

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4406 of 2013

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Kashi Sahni son of Late Mushaharu Sahni, resident of Village-Amai, P.S. -
Manigachchi, District - Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar
2. The Bihar State Election Authority through Chief Election Officer, Bihar, Patna
3. The Registrar, Co-Operative Societies, Bihar, Patna
4. The District Magistrate-cum-District Election Officer, Darbhanga
5. The District Co-Operative Officer-cum-District Deputy Election Officer, Darbhanga
6. The Block Development Officer-cum-Election Officer, Manigachhi, Darbhanga
7. The Manigachhi Prakhand Matasyajivi Sahyog Samiti Ltd. through its so called Secretary, Bishwanath Sahni
8. Bishwanath Sahani son of Jagdish Sahni, resident of village-Amai, P.S. - Manigachhi, District - Darbhanga
9. Mahim Sahni son of Late Laljee Sahni, so called Chairman of the Managing Committee of the Society resident of Village-Amai, P.S. - Manigachhi, District - Darbhanga
10. Raj Kumar Sahni son of Ram Prasad Sahni so called Member of the Managing Committee, resident of Village - Amai, P.S. - Manigachhi, District - Darbhanga
11. Basath Sahni son of Jeebachh Sahni, so called Member of Managing Committee, resident of Village - Amai, P.S. - Manigachhi, District - Darbhanga
12. Raj Kumar Sahni son of Budhan Sahni, resident of village - Jagdishpur, P.S. - Manigachhi, District - Darbhanga
13. Dilip Kumar son of Madhun Sahni, resident of village - Jagdishpur, P.S. - Manigachhi, District - Darbhanga
14. Ram Bilas Sahni son of Arjun Sahni resident of village - Jagdishpur, P.S. - Manigachhi, District - Darbhanga
15. Ram Kripal Sahni son of Arjun Sahni resident of village - Jagdishpur, P.S. - Manigachhi, District - Darbhanga
16. Raj Kumar Sahni son of Khokhai Sahni resident of village Narayanpur, P.S. - Manigachhi, District - Darbhanga
17. Ganesh Sahni son of Lakhan Sahni resident of village Narayanpur, P.S. - Manigachhi, District - Darbhanga
18. Mahendra Sahni son of Latan Sahni resident of village Narayanpur, P.S. - Manigachhi, District - Darbhanga
19. Phuchai Mukhiya on of Haridan Mukhiya resident of village - Bhatpura, P.S. - Manigachhi, District - Darbhanga
20. Bishwanth Sahni son of Kedar Sahni resident of village - Bhatpura, P.S. - Manigachhi, District - Darbhanga
21. Ramjee Devi wife of Juge Mukhiya resident of village-Banghat, P.S. - Manigachhi, District - Darbhanga
22. Marni Devi wife of Vivek Mukhiya resident of village-Banghat, P.S. - Manigachhi, District - Darbhanga
23. Pinki Devi wife of Bechan Mukhiya resident of village-Banghat, P.S. - Manigachhi, District - Darbhanga
24. Most. Bulkan Devi wife of Late Hiya Mukhiya, resident of village Banghat, P.S. - Manigachhi, District - Darbhanga
25. Baijnath Sahni son of Ganga Sahni, resident of village-Indrathair Chanaur, P.S.

- Manigachhi, District - Darbhanga
 26. Sanjay Sahni son of Ganga Sahni, resident of village- Indrathair Chanaur, P.S. -
 Manigachhi, District - Darbhanga

.... Respondent/s

Appearance:

For the Petitioner/s : Ms. Mahasweta Chatterjee, Advocate
 Mr. Ram Nibas Prasad, Advocate
 For the Respondent/s : Mr. Kundan Bahadur Singh, SC-22
 Mr. Neeraj Kumar, AC to SC-22

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 24-09-2015

Heard Ms. Mahasweta Chatterjee, learned counsel
 appearing for the petitioner and learned counsel for the State.

The petitioner is aggrieved by the order dated 29.11.2012 /
 30.11.2012 passed by the Registrar, Cooperative Society in Election
 Case No. 81 of 2012 whereby the election case has been dismissed.

It is not in dispute that the election case was contested *inter alia* on grounds that; (a) the voter list was infracted for it did not include the name of 281 voters, and (b) that the elected secretary and one of the members were defaulter.

I have heard learned counsel for the parties and I have perused the records. The thrust of argument of Ms. Chatterjee is that 281 members of the erstwhile self supporting society which got merged to form the society in question had not been included in the membership list though they became the members of the amalgamated society by operation of law under Section 11B of the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as the 'Act').



She submits that on this count alone the election stood vitiated. It is further the argument of learned counsel that since the elected Secretary i.e. the respondent no. 8 and one of the members i.e. respondent no. 11 were defaulter hence their election is fit to be set aside. It is further the argument that the respondent no. 11 did not even choose to contest. According to Ms. Chatterjee though the audit report had been presented but was not considered and this contention was summarily rejected.

The election petition is on record and the petitioner prays to declare the entire election void and the reason is the infracted voter list. Although allegation against the elected Secretary has been made but those are the pleadings supporting the prayer for setting aside their election. It is not in dispute rather is admitted that the petitioner has contested the election on the same voter list and has been defeated. He now turns around to question the entire election on grounds of a vitiated voter list in which 281 valid members have been left out. Law is very well settled on the issue and the petitioner having taken a calculated risk by contesting the election on the voter list which according to him did not include 281 members, he cannot turn around to question the election on grounds of irregularity in the voter list. Reference in this regard is made to a Bench decision of this Court reported in **2006(1) PLJR page 281**. Coming to the next issue raised by Ms. Chatterjee regarding the Secretary and the respondent no. 11

being defaulters, what I find from the impugned order is that the allegation was not supported with evidence. The incorrectness of the charge is manifest from the counter affidavit filed on behalf of the private respondent nos. 8 and 9 which encloses orders of a prescribed authority whereby the allegation of defaulter as against the two persons have been set at rest *inter alia* on grounds that it did not provide an opportunity of hearing. These are orders which were passed way back in the year 2006 and there is nothing to show that since thereafter any order has been passed by the statutory authorities declaring these persons as defaulters. In the circumstances, the reliance on the audit report would not be proper until it is supported by a statutory order.

For the reasons aforementioned, I am not persuaded to interfere with the order impugned. The writ petition is disposed of.

(Jyoti Saran, J)

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