

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16760 of 2012

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1. Pragatishil Adarsh Sahakari Grih Nirman Samiti Limited having its office At Shashtri Nagar, Road No. 4, P.S. - Kashim Bazar, Munger through its Chairman, Krishna Mohan Prasad Sinha, Son of Late Bindeshwari Prasad, Resident of Nirmala Bhawa, Shashtrinagar, P.S. - Kashim Bazar, Munger

2. Sri Krishna Nagar Sahkari Grih Nirman Samiti Limited having its office at New Area, Nawada, P.S. - Nagar Thana, Nawada through its Chairman, Arun Kumar, Son of Late Bachu Singh, Resident of New Area, Nawada, P.S. - Nagar, Thana, District - Nawada

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Co-Operative Department, Government of Bihar, Patna

2. Registrar, Co-Operative Department, Government of Bihar, Patna

3. Shri V.S. Dubey, Chairman, Administrative Reforms Commission, New Secretariat, Bihar, Patna

4. Shri Rajesh Kumar, Director, Animal Husbandry, Bihar, Patna- Cum- Registrar, Co-Operative Department, Government of Bihar, Patna

5. Shri Sanjay Kumar Singh, District Magistrate Cum Liquidator Designate, Bihar State Housing Co-Operative Federation Limited, Lalit Bhawan, Bailey Road, Patna

6. Bihar State Housing Co-Operative Federation Limited, Lalit Bhawan, Bailey Road, Patna through its Managing Director

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 1766 of 2015

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1. Raghunath Jha son of Late Rajendra Jha resident of Mohalla - Tahaltola, Dhanaur Bhagya Sahay Nagar Phulwarisharif, P.S. Phulwarisharif, District - Patna

2. Navin Kumar Sinha Son of Late Madheshwar Singh resident of Mohalla - Rajiv Nagar, Road No. 16, P.S. Rajiv Nagar, District - Patna

3. Umakant Singh Son of Late Sarowar Singh resident of Mohalla - Chandra Vihar, P.S. Rajiv Nagar, District - Patna

4. Jata Shankar Lal Das son of Late Shabhapati Lal Das, Sumita Bhawan, A - 309, A.G. Colony, P.S. Shashtri Nagar, District - Patna

5. Ginni Devi wife of Late Naresh Chandra Jha C/o Suresh Chandra Jha, Sector - 5, Road No. 3, Magistrate Colony, P.S. Rajiv Nagar, District - Patna

6. Gopal Ram Son of Late Raghunandan Ram resident of village - Hauzpora, P.S. Belsar, District - Vaishali

7. Gangeshwar Jha Son of Late Amar Nath Jha resident of Mohalla - Chandra Vihar, P.S. Rajiv Nagar, District - Patna

8. Surendra Kumar Singh Son of Late Dhanajay Narayan Singh C/o Sangram Singh, Rerauna Kala Mandir, Archana Hotel, Daltanganj Town, Daltanganj, District - Palamu (Jharkhand)

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Co - Operative Department, Govt. of Bihar, Patna

2. The Registrar, Cooperative Societies, Government of Bihar, Patna

3. The District Magistrate, Patna - Cum - Liquidator, Bihar State Housing Co - operative Federation Ltd., Patna (under Liquidation), Lalit Bhawan, Bailey Road, Patna - 1

4. The Assistant Liquidator, Bihar State Housing Co - Operative Federation Ltd. (under Liquidation), Lalit Bhawan, Bailey Road, Patna - 1

.... Respondent/s

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Appearance :

(In CWJC No. 16760 of 2012)

For the Petitioner/s : Mr. Rajeev Kumar Verma, Sr. Adv.

Mr. Madan Mohan Jha, Adv.

For the Respondent/s : Mr. Raj Nandan Prasad, SC-9

Respondent No. 6 : Mr. Purshottam Jha, Adv.

