

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5995 of 2013

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Gauri Kumari Wife Of Late Narendra Kumar Resident Of B - 44, Biscomaun Colony, P.S. Alamganj, Town And District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Co - Operative Department, Govt. Of Bihar, Patna
2. The Registrar, Co - Operative Societies, Bihar, Patna
3. The Bihar State Co - Operative Marketing Union (Biscomaun) West Gandhi Maidan, Patna Through Its Secretary
4. The Managing Director, Biscomaun, West Gandhi Maidan, Patna
5. The Biscomaun Karmachari Grih Nirman Samiti Ltd., Biscomaun Karmachari Grih Nirman Samiti Ltd., Biscomaun Colony, Patna, Through Its Secretary
6. The President, Biscomaun Karmachari Grih Nirman Samiti Ltd., Biscomaun Karmachari Grih Nirman Samiti Ltd., Biscomaun Colony, Patna

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 988 of 2013

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Ravi Kumar S/O Late Veer Singh R/O Plot No. B/8, Biscomaun Colony, P.O.- Gulzarbagh, P.S.- Alamganj, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar through the Secretary Co-Operative Department, Government Of Bihar, Patna
2. The Bihar State Co-operative Marketing Union Ltd., Patna at BISCOMAUN Bhawan, West Gandhi Maidan, P.S. Gandhi Maidan, District Patna, through its Administrator.
3. Managing Director The Bihar State Co-Operative Marketing Union Ltd., Patna At Biscomaun Bhawan, West Gandhi Maidan, P.S.- Gandhi Maidan, District- Patna
4. Secretary The Bihar State Co-Operative Marketing Union Ltd., Patna At Biscomaun Bhawan, West Gandhi Maidan, P.S.- Gandhi Maidan, District- Patna
5. Swapan Chatterjee S/O Late N.N. Chatterjee Khasmahal, Road No.3, Chiraiyatand, P.S.- Jakkampur, District- Patna
6. Biscomaun Karamchari Sahkari Grih Nirman Samiti Ltd. Through Its Secretary Biscomaun Colony, P.S.- Gulzarbagh, P.S.- Alamganj, District- Patna

.... Respondent/s

Appearance :

(In CWJC No. 5995 of 2013)

For the Petitioner/s : Mr. Sajat Sinha
Mr. Rajesh Mohan

For the Respondent/s : Mr.

For BISCOMAUN both case: Mr. Parth Sarthi

(In CWJC No. 988 of 2013)

For the Petitioner/s : Mr. Alok Kumar Sinha

For the Respondent/s : Mr. Shail Kumar

For the State: Mr. S.K. Ranjan

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 22-02-2016

1. The writ applications filed under Article 226 of the Constitution of India seek quashing of the order dated 05.12.2012/19.07.2015 passed by the Managing Director BISCUMUAN cancelling the allotments in the Biscomuan colony Patna made in favour of the petitioner(s). Both the writ petitions are identical in nature and as such heard together with the consent of the party. The order present shall govern them.

2. Heard Mr. Alok Kumar Sinha the Advocate who appeared on behalf of the petitioner(s) and advanced the lead submissions as well as Mr. Parth Sarthi who appeared for the BISCUMUAN. Parties have exchanged pleadings.

3. The counsel for the petitioner(s) submitted that the issue raised herein was raised in C.W.J.C. No. 13388 of 2012 and decided on 23.08.2013 by a co-ordinate Bench of this Court. He produced a web-copy of the order which is taken on record and marked 'X' for identification. It is submitted that the writ applications deserves to be disposed of in the light of the said order of the Court wherein the following was held:-

On a consideration of the entire facts and circumstances and the submissions of learned counsels for the parties, I find substantial force in the submission of learned counsel for the petitioners. It is evident that the land in question itself had been acquired on the request and application of the petitioner-society for being allotted to the members of the society.



The Land Lease Agreement giving the land on lease for a period of 25 years was only notionally a lease agreement as it was clearly stipulated therein that the sole purpose of grant of lease was because it was considered desirable, prudent and safe for the lessor BISCOMAUN that absolutely right, title and interest should not be conferred upon the lessee at the first instance and in the beginning the lessee should be given only the status of tenant of the land which may be reasonable and lessor BISCOMAUN may resume possession of the land in the event of non-payment of the whole dues or any part thereof within the period mentioned in the lease deed.

