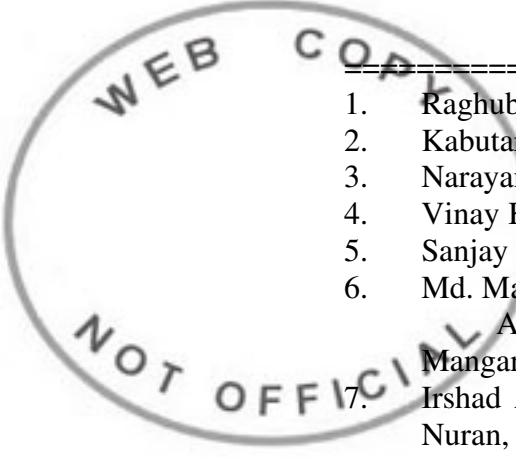


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3826 of 2016

With

I.A. No.2085 of 2016

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1. Raghubir Chaudhary, Son of Sri Raghunath Chaudhary.
 2. Kabutari Devi, W/o Mahendra Mahto.
 3. Narayan Mahto, S/o Jamu Mahto.
 4. Vinay Kumar Ram, Son of Late Vishun Dayal Ram.
 5. Sanjay Kumar Ram, Son of Bishun Dayal Ram.
 6. Md. Mansoor Alam, Son of Md. Shaheed.

All no.1 to 6 are residents of village - Mangarpal Nuran, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.

7. Irshad Ahmad, Son of Late Amirul Haque, resident of village - Mangarpal Nuran, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
8. Dilip Mahto, Son of Awadhesh Mahto.
9. Gulabi Devi, Wife of Kamleshwar Mahto.
10. Mahendra Mahto, Son of Chandraket Mahto.
11. Munna Mahto @ Munna Kumar, Son of Opin Mahto.
12. Lakshminiya Devi, Wife of Surendra Mahto.
13. Paras Mahto, Son of Ramdas Mahto.
14. Phuljharia Devi, Wife of Bideshi Mahto.

Petitioner Nos. 7 to 14 are residents of village - Mangarpal Nuran, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.

15. Abdul Samad, Son of Late Abdul Sakoor.
16. Meera Devi, Wife of Amrendra Mahto.
17. Shabana Bano, Wife of Fiyaz Ahmed.
18. Md. Khurshid, Son of Late Banshi Ahmed.

Petitioner Nos. 15 to 18 are resident of village - Mangarpal Murtuja, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.

19. Md. Jalaluddin, Son of Neyamul Haq, Resident of village - Mangarpal Nuran, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
20. Arjun Mahto, Son of Late Ranjeela Mahto, Resident of village - Mangarpal Nuran, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
21. Arun Mahto, Son of Narayan Mahto, Resident of village - Mangarpal Nuran, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
22. Bhim Mahto, Son of Nageshwar Mahto.
23. Priyatam Mahto, Son of Haricharan Mahto.
24. Rajendra Ram, Son of Nanhak Ram.
25. Opin Mahto, Son of Late Prabhu Mahto.
26. Raghunath Sahni, Son of Sharda Mahto.
27. Garibani Devi, Wife of Maya Lal Mahto.
28. Mostt. Akli Kuer, Wife of Late Rangeela Mahto.

Petitioner Nos.19 to 28 are residents of village - Mangarpal, P.S. Dariyapur, District – Saran.

29. Arjun Ray, Son of Late Dinanath Ray, resident of village- Mangarpal Murtuja, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
30. Rita Devi, Wife of Dilip Mahto.
31. Pujani Devi, Wife of Bhawani Mahto

Both are residents of village - Mangarpal Nuran, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.