(In CWJC No. 1766 of 2015)

For the Petitioner/s : Mr. Amar Nath Singh, Adv.

For the Respondent/s : Mr. Kundan Bahadur Singh, S.C. -22

Respondent No. 6 : Mr. Purshottam Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-12-2015

Heard Mr. Rajeev Kumar Verma learned Senior Counsel for the petitioners, Mr. Raj Nandan Prasad, learned S.C. 9 for the State and its authorities including the District Magistrate-cum-Official Liquidator and Mr. Purshottam Jha learned counsel for the Bihar State Housing Cooperative Federation Ltd., the respondent No.6.

With the consent of the parties, the writ petition has been considered with a view to its final disposal at the stage of admission itself.

Since the relief prayed in C.W.J.C.No.1766 of 2015 is dependent on the outcome of C.W.J.C.No.16760 of 2012 hence I shall be referring to the pleadings and annexures of the said writ petition.

The petitioners are cooperative societies registered under the



Bihar Cooperative Societies Act, 1935 (hereinafter referred to as 'the Act') and are aggrieved by the order of liquidation passed in respect of respondent no. 6 by the Registrar, Cooperative Societies in purported exercise of power vested under Section 42 of 'the Act', dated 23.8.2012/27.8.2012 circulated vide Memo No.4422 dated 27.8.2012 impugned at Annexure-20 of the writ petition together with the show cause notices issued against the initiation of such proceedings impugned at Annexures-7, 8, 12 and 15 of the writ petition. For adjudicating on the issue so raised in the writ petition it would not require this Court to enter into the factual details of the case. Suffice it to say that it is on the recommendation made by the Chairman, Administrative Reforms Commission and after obtaining concurrence by the State Cabinet that the Registrar Cooperative Societies has exercised the statutory powers vested under section 42 of 'the Act' to order for the winding up of the Bihar State Housing Cooperative Federation Ltd. Patna (hereinafter referred to as 'the Housing Federation').

Mr. Verma responding to the objection on the alternative appellate remedy available to the petitioners under Section 43 of 'the Act', submits that in view of the admission made by the Registrar at paragraph 5 of the counter affidavit candidly accepting that the exercise was undertaken on the basis of recommendation of the



Chairman, Administrative Reforms Commission and after obtaining concurrence from the State Cabinet, any appellate remedy would be an exercise in futility rather a completion of formality. He thus submits that since the winding up proceedings including the final order is sought to be questioned by the petitioner purely on issue of jurisdiction and misapplication of the statutory provisions and not on the factual aspects of the matter hence the writ petition founded on issues of law may be heard and adjudicated on the same.

Although a preliminary objection has been raised by the Registrar in his counter affidavit as regarding the maintainability of the writ petition in view of the statutory remedy of appeal so available to the petitioners under Section 43 of 'the Act' but considering the circumstances that the proceedings has a concurrence of the State cabinet as well as the fact that Mr. Verma seeks to limit his argument only on the issue of law and jurisdiction and not to enter into the merits of the matter, this Court would proceed to consider the matter on the merits of the issues raised without relegating the petitioner on the objection of alternative remedy.

Mr. Verma straightway referred to the notices impugned at Annexures 7, 8, 12 and 15 to submit that impugned order rests on these notices requiring the petitioner to respond to the winding up proceedings which were initiated on the recommendation of the



Chairman, Administrative Reforms Commission and after obtaining the concurrence of the State Cabinet. It is argued that although an exhaustive objection was filed in the winding up proceedings raising issues of maintainability in view of absence of pre-requisites for initiation of such proceedings as also in view of the provisions of the Multi State Cooperative Societies Act, 2002 (hereinafter referred to as the 'Act of 2002') but the objections have been rejected mechanically by the respondent Registrar without appreciation of the legal position that the prerequisites to invoke Section 42 of 'the Act' was missing and Section 103 of the 'Act of 2002' wrests the jurisdiction from the Registrar Cooperative Societies and vests the same in the Central Registrar.

Mr. Verma has referred to Section 42 of 'the Act' to submit that the circumstances in which a proceeding of winding up can be initiated stands well explained. He submits that in the present case neither there was any request by the society for such winding up nor was any enquiry held under Section 35 by the Registrar or any inspection under Sections 36 and 37 of 'the Act' was carried out to justify such action. It is argued that it is also not a case where the 'Housing Federation' has ceased to function or that the numerical strength of the Committee has fallen below the majority.

Mr. Verma next refers to the statement of the Registrar made in



paragraph 5 of the counter affidavit to submit that it is fairly admitted by the respondent that the proceedings was initiated on the recommendation of the Chairman, Administrative Reforms Commission and after seeking concurrence of the State Cabinet. It is submitted that a moment a proceeding is influenced by authorities other than the authorities recognized under 'the Act', the proceedings would stand vitiated.

Mr. Verma next referring to provisions of Section 103 of 'the Act of 2002' submits that the provision is self eloquent and has been a matter of discussion in a number of judgments to hold that no sooner the area of operation of a cooperative society extends over two States, it shall be deemed to be a Multi State Cooperative Societies registered under the provisions of 'the Act of 2002'. He submits that in view of such statutory stipulations at present in Section 103 of the 'Act of 2002' and in view of the categorical statement made by the petitioner before the Registrar as well as before this Court in paragraphs 7, 49 and 50 that after the reorganization of the State under the Bihar Reorganization Act, 2000, the area of operation of the society now spread over also to the State of Jharkhand with effect from 15.11.2000 which is also manifest from the details present at Annexure-1, the petitioner would be a deemed Multi State Cooperative Societies and the jurisdiction of the Registrar under 'the

Act' to exercise jurisdiction over the 'Housing Federation' would stand restricted and stand vested in the Central Registrar.

Mr. Purshottam Jha, learned counsel appearing for the 'Housing Federation' seconds the arguments advanced by Mr. Verma on the legal issues but the opposition has come from Mr. Prasad learned Standing Counsel to submit that since the respondent 'Housing Federation' is yet to be registered under the 'Act of 2002', it cannot claim any prejudice on privilege on such account. Mr. Prasad however, even while contesting the arguments of Mr. Verma on the 'Act of 2002' could not wriggle away from the admission made by the Registrar Cooperative Societies in paragraph 5 of the counter affidavit that the exercise was undertaken on the recommendation of the Chairman, Administrative Reforms Commission and after obtaining the concurrence of the State Cabinet. There is also nothing on record to support any enquiry or inspection carried out by the Registrar to satisfy himself as to whether the case of the respondent 'Housing Federation' was fit for liquidation as mandated under Clause (b) of Section 42 of 'the Act'.

I have heard learned counsel for the parties and I have perused the records.

Considering the arguments advanced by Mr. Verma and the manner of response of the Registrar to the legal issues so raised, it

would not detain this Court to hold that the entire liquidation proceedings is without sanction of law and the reasons are more than one:

(a) The proceedings are influenced by the recommendations of Chairman, Administrative Reforms Commission as well as the decision of the State Cabinet both of whom are strangers to a proceeding of winding up as provided under Section 42 of 'the Act'. In fact where an order of statutory authority stands influenced and rests on the recommendations of any stranger or any superior authority, it loses its sanctity. Law in this issue stands fully discussed in the judgment of the Supreme Court rendered in the case of **Purtabpur Sugar Mills vs. Cane Commissioner** since reported in **AIR 1970 SC 1896**.

(b) Section 42 of 'the Act' runs as follows:-

“42. Winding-up order. The Registrar may, by notification, order a registered society to be wound up if –

(a) on receipt of a request for the winding-up of the Society by, special resolution passed by three-fourth of the members of the Society,

(b) after an inquiry has been held under Section 35 or an inspection made under Section 34, Section 36 or Section 37, the Registrar is of the opinion that winding-up of the Society is necessary in the interest of members, or

(c) If a Society has not commenced working after registration or has ceased working.