Thus, it is too late in the day for the respondents to contend that since the period of lease has expired without the execution of any deed of absolute sale therefore BISCOMAUN has become owner of the said land. It is clear from the materials on the record that BISCOMAUN itself had been deducting the cost of the land from different employee members of the society to whom the land had been allotted and the entire price had been deducted by it. After receiving the entire amount towards the consideration money of the price of the land along with interest BISCOMAUN ought not claim to continue to be the owner of the land.

As a matter of fact, the Lease Land Agreement clearly stipulates that if the entire dues have been paid within the period indicated therein then there shall be no right of resumption available to the lessor-BISCOMAUN and there should be absolute transfer of ownership of the land to the society or its members. In the said circumstances, it cannot be said that merely on the expiry of the lease which was for a nominal sum of Rs. 151 per annum, after realizing the entire cost of the land from the beneficiaries allottees towards such property, that the ownership of the land would get transferred to BISCOMAUN merely because of period of lease expired. As a matter of fact, the entire cost having been recovered, BISCOMAUN would be obliged to transfer the ownership to the lessee-society or its members.

The court having held so in the penultimate paragraph of the order directed as under:

In the light of the aforesaid discussions, the writ application is allowed and the respondent no.3, the Managing Director, BISCOMAUN is directed to ensure that the order of the Registrar, Co-operative Societies is complied with and sale deeds are executed in favour of the individual allottees within a period of three months from the date of receipt/production of a copy of this order.

4. Mr. Parth Sarthy has only raised an issue of maintainability of the case relying on a decision by the Special Bench of this Court in ***The Organizer, Dehri C.D. & C.M. Union Ltd. vs. State of Bihar (Sp. Bench) 2014 (1) PLJR 695.***

5. Before I deal with the said submission of the Counsel for the respondent BISCOMAUN, be it noted that unquestionably, the impugned order was passed when the respondent BISCOMAUN was under supersession and was being administered/controlled by the Administrator appointed by the State Government. Both the parties in support of their submissions on this issue have relied on ***The Organizer, Dehri C.D. & C.M. Union Ltd. (Supra).***

6. The maintainability of the writ applications against the BISCOMAUN is raised in a later counter affidavit filed on behalf of the BISCOMAUN stating that Managing Committee of the BISCOMAUN has now been constituted and is functional and as such the writ applications against the BISCOMAUN would not be maintainable in law. Some orders passed by a learned single Judge have been enclosed in support thereof.

7. On going through those orders, it does not appear that the issue raised in this applications was specifically raised and dealt with. Those orders are not helpful in resolving the objection of the respondent.

8. The Court considered the order passed by the Special Bench carefully. The Special Bench took notice of the earlier judgment of a Division Bench in the case of **Harendra Narain Banker Vs. The State of Bihar** reported in **1985 P.L.J.R. 1078** wherein analyzing the provisions, it was held that even though 99 % of the shareholding was of the State Government, its Managing Director being appointed by the Government its Apex Managing Committee and its Chairman being all elected by other Co-operatives the Government had hardly any say in managing the affairs. The BISCOUMAN was not State or State instrumentality or Agency amenable to writ jurisdiction. The aforesaid proposition of law was, however, diluted to some extent by a Division Bench of this court in **Nand Kishore Rai Vs. State of Bihar (1988 PLJR 1065)** when it was held that if the cooperative society is being run by its Managing Committee then no writ will lie but if the Managing Committee has been suspended and the Co-operative Society is being run by a Special Officer/Administrator then writ shall lie. The Special Bench also conceived a situation where in exercise of power under relevant provisions of Bihar and Orissa Cooperative Societies Act 1935 the Managing Committee is either suspended or superseded or dissolved

by the Registrar of the Cooperatives Bihar or Special Officer and the Administrator is appointed, the situation shall challenge. It shall become an instrumentality of the State or a State within the meaning of Article 12. The Court cannot do better than to extract herienbelow the relevant observation:-

But the situation drastically changes when in exercise of power either under Sections 41(1), 41(3) or Section 41(5) of the Bihar & Orissa Co-operative Societies Act, 1935 as it then stood, the Managing Committee is either suspended, superseded or dissolved by the Registrar of Co-operatives, Bihar and either a Special Officer is appointed or an Administrator is appointed replacing the Managing Committee of the Co-operative.