32. Asmat Praveen, Wife of Ashir Asfat.

33. Jabir Alam, Son of Late Sahid Hussain.
Both are residents of village- Mangarpal Murtuja, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
34. Jawahar Lal Sahni, Son of Raghunath Sahni.
35. Rajendra Mahto, Son of Jammu Mahto.
36. Ramayan Mahto, S/o Maleshwar Mahto.
37. Marachhiya Devi, Wife of Narayan Mahto.
Petitioner Nos.34 to 37 are resident of village - Mangarpal Nuran, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
38. Shivajee Sahni, Son of Raghunath Sahni, Resident of village - Barua, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
39. Savita Kumari, Wife Kaushal Kishore Gupta.
40. Babu Lal Sahni, Son of Ragnath Sahni.
41. Birendra Mahto, Son of Ragnath Mahto.
42. Gita Devi, Wife of Ramayan Mahto.
43. Pancham Mahto, Son of Langar Mahto.
Petitioner nos.39 to 43 are residents of village - Mangarpal Nuran, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
44. Aftab Alam, Son of Md. Kamrujja, resident of village - Mangarpal Murtuja, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
45. Sunita Devi @ Sunita, Wife of Raj Kumar Mahto.
46. Ramaugrah Mahto, Son of Ramprit Mahto.
47. Deojhari Devi, Wife of Ramprit Mahto.
48. Ramprit Mahto, Son of Late Nathu Mahto.
49. Taramati Devi, W/o Ram Mahohar Mahto.
50. Sarita Devi, Wife Bablu Mahto.
51. Bablu Mahto, Son of Ramprit Mahto.
52. Ram Manohar Mahto, Son of Late Ramprit Mahto.
53. Abhishekh Kumar, Son of Birendra Mahto.
54. Anish Kumar, Son of Raja Prasad.
55. Indu Devi, Wife of Anish Kumar.
56. Bhawani Mahto, Son of Awadh Mahto.
57. Urmila Devi, Wife of Opin Mahto.
58. Ajit Kumar, Son of Narayan Mahto.
59. Asha Devi, Wife of Bhedheswar Mahto.
60. Raghunath Mahto, Son of Late Ganesh Nahto.
61. Rakesh Mahto, Son of Rajan Mahto.
62. Rajan Mahto, Son of Ramdas Mahto.
63. Meena Devi, Wife of Late Jagan Sahni.
64. Somari Devi, Wife of Yadunath Mahto.
65. Bhuneshwar Mahto, Son of Jagun Mahto.
66. Umesh Mahto, Son of Nageshwar Mahto.
67. Ramayan Sahni, Son of Raghunath Sahni.
68. Pintu Mahto, Son of Kauleshwar Mahto.
69. Dharam Nath Mahto, Son of Late Nagina Mahto.
70. Harendra Mahto, Son of Ramjee Mahto.
71. Ranjeet Mahto, Son of Mewalal Mahto.
72. Bhola Mahto, Son of Lakhan Mahto.
73. Babita Devi, Wife of Chhotelal Mahto.
74. Raj Kumar Mahto, Son of Ramprit Mahto.
75. Mukesh Mahto, Son of Nageshwar Mahto.
Petitioner nos. 45 to 75 are residents of village - Mangarpal Nuran, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.

76. Sunil Bhagat, Son of Prabhu Bhagat.
 77. Anil Bhagat, Son of Prabhu Bhagat.
 Both are residents of village - Barua, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
 78. Sabita Devi, Wife of Pancham Mahto.
 79. Gautam Mahto, Son of Laldeo Mahto.
 Both are residents of village - Mangarpal Nuran, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
 80. Md. Seraj, Son of Neyamul Haque, resident of village - Murtuja, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
 81. Anita Devi, Wife of Ramashankar Mahto.
 82. Mohan Mahto, Son of Teras Mahto.
 83. Parwati Devi, Wife of Sunil Mahto.
 84. Shivrati Devi, Wife of Bhola Mahto.
 85. Butai Rai, Son of Bhikari Rai.
 86. Badelal Prasad, Son of Sureshwar Mahto.
 87. Anurudh Mahto, Son of Mishri Mahto.
 88. Rajmuni Devi, Wife of Dinesh Kumar Suman.
 89. Somaria Devi, Wife of Paras Mahto.
 90. Krishna Mahto, Son of Late Badri Mahto.
 91. Mostt. Urmila Kunwar, Wife of Late Laxman Bhagat.
 92. Manoj Mahto, Son of Kedar Mahto.
 93. Gauri Shankar Mahto, Son of Late Rangeela Mahto.
 94. Chandan Mahto, Son of Tarkeshwar Mahto.
 95. Jathi Devi, Wife of Pritam Mahto.
 96. Ajay Chaudhary, Son of Raghunath Chaudhary.
 97. Manju Devi, Wife of Rajaram Mahto.
 98. Gopi Mahto, Son of Langar Mahto.
 99. Babita Devi, Wife of Jawahar Lal Sahni.
 100. Mahesh Mahto, Son of Satan Mahto.
 101. Girja Devi, Wife of Harendra Mahto.
 102. Panpatia Devi, Wife of Baijnath Mahto.
 103. Shitab Rajak, Son of Chandrika Rajak.
 104. Jitan Mahto, Son of Badri Mahto.
 105. Nand Kishore Mahto, Son of Bhuneshwar Mahto.
 106. Lilawati Devi, Wife of Ram Kishore Mahto.
 107. Heera Devi, Wife of Sambhu Mahto.
 108. Babulnia Devi, Wife of Kauleshwar Mahto.
 109. Kusmi Devi, Wife of Rambabu Mahto.
 Petitioner nos. 81 to 109 are resident of village - Mangarpal Nuran, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
 110. Rajda Khatoon, Wife Javed Alam, resident of village - Mangarpal Murtuza, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
 111. Kajali Devi, Wife of Jitan Mahto, resident of village - Mangarpal Nuran, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
 112. Jawed Alam, Son of Saheed Hussain.
 113. Ishrat Jahan, Wife of Irshad Ahmed.
 114. Jiyaul Haq, Son of Late Abdul Safik.
 115. Md. Firoj, Son of Md. Sowarati.
 Petitioner Nos. 112 to 115 are residents of village - Mangarpal Murtuza, P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.
 116. Rahul Kumar, Son of Saheb Mahto.
 117. Lal Babu Mahto, Son of Teras Mahto.

