

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.526 of 2018

IN

Civil Writ Jurisdiction Case No. 2597 of 2009

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Sri Raman Kumar, son of Late Bhup Narayan Lal Das, R/o – Adarsh Colony, West Patel Nagar, P.O. – L.B.S. Nagar, P.S. – Shastri Nagar, Patna 23.

.... Appellant

Versus

1. The State of Bihar through its Chief Secretary, Old Secretariat, Patna
2. The Secretary, Department of Cooperative, Government of Bihar, Patna.
3. The Registrar, cooperative Societies, Government of Bihar, Patna.
4. The District Cooperative Officer, Patna.
5. The Bihar Asainik Sewa Sahkari Griha Nirman Samiti Ltd. Patna, Magistrate Colony, Khajpura, P.S. – Shastri Nagar, Patna – 800025.

....Respondent 1st Set.

6. Smt. Meena Das Daughter of the Bhup Narayan Lal Das, wife of Uma Shankar Lal Das, aged about 64 years resident of Adarsh Patn, Katchari Road, Baidyanath, Deoghar (Jharkhand) – 814112.
7. Sri Lalan Kumar son of Late Bhup Narayan Lal Das, aged about 62 years resident of Chitragupta Nagar, Kayasth Tola, P.O. and District – Saharsa.
8. Smt. Veena Arbind, daughter of Late Bhup Narayan Lal Das, Wife of Dharendra Kumar Das Arbind, aged about 57 years resident of village + P.O. – Paraul, Via Kaluahi, P.S. – Arer, District – Madhubani.

Petitioners Nos. 1, 2 and 4/Respondents 2nd Set.

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Appearance :

For the Appellant/s : Mr. Yogendra Mishra, Advocate

For the Respondent/s : Mr. Raj Ballabh Prasad Yadav- AAG11

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 16-07-2018

Challenge in the present Letters Patent Appeal is to the judgment dated 06.03.2018 passed by learned writ court in CWJC No. 2597/2009. By the impugned judgment, the learned writ court has refused to quash and cancel the order dated 02.09.2008 passed by the Registrar, Cooperative Societies, Bihar, Patna (Respondent no. 3), by which he has dismissed the petitioner's application registered vide Dispute Case No.



103/2005 and Dispute Case No. 13/2006.

2. Learned writ court has also refused to quash the letter dated 29.10.2007 issued by the Secretary of the Society by which the petitioner's membership of the said society has been terminated. Having refused to grant the aforesