

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.856 of 2015

Along with

Interlocutory Application No. 5298 of 2016

And

Interlocutory Application No. 5394 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 14757 of 2011

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Hanuman Nagar Prakhand Matsyajivi Sahyog Samiti Ltd. Dilahi through its Secretary Rameshwar Sahni son of Late Savkhi Sahni, resident of village -Dilahi, P.S-Bisanpur Distt- Darbhanga.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Co-operative Societies, Bihar, Patna.
3. The Registrar, Co-operative Societies, Bihar, Patna.
4. The Joint Registrar, Co-operative Societies, Bihar, Patna.
5. The District Co-operative Officer, Darbhanga.
6. The District Co-operative Officer, Sitamarhi.
7. The Bihar State Election Authority, Bihar through the Chief Election Officer, Bihar State Election Authority, Patna.
8. Kavita Devi wife of Nand Kishore Sahni, resident of village-Tisidih, P.S-Moro, Distt-Darbhangha, Chairman of Deemed Hanuman Nagar Prakhand Matsyajivi Sahyog Samiti Ltd. Tisidih, Darbhanga.
9. Sunil Kumar son of Late Shivajee Sahni.
10. Asha Devi wife of Awadhesh Sahni.
11. Pawan Sahni son of Bhulla Sahni.
12. Mahesh Sahni son of Hazari Sahni.
13. Reeta Devi wife of Shankar Sahni.
14. Satish Kumar son of Chandeshwar Sahni.

All respondents No. 9 to 14 all members of Deemed Hanuman Nagar Prakhand Matsyajivi Sahyog Samiti Ltd. Tisidih, Darbhanga.

15. Hanuman Nagar Prakhand Matsyajivi Swablambi Sahkari Samiti Ltd. Tisidih through its Chairwoman Pramila Devi wife of Angeshwar Sahni, resident of Village- Tisidih, P.S-Moro, District -Darbhanga.

.... Respondent/s

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Appearance :

For the Appellant : Ms. Mahasweta Chatterjee with
Mr. Ram Nibash Prasad and
Mr. Shamir Kumar Sinha, Advocates
For the State : Mr. Ajay Bihar Sinha, GA 8 with
Mr. Suryakant Kumar, AC to GA 8
For the respondent no. 8 : Mr. Ranjeet Kumar Mishra with
Mr. Pasupati Prasad Sinha,
For the respondents no. 9 to 14 : Mr. Rajesh Kumar Singh
For the Respondent no. 15 : Mr. Rajendra Narayan, Sr. Adv. with
Mr. Lal Babu Singh, Advocate

CORAM:

**HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
CAV JUDGMENT**

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 16-11-2016

Heard learned counsel for the parties.

Re.: Interlocutory Application No. 5298 of 2016
and
Interlocutory Application No. 5394 of 2015

2. Though Interlocutory Application No. 5298 of 2016

has been filed by the respondent no. 15 for vacating the interim stay dated 18.05.2015 and for maintaining *status quo* as obtaining on that date, but the same is not pressed as the parties have agreed that the appeal itself may be finally disposed off.

3. Similarly, learned counsel for the appellant also has not pressed Interlocutory Application No. 5394 of 2015 in which prayer has been made for quashing the deemed registration certificate dated 30.01.2015 of respondent no. 15, the constitution of its Ad-hoc Managing Committee dated 30.04.2015 and the registration certificate of the reorganized society dated 08.05.2015.

Thus, both the Interlocutory Applications stand disposed off.

Re.: Letters Patent Appeal No. 856 of 2015

4. The challenge in the present appeal under Clause 10 of the Letters Patent of Patna High Court is to the judgment dated 07.11.2014 passed by the learned Single Bench by which C.W.J.C. No. 14757 of 2011 filed by the respondents no. 8 to 14 has been allowed.

5. The respondents no. 8 to 14 were the office bearers and members of the Hanuman Nagar Prakhand Matsyajivi Sahyog Samiti Limited, Tisidih and had filed a petition before the Assistant Registrar, Co-operative Societies, Darbhanga on 25.12.2002 for registration of the said society under the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act'). The said application, along with the required documents, including the bye-laws were sent to the Registrar, Co-operative Societies, Bihar under letter no. 33 dated 16.01.2003 for the needful as he was the person empowered to register such a society. Since there was no refusal to register the society, as per Rule 8 of the Act, the society having been deemed to be registered, the respondent no. 8 claiming to be the Chairman of the society, filed Miscellaneous Case No. 07 of 2003 before the Hon'ble Minister of the Co-operative Department, Bihar for grant of deemed registration certificate. The said Miscellaneous