118. Kunti Devi, Wife of Kripal Mahto.

119. Chandra Devi, Wife of Ramanugrah Mahto.

Petitioner nos. 116 to 119 are residents of village - Mangarpal Nuran,
P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.

120. Suchit Mahto, Son of Late Bangali Mahto.

121. Sumitra Devi, Wife of Surendra Mahto.

122. Rambabu Mahto, Son of Sukhdeo Mahto.

123. Sanjay Chaudhary, Son of Raghunath Chaudhary.

124. Kauleshwar Mahto, Son of Langar Mahto.

125. Geeta Devi, Wife of Lalbabu Mahto.

126. Guriya Devi, Wife of Sanjay Chaudhary.

127. Yadunath Mahto, Son of Late Ganesh Mahto.

128. Pappu Kumar, Son of Surendra Mahto.

129. Savita Devi, Wife of Sitab Rajak.

130. Rajdeo Mahto, Son of Paspati Mahto.

131. Kameshwr Mahto, Son of Nagina Rai.

132. Dilip Mahto, Son Pritam Mahto.

133. Prem Mahto, Son of Surendra Mahto.

134. Vijay Mahto, Son of Munsi Mahto.

135. Kumari Guriya Suman, D/o Dinesh Kumar Suman.

136. Kalpatiya Devi, Wife of Shiv Lal Mahto.

137. Chotelal Mahto, Son of Raghunath Mahto.

138. Ashok Mahto, Son of Nageshwar Mahto.

139. Dewanti Devi, Wife Krishna Mahto.

140. Geeta Devi, Wife of Shivan Mahto.

141. Dewanti Devi, Wife Vishwanath Mahto.

142. Sarswati Devi, Wife of Baijnath Mahto.

143. Sarswati Devi, Wife of Gopi Mahto.

144. Soni Devi, Wife Killan Sahni.

145. Kripal Mahto, Son of Jatan Mahto.

146. Maheshwar Mahto, Son of Shivdhari Mahto.

147. Munna Kumar, Son of Maheshwar Mahto.

148. Saholi Devi, Wife Rajan Mahto.

149. Vakil Mahto, Son of Gopi Mahto.

150. Kariban Mahto, Son of Shayam Lal Mahto.

151. Chotu Mahto, Son of Gopi Mahto.

152. Ranjeeta Devi, Wife of Sanjay Mahto.

Petitioner Nos.120 to 152 are residents of village - Mangarpal, P.O.
Tarwa Mangarpal, P.S. Dariyapur, District – Saran.

153. Ranjeet Kumar Gupta, Son of Siya Sah.

154. Raushan Kumar Gupta, Son of Prabhu Lal Prasad.

155. Manoj Kumar Gupta, Son of Satrudhan Sah.

Petitioner nos.153 to 155 all are residents of village - Mangarpal Nuran,
P.O. Tarwa Mangarpal, P.S. Dariyapur, District – Saran.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Cooperative Department, Patna.
2. The Bihar State Election Authority, Harding Road, Patna through its Secretary.
3. The District Magistrate cum District Election Officer, Saran.
4. The District Co-operative Officer, Saran.
5. The Block Development Officer, cum Election Officer, Dariyapur Block,

District- Saran.

