

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No.748 of 2017

1. Kuber Grih Nirman Sahkari Samitee Maryadit Rohinipuram, Raipur (Chhattisgarh), Through Vice President, P. P. Tiwari, Now Through Vice President Bhaktbhushan Chandravanshi, S/o Late Shri G. L. Chandravanshi, Aged About 67 Years, R/o E- 36, Rohinipuram, Raipur, District : Raipur, P. S. D. D. Nagar, Raipur, Tah. & Distt. Raipur (Chhattisgarh)
2. Sewak Ram Pandey, S/o Shri Gendram Pandey Aged About 70 Years R/o Rohinipuram, Raipur 492010, Director Of The Kuber Grih Nirman Co-Operative Society, Rohinipuram Raipur (Chhattisgarh)
3. S. C. Nandi, S/o Shri Nagendra Nath Nandi, Aged About 68 Years R/o Rohinipuram, Raipur 492010, Director Of The Kuber Grih Nirman Co-Operative Society, Rohinipuram Raipur (Chhattisgarh)
4. K. K. Puranik, S/o Late Shri Ramsahai Puranik Aged About 74 Years R/o Rohinipuram, Raipur 492010, Director Of The Kuber Grih Nirman Co-Operative Society, Rohinipuram Raipur (Chhattisgarh)
5. Hemraj Kannamwar, S/o Late Shri Natthuji Kannamwar, Aged About 72 Years R/o Rohinipuram, Raipur 492010, Director Of The Kuber Grih Nirman Co-Operative Society, Rohinipuram Raipur (Chhattisgarh)
6. K. P. Tiwari, S/o Satanand Tiwari, Aged About 47 Years C-81, Geleprasth V. I. P. State, Shankernagar, Raipur 492007, Director Of The Kuber Grih Nirman Co-Operative Society, Rohinipuram Raipur (Chhattisgarh)
7. Dr. D. K. Jain, S/o Late Shri Bhagwandas Jain, Aged About 75 Years Sharbhi Sadan, Ganeshram Nagar, Raipur 492001, Director Of The Kuber Grih Nirman Co-Operative Society, Rohinipuram Raipur (Chhattisgarh)
8. Smt. Meena Banjari, W/o Shri Bhanupratap Banjari, Aged About 55 Years Kundrapara, Gudiyari, Raipur, Director Of The Kuber Grih Nirman Co-Operative Society, Rohinipuram Raipur (Chhattisgarh)

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Versus

1. Deputy Registrar, Co Operative Society, Chhattisgarh Vivekanand Nagar, Raipur, Dist. Raipur (Chhattisgarh)
2. Mahant Pathak, Kankali Para, Raipur, Dist. Raipur (Chhattisgarh)

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For Petitioners	:	Shri B. P. Gupta, Advocate
For Respondent No.1	:	Shri Ramakant Mishra, Dy.AG
For Respondent No.2	:	Shri R. Pradhan, Advocate (Caveator)
For Interveners	:	Shri Bhaskar Payashi, Advocate

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

26/04/2017

Heard on I.A.No.2, an application for seeking permission to intervene in the present writ petition filed by the members of the society as also I.A.No.4, an application for intervention by the complainant/purchaser of land.

2. Learned counsel for respondent-intervener submits that they may be heard in the matter in opposition of the writ petition, because any decision in the petition, may affect either their interest as members or as purchasers.

3. One of the intervener is said to be Mahant Pathak, complainant, who is making allegation against the society, on which complaint, the impugned order is said to have been passed.

4. There is objection to the intervention of the alleged purchaser/complainant, by submitting that these persons have only sought intervention without there being any interest involved therein.

5. Having considered the submission of learned counsel for the parties, I am inclined to allow the applications (I.A.No.2 & I.A.No.4) of intervention.

6. Accordingly, the applications (I.A.No.2 & I.A.No.4) are allowed. Intervener-Ghanshyam Bokade, Ramadhar Mahobiya and Smt. Sushila Tiwari are permitted to intervene in support of the petition though without filing their pleading. Intervener-Om Prakash Tiwari is permitted to intervene in opposition of the petition without any liberty to file any other document.

7. Heard on admission.

8. The petitioner has challenged legality and validity of order dated 14-03-2017 passed by the Deputy Registrar, Cooperative Society, by which, the Deputy Registrar has passed an order for winding up of the society.

9. At the outset, learned State counsel submits that there is alternative statutory remedy of appeal before the Joint Registrar, Cooperative Societies, Raipur, therefore, this petition is not maintainable.

10. Replying to the objection of the maintainability, learned counsel for the petitioner submits that the impugned order has been passed in the background that the petitioner had filed a petition initiating contempt proceedings against the Registrar and the Registrar was noticed. In this background, the Registrar has prevailed upon the Deputy Registrar to initiate proceedings of winding up of the society. Next submission is that the proceedings of winding up of society were initiated by the Deputy Registrar on certain complaints without there being any application by the members of the society. According to him, such action cannot be said to be action on his own motion, therefore, power under Section 69(2) of the Chhattisgarh Cooperative Societies Act, 1960 could not be invoked.

11. It is not in dispute that the petitioner was granted opportunity to show cause, reply was obtained and thereafter, the impugned order has been passed. The impugned order is neither passed by the Registrar nor impugned order shows that the Deputy Registrar acted on the instructions/directions/dictates of the Registrar. The impugned order has been passed by the constituted authority. It is also not a case where the appeal has to be filed before the Registrar, but the appeal shall lie before the Joint Registrar. The grounds, which has been raised in this petition, are not those grounds, on which the Writ Court may not be insist to first exhaust alternative remedy and examine the merits of the case itself. Though, there is no impediment under the law to entertain any such grievance, it is only a rule of self imposed restriction that where a party has efficacious remedy of statutory appeal, this Court would not ordinarily invoke its jurisdiction under Article 226 of the Constitution of India.

12. The settled legal position is that in case, there is violation of principles of natural justice or the authority, who has passed the order is not having jurisdiction or against the action of malice, this Court may not insist on taking recourse to alternative remedy and may itself examine the case on merits. That is not the situation in the present

case.

13. Therefore, this petition is disposed off with liberty to file an appeal before the Joint Registrar. Certified copy of the impugned order be returned to learned counsel for the petitioner, after retaining photocopy of the same. The period, during which, the petition remained pending before this Court, shall be excluded for the purpose of counting the period of limitation in filing appeal.

SD/-
(**Manindra Mohan Shrivastava**)
Judge