Case No. 07 of 2003 was initially dismissed for default and pursuant to filing of restoration Case No. 103 of 2007, the matter was referred to the Registrar, Co-operative Societies, Bihar, who restored Miscellaneous Case No. 07 of 2003 and also ordered for issuance of deemed registration certificate to the society and directing the Assistant Registrar, Co-operative Societies to prepare the record for such purpose. The Assistant Registrar, Co-operative Societies, Bihar requested the Assistant Registrar, Co-operative Societies, Darbhanga Division for sending the concerned record, and the same was sent under Memo No. 141 dated 17.06.2008. However, no steps were taken and, in the meantime, the Joint Registrar, Co-operative Societies, Bihar issued letter no. 6031 dated 02.11.2010 informing that all the societies of the concerned block have already been merged in one society in light of amendment in Section 11 of the Act and, therefore, issuance of deemed registration certificate was not legal. Since in Hanuman Nagar block, on the date of reorganization in terms of Sections 8(1)(b) and 11(b) of the Act and proviso to Section 11 (4) of Bihar Self-Supporting Co-operative Societies Act, 1996 (hereinafter referred to as the '1996 Act'), as on 02.08.2010, the date with effect from which the amendment was brought about, there were two fishermen Co-operative Societies namely, Hanuman Nagar Prakhanda Matsyajivi Swablambi Sahyog



Samiti Limited, Tisidih registered under the 1996 Act and Hanuman Nagar Prakhand Matsyajivi Sahyog Samiti Limited, Dilahi registered under the Act, upon merger, Hanuman Nagar Prakhand Matsyajivi Sahyog Samiti Limited, Dilahi, the appellant, came into existence on 17.02.2011. Thus, the deemed registration certificate was not issued to the Hanuman Nagar Prakhand Matsyajivi Sahyog Samiti Limited, Tisidih. The office bearers and some members (respondents no. 8 to 14) filed C.W.J.C. No. 14757 of 2011 against the said order of refusal dated 02.11.2010. The learned Single Judge, by judgment dated 07.11.2014, has allowed the writ petition and directed for issuance of deemed registration certificate of Hanuman Nagar Prakhand Matsyajivi Sahyog Samiti Limited, Tisidih and in terms of amendment to the Act, to merge the new society with the other society and constitute an adhoc Managing Committee which should get election done for permanent Managing Committee. Being aggrieved by the same, the appellant, which is the society formed pursuant to merger of the other two societies, has preferred the present appeal.

6. Learned counsel for the appellant submitted that the direction for issuance of the deemed registration certificate ought not to have been given by the learned Single Bench in view of the amendment to the act in the year 2010, as w.e.f. 02.08.2010 there



could not have existed more than one society in a particular block. It was further submitted that the direction to merge the so-called new society with that of the appellant society and to constitute an adhoc committee is also erroneous inasmuch as Section 12 of the Act provides that only the certificate of registration issued by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered and, thus, the same not having been issued, as on 02.08.2010, the said society could not have been merged into the newly formed appellant society. Learned counsel further submitted that most of the members of the deemed registered society, as per the order of the learned Single Bench, are members in the appellant society and since no person can be member of more than one society, the issue of incorporation and formation of any new society has become infructuous, after coming into existence of the appellant society and, thus, the directions given by the learned Single Bench in the impugned order are unsustainable. Learned counsel further submitted that the learned Single Bench has failed to appreciate the fact that once the appellant society had been registered, its registration could have been cancelled only as per provision of Section 11 (4) of the Act and, thus, the direction to open the issue of merger once again, without cancellation of the registration of the appellant society is erroneous. Learned counsel



also submitted that all the 305 promoters of the society of the respondents no. 8 to 14 had not been made party and, thus, the writ petition cannot be said to have been filed by the said society. Learned counsel also submitted that if at all, the society of the writ petitioners is deemed to have been constituted, there ought to have been some activity to indicate such formation of the society but the writ petitioners have not discharged any of the obligations under the Act so as to indicate that the society stood deemed to be constituted.

7. Learned counsel for the respondents submitted that the order of the learned Single Judge is well considered both on facts as well as in law and the appeal is fit to be dismissed.

8. Having considered the rival contentions, we find no merit in the present appeal. The simple issue before the learned Single Bench was with regard to there being deemed registration of Hanuman Nagar Prakhand Matsyajivi Sahyog Samiti Limited, Tisidih in view of the provisions of Section 11 (1) and (2) of the Act. For such purpose, it would be useful to reproduce the relevant sections of the Act.

