the Society complies with the instructions of the Registrar and passes an order of removal under Section 38(1) of the Act, 1965, that the aggrieved party shall have the right to challenge such orders and cause of action shall accrue in the person against whom the said orders have been passed.

In view of the aforesaid, the present petition is premature and does not require consideration by this Court under Article 226 of the Constitution of India at this stage.

The petition is ***dismissed***.

Order Date :- 13.10.2023

Anurag/-