6. Mangarpal Primary Agriculture Credit Co-operative Society having its office at Mangarpal, P.S. Dariyapur, District - Saran, through its Administrator.
7. Maheshwar Prasad Singh, Ex-Chairman, Mangarpal PACS, P.O.- Mangarpal, Block- Dariyapur, P.S.- Dariyapur, District- Saran.

.... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Rai
For the Respondent-State	:	Mr. Anil Kumar Sinha, GA-9 Ms. Nutan Sharma, AC to GA-9
For State Election Authority	:	Mr. Mukesh Kumar
For the Respondent No.7	:	Mr. Madhuresh Prasad Mr. Shyameshwar Kumar Singh

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-03-2016

Heard Mr. Bindhyachal Rai, learned counsel appearing for the petitioners, learned counsel for the State, learned counsel for the Election Authority and Mr. Madhuresh Prasad who has appeared for the respondent no.7, the Ex-Chairman of Mangarpal Primary Agriculture Credit Cooperative Society in the district of Saran (hereinafter referred to as 'the Society').

The petitioners are aggrieved by an order dated 25.1.2016 of the Block Development Officer –cum- Election Officer, Dariyapur, district-Saran impugned at Annexure-7 to the writ petition, whereby the Block Development Officer while admitting to the fact that the name of the voters appearing at serial nos.1083 to 1294 finds mentioned in the membership register of the society in question, yet has proceeded to delete their names from the voter-list.

The limited issue which falls for consideration before this Court is that if these voters whose names are appearing at serial no.1083 to 1294 continue to remain in the membership register of the society, how can they be removed from the voter list?

It is the argument of Mr. Rai, learned counsel appearing for the petitioners that having entered into the membership of the society by following the process provided under rule 7(4) of the Bihar Cooperative Societies Rules, 1959 (hereinafter referred to as 'the Rules') framed under the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as 'the Act') unless there is any adjudication on the membership of these persons by a valid forum and unless they are held disqualified to be members of the society in a duly constituted proceedings, the Block Development Officer had no business to remove these persons from the voter-list. He further submits that these petitioners along with some others making a total number of 212, had been granted membership of the society, their names entered in the voter-list prepared for the election held in the year 2014 and these persons also voted in the election held in 2014. He submits that it is following the resignation of majority of elected members that the Managing Committee of the society was dissolved under section 41(5) of 'the Act' on 27.3.2015. He submits that an election programme was announced



by the State Election Authority and a draft voter list was published by the Block Development Officer –cum- Election Officer. He submits that it is at this stage that a complaint was made by the respondent no.7 questioning the membership of these 212 persons and the Block Development Officer -cum- Election Officer, Dariyapur in the district of Saran by the order impugned dated 25.1.2016 present at Annexure-7 has obliged him by deleting the names of the persons appearing at serial nos.1083 to 1294 which include these petitioners as well.

A counter affidavit has been filed by the Block Development Officer –cum- Returning Officer admitting to the position and who submits that the matter was enquired on a complaint received from the Ex-Chairman of the society and when it transpired that 212 members had been granted membership of the society illegally and without following the proper procedure and hence they were deleted from the voter-list.

It is considering the prima-facie illegality in the order of the Block Development Officer as reflecting from Annexure-7 where while admitting that these petitioners along with others constituting 212 members continue to have the membership of the society yet he proceeded to delete them from the voter-list that this Court by order dated 1.3.2016 while staying the operation of the

order of deletion, issued notice to the respondent no.7 who was added as party by the same order and having responded to the notice, he has registered appearance through Mr. Prasad.

Mr. Prasad has laboured hard to justify the opinion of the Block Development Officer and the reasons behind the same. Alleging illegality committed by the statutory authority in grant of membership to these 212 persons which according to learned counsel was de hors the procedure prescribed under 'the Act' and 'the Rules' framed thereunder for grant of membership, he submits that in the face of the illegality committed, the order impugned requires no interference.

In my opinion the laboured effort of Mr. Prasad is appreciative but cannot justify illegality in the jurisdiction exercised by the Block Development Officer as the Returning Officer which is de hors the provisions of 'the Act' and 'the Rules' framed thereunder as well as the byelaws of the society.