“11. Registration. – (1) *If the Registrar is satisfied that a society has complied with provisions of this Act and Rules and that its proposed bye-laws are not contrary to this Act, or to the Rules, he may register the Society and its bye-laws. And he will send by registered post to the organizer/ promoter of the Society, within 90 days from the date of submission of application, a registration certificate and original copy of the registered bye-laws duly sealed and signed by him.*

(2) *If in the opinion of the Registrar, the conditions*

stipulated under subsection (1) above appear not have been complied with, within 90 days of presentation of the application before him, he shall record reasons for refusal and refuse to register the society and send this decision by registered post to the organiser/ promoter. In the event of the refusal not being sent within the stipulated period, the Society shall be deemed registered and in such a situation the Registrar within one month thereafter shall send by registered post, the registration certificate for deemed registration along with original copy of the registered byelaws duly sealed and signed.

(3) In the event where the organiser/ promoter has received the refusal order in accordance with the provisions of sub-section (2) or has not received registration certificate of deemed registration an appeal shall lie to the Registrar if the refusal order has been passed by an officer appointed to assist the Registrar under sub-section 2 (a) of section 6 of this Act and to the State Government if such order has been passed by the Registrar himself:

Provide that such appeal shall lie within sixty days from the receipt of the refusal order or within sixty days from the expiry of the prescribed period of communication in case of deemed registration.

(4) If in the opinion of the Registrar, the organiser/ promoter has got a society registered by fraud or mistake, then the Registrar shall appeal to the State Government for cancellation of the said registration.

Provided that such appeal may be filed within sixty days from the registration order.

12. Evidence of registration. – *A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled.”*

9. Thus, when the writ petitioners had applied before the concerned authority on 25.12.2002 for registration of the their society under Section 11 of the Act, the authority could have refused such registration within 90 days of the submission of the application; however, if the same was not done, the society shall be deemed to be registered and the Registrar shall send by registered post, the registration certificate within one month thereafter along with the



original copy of the registered bye-laws duly sealed and signed. The admitted position is that the application for registration has not been found unfit and, thus, under the statute, it was obligatory on the part of the authority to merge the society and after 90 days from the date of submission of the application, the society came into existence, as per the deeming provision of the Act. Thus, once the society is born, the issuance of registration certificate, being merely a ministerial act, shall not lead to any liability being fastened on the society due to non-performance of the obligation on the part of the authority concerned to issue a formal registration certificate. In the present case, the same, on appeal, as provided under Section 11(3) of the Act was also allowed directing issuance of a registration certificate of deemed registration and, thus, in the eyes of law, after 90 days from the date of submission of the application on 25.12.2002, the deemed society became a legal entity.

10. The contention of learned counsel for the appellant that Section 12 of the Act stipulates that a certificate of registration is evidence of registration and the same not having been granted to the society of the writ petitioners, a direction to consider it to be a society on the cut off date, i.e., 02.08.2010 is erroneous, is fit to be noticed only for the sake of rejecting such argument. Section 12 of the Act only speaks about the certificate of registration signed by the



Registrar to be conclusive evidence that the society mentioned therein is duly registered; however, non-issuance of certificate cannot be said to be conclusive proof of non-registration of a society. Thus, we have no hesitation to hold that as per the provision of Section 11 of the Act, upon no refusal being either recorded on file or indicated to the writ petitioners, the pending application for registration of the society under the Act, after 90 days of such application being made, stood registered and only the formal issuance of certificate remained. Non-issuance of such certificate of deemed registration would not have the implication of the society not having come into existence. The argument of learned counsel for the appellant that the society did not start functioning and that many members of the deemed society have become members of the newly constituted appellant society is not relevant, for the reason that it relates to the functioning and membership of the society concerned and has no bearing on the issue involved in the present case. Even if there is any truth in the submission of learned counsel for the appellant, it constitutes a separate cause of action, to be agitated before the statutory forum and is not relevant to the issue whether the society came into existence after 90 days of filing of the application for registration on 25.12.2002. Once it has been held that the society of the writ petitioners is deemed to have come into

existence after 90 days from 25.12.2002, as per the amendment brought about in the Act with effect from 02.08.2010, the society of the writ petitioners was, but necessarily, required to be also amalgamated, along with the other two existing societies as on that date. The same not having been done, the direction of the learned Single Bench to such effect, is, but a natural consequence, flowing from the deemed registration of the society of the writ petitioners.

11. In view of the aforesaid, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal which, accordingly, stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, ACJ *I agree.*

(Hemant Gupta, ACJ)

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