(d) if the number of the members of the society has been reduced to less than ten contrary to the condition of registration;

Provided that such order can only be passed after giving a notice of one month and providing opportunity of hearing to the shareholder members and persons/institutions having interest in the Society.”

A cursory glance of provisions confirms that it is only in the explained circumstances in which a proceedings of winding up can be undertaken by the Cooperative Registrar and which are:

- (a) at the request made by the society concerned;
- (b) on the basis of any enquiry conducted by the Registrar under Section 35 of ‘the Act’ or after holding inspection under Section 34, 36 and 37 of ‘the Act;
- (c) where the society has ceased to function; and
- (d) where the strength of the members has fallen below the statutory requirements i.e. less than 10 contrary to the condition of registration.

Considering the case in hand in the backdrop of the statutory provisions, it stands confirmed that the case does not fall under Clause (a), (c) or (d) of Section 42 since there are no such circumstances discussed. Although an attempt has been made by the Registrar to justify his action under Clause (b) of the provision but in absence of any enquiry or inspection as mandated under Sections 34, 35, 36 and

37 of 'the Act' on record, the attempt is futile. In the circumstances thus, where none of the pre-requisites for an exercise of winding up are satisfied in the case of the respondent Federation, the entire exercise becomes unsustainable.

(c) Consequent upon the creation of the State of Jharkhand with effect from 15.11.2000 under the Bihar Reorganization Act, 2000, the area of operation of the respondent Housing Federation now extends also to the State of Jharkhand as is manifest from Annexure-1. A categorical statement is made by the petitioner in paragraphs, 7, 49 and 50 of the writ petition which is not denied. Now in view of the provisions underlying Section 103 of 'the Act' of 2002', where such societies by deeming fiction become registered as a Multi State Cooperative Society under the said act, the jurisdiction of the Cooperative Registrar to exercise power over such societies stands wrested and is vested in the Central Registrar appointed under the 'Act of 2002'. Section 103 of 'the Act 2002' runs as follows:

“103. Cooperative societies functioning immediately before reorganisation of states.-

(1) Where, by virtue of the provisions of Part II of the State Reorganisation Act, 1956 (37 of 1956) or any other enactment relating to reorganisation of states, any cooperative society which immediately before the day on which the reorganisation takes place, had its objects confined to one state becomes, as from that day, a multi-

State cooperative society, it shall be deemed to be a multi-State cooperative society registered under the corresponding provisions of this Act and the bye-laws of such society shall, in so far as they are not inconsistent with the provisions of this Act, continue to be in force until altered or rescinded.

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.....”

Section 103 of the ‘Act of 2002’ is parimateria to Section 95 of the Multi State Cooperative Societies Act, 1984 (hereinafter referred to as the ‘Act of 1984’). These provisions have been a subject matter of discussion in a number of judgments, some of which are as follows:-

- (a) (2009) 16 SC 157 (Baba Trading Company Vs. Vidarbha Chamber of Commerce and Industries and Ors.)**
- (b) 2003(2) BLJR 1467 (The Bihar State Co-operative Milk Producers Federation Limited Vs. The State of Jharkhand and others)**
- (c) 2012(3) PLJR 873 (The Bihar Rajya Sahkari Bhhumi Vikas Bank V. State of Bihar)**

The legal position settled in the judgments so referred to above is, that there would be no need to await a formal registration as a Multi State Cooperative Society for the moment the area of operation of a cooperative society spreads over two States, it partakes the nature of a Multi State Cooperative Society and shall be deemed to be registered under Section 95 of the ‘Act of 1984’ or Section 103 of

the 'Act of 2002', as the case may be.