Firstly when power is exercised under Section 41(1) of the Act, as it then stood, the Special Officer has to be a Government servant and this power is exercised in cases where in respect of the registered Society, economic interest of the Government is apparently clear. Thus, in such a situation not only the economic interest of the Government is apparently clear. Thus in such a situation not only the economic interest of the Government is present and admitted but the entire responsibility of Managing Committee and all decisions that could be taken by it vest in a Government servant, are naturally controlled by the Government. Thus, in addition to economic interest, there automatically becomes a case of deep and pervasive control even though for a limited period.

Then when power is exercised under Section 41(2) or 41(3) of the Act and an Administrator is appointed during the period when the Managing Committee of the Co-operative is superseded, the Administrator is under control of Registrar under Section 41(7). Similarly when under Section 41(5) an Administrator is appointed by the Registrar dissolving the Managing Committee, the Administrator is bound by the directions issued by the Registrar in terms of



Section 47(5) and as such the entire administration of the Co-operative comes under the superintendence of the Registrar, who is a statutory authority. This, in my view, makes the powers and functions exercised by the Special Officer or the Administrator, as the case may be, amenable to writ jurisdiction under Article 226 of the Constitution notwithstanding the co-operative by itself not being 'State' within the meaning of Article 12 of the Constitution. The Special Officer or the Administrator, as the case may be, during the suspension or supersession of the Co-operative works under direct authority of the State and controlled by the State exercising all powers and functions of the Managing Committee. He is State for the purposes of Article 12 of the Constitution.

There is no gainsaying that whenever a Government Officer is appointed as an Administrator or a Special Officer replacing the Managing Committee by nature of the person being Government officer, he does not cease to be so when acting in such capacity. He continues to be a Government servant and, thus "State" directly being part of executive State within the meaning of Article 12 of the Constitution.

9. In the case at hand, as I have noticed, the impugned order was passed when there was no duly elected Managing Committee of the respondent BISCOMAUN. It was under supersession and administered by the Administrator. The Managing Director was functioning under the control of the Administrator/Special Officer.

10. This Court considering the above is unable to accede to the submission of the respondent that the impugned order in the case even if passed by the BISCOMAUN while under supersession and direct controlled of the Administrator appointed by the Government

is not liable to be interfered as a duly elected Managing Committee has now taken over the management and affairs of the BISCOMAUN.

11. When the writ petition was filed challenging the order the BISCOMAUN was under suppression and thus amenable to writ jurisdiction of this Court. Even if subsequent thereto the Managing Committee is constituted, the jurisdiction of the Court shall not stand curtailed or restricted as legality of the Order passed by the BISCOMAUN while under suppression is being tested by the Court. The factual position which existed on the date of filing of the writ application shall be relevant to consider such objection.

12. The counsel for the respondent-BISCOMAUN has not placed before the Court, the law which in the aforesaid factual profile shall debar the writ court from passing order to correct the illegality in exercise of its power of judicial review. The Special Bench of this Court has also not held so. On the contrary, it is settled law that the case of the parties shall be considered with reference to the date on which the writ petition was filed.

13. This Court finds no merit in the objection of the respondent-BISCOMAUN to the maintainability of the writ petition.

14. In the light of discussions made hereinabove, the writ application is allowed. The order dated 5.12.2012 passed by respondent no. 4 cancelling the allotment of plot no. B-44 in the BISCOMAUN colony Patna is quashed and set aside. Similar order

impugned in CWJC No. 988 of 2013 is also quashed. The case of the petitioner(s) of both the cases shall be dealt with by the respondent-BISCOMAUN in the light of the directions issued by this Court in CWJC No. 13388 of 2012, operative part whereof is noticed above.

15. No order as to cost(s).

(Kishore Kumar Mandal, J)

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