There is absolutely no dispute on the legal position that all such persons who are in the membership of the society unless held disqualified under 'the Act' and 'the Rules' and the byelaws by an order of the statutory authority, would be entitled for having their names in the voter-list. There is again no dispute that these 212 persons whose names stand deleted from the voter-list inclusive



of the present petitioners continue to remain in the membership of the society. The Block Development Officer -cum- Election Officer in the order impugned at Annexure-7 admits to the position that the membership of the society runs from serial nos.1 to 1294 which includes these petitioners as well as some others. The uncontested position which remains thus is that 212 members inclusive of these petitioners continue to be in the members of the society. Even when the respondent no.7 questions the eligibility of these 212 persons on their membership but this issue is yet to be adjudicated upon by a competent forum. Now until such time that these 212 persons including the petitioners who are admittedly on the membership of the society, are removed from the primary membership of the society by an order passed by a competent authority in a duly constituted proceedings certainly the Block Development Officer cum Election Officer has no jurisdiction to delete their names from the voter-list in the garb of rectification of error in the matter of grant of membership because neither 'the Act' nor 'the Rules' bestow any such powers on him. In fact the Block Development Officer cum Election Officer realising his statutory limitations has not passed orders on the membership issue rather has merely deleted their names from the voter list.

Rule 7(4) of 'the Rules' was incorporated under an



amendment introduced in the year 2008 and vested the authorities of the Cooperative Department with the power of grant of membership to such of the members who were denied membership by a society. The procedure is prescribed thereunder. The complaint in the present case is that the statutory procedure has been bypassed resulting in illegal grant of membership. In my opinion even when rule 7(4) of 'the Rules' enables the authorities named thereunder to grant membership in the circumstances discussed therein, it yet does not confer any jurisdiction on these authorities to review such position unless an issue is raised under a dispute filed under section 48 of 'the Act' which also covers a membership issue. Admittedly no such dispute was raised by the respondent no.7 who in fact has tried to circumvent the lawful procedure apparently being aware that the election is round the corner. In my opinion the respondent no.7 thought it proper to remove these members by taking recourse to the jurisdiction of the Returning Officer who in my opinion had no jurisdiction to remove these members from the voter-list until such time that a statutory authority in exercise of power vested under section 48 of 'the Act' has adjudicated on such issue.

The argument so advanced by Mr. Prasad was also a subject matter in a case arising from CWJC No.13060 of 2015 (Kaushal Kishore vs. The State of Bihar) and the conclusion drawn

by this Court would apply on the issue raised herein on all fours:

“

.... Whether or not the prescribed procedure was followed in the matter of grant of membership to those 281 persons, may be a subject-matter of a membership dispute to be raised before the statutory authorities under section 48 of ‘the Act’ but until such time that an opinion is expressed by the statutory authority as regarding grant of membership to these 281 persons it cannot be a subject-matter of an election dispute for in my opinion, until such time that there is an adjudication on the membership of 281 persons their entry into voter list would suffer from no infirmity. There is no discussion in the election petition as to whether the respondent no.7 took any steps to question the membership of these 281 persons before the proper forum. Certainly this issue could not have been raised before the Prescribed Authority by way of election dispute. I would go a step further to hold that once a membership is granted to any person which may be suffering from procedural infraction but that ipso facto cannot be a ground to snatch the membership from him until such time that the charge maker is able to establish that the member concerned suffers from ineligibility to enter into the membership. In so far as the present case is concerned there is no dispute that these 281 persons had attained membership of the society and whose membership is yet to be set aside by a competent forum.”

(Emphasis supplied)

The matter is much worse here for in the present case the Block Development Officer cum Election Officer while acknowledging that these 212 persons continue to be in the membership of the society yet he has gone ahead to delete their names. The adventurous exercise by the Block Development

Officer cum- Election Officer on the complaint made by the respondent no.7 is clothed with illegality and an exercise wholly without jurisdiction.

In the circumstances discussed, the order dated 25.1.2016 passed by the Block Development Officer –cum- Election Officer, Dariyapur, district- Saran impugned at Annexure-7 in so far as it proceeds to delete the names of members appearing at serial no.1083 to 1294 from the voter-list is held illegal and is accordingly set aside. The voters stand restored to their respective places. The interim order passed on 1.3.2016 is hereby confirmed.

The writ petition is allowed. The interlocutory application stands disposed of.

(Jyoti Saran, J)

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