I am tempted to reproduce paragraphs 4, 6, 7 and 8 of the judgment rendered by the division Bench of this Court in the case of **Bihar Rajya Sahkari Bhumi Vikas Bank Samiti Vs. The State of Bihar** reported in **2012(3) PLJR 873** which would put the entire issues at rest.

“4. The parties are in agreement that after on account of Section 103 of the Act the appellant bank became a Multi State Co-operative Society, the Registrar Cooperative Societies, Bihar, Patna shall have no jurisdiction in respect of the appellant bank and the control shall vest in the Central Registrar, Co-operative Societies appointed under subsection (1) of Section 4 of the Act.

6. It may be useful to quote paragraph 17 of the aforesaid judgment in the case of *Naresh Shankar* (supra) which runs as follows :-

“As noted earlier, Section 95 of the Multi- State Act takes care of a situation arising out of re-organization of States of certain class of co-operative societies. Indeed, the very rationale or legal justification of having such a provision in the statute book is to provide continuity to those co-operative societies, the objects of which were confined to one State immediately before the day on which the re-organization takes place but as from the day of the re-organization of the State its object extends to more than one State, by declaring that such co-operative societies shall be deemed to be a multi State co-operative societies registered under the corresponding provisions of the Multi State Act. The very purpose of having this kind of provision is to stop the applicability of a State Co-operative Societies Act over more than one State as a State Act cannot have extra-territorial operation and the multi State co-operative societies cannot be regulated by a State Co-operative Societies Act”.

7. Thus, there is no difficulty in holding that the State Co-



operative Societies Act applicable to co-operative societies within the State of Bihar cannot apply to Multi State Co-operative Societies like the appellant. Hence, the Registrar, Co-operative Societies, Bihar, Patna shall have no jurisdiction to exercise appellate or any other kind of statutory power in respect of employees of the appellant co-operative bank. To be fair to learned counsel for the writ petitioner, it must be noted that he has raised another controversy to controvert the claim of appellants by placing reliance upon bye laws and service regulations framed by the bank at the relevant time.”

8. According to learned counsel for the writ petitioner, the Registrar, Co-operative Societies, Bihar will have power to hear appeals on account of bye- laws and service regulations of the bank in existence at the relevant time. The statutory provision in Section 103 of the Act is absolutely clear that as soon as a co-operative society is deemed to be a Multi State Co-operative Society, bye- laws of such society shall exist only to the extent they are not inconsistent with the provisions of this Act. As a natural corollary, parts of the bye-laws and service regulations etc. inconsistent with the provisions of the Act conferring jurisdiction upon Registrar, Co-operative Societies, Bihar under another statute shall cease to have any effect once a co-operative society becomes a Multi State Co-operative Society.

In the circumstances discussed hereinabove, it stands confirmed beyond any doubt that neither the winding up proceedings could be initiated on the basis of the recommendation of the Chairman, Administrative Reforms Commission even if the same had concurrence of the State Cabinet nor the conditions prevalent in the present case do satisfy the pre-requisites mandated under Section 42 of the Act for initiation of such proceedings. In fact in view of Section 103 of the ‘Act of 2002’ the Registrar, Cooperative Societies had no

jurisdiction to exercise power under Section 42 of 'the Act'.

For the reasons aforementioned, the entire winding up proceedings initiated against the respondent 'Housing Federation' culminating in the final order dated 23.8.2012/27.8.2012 impugned at Annexure-20 of the writ petition cannot be upheld and is accordingly set aside. The writ petition is allowed, the interlocutory application stands disposed of. The interim order passed on 11.9.2012 is confirmed.

In view of the order passed in C.W.J.C.No.16760 of 2012, I find no necessity to express any opinion on the issue raised in C.W.J.C.No.1766 of 2015 which is accordingly disposed of.

The interlocutory applications so filed in the writ petitions seeking to intervene by raising individual causes stands disposed of and the intervenors shall be at liberty to espouse their case before the authorities concerned.

(Jyoti Saran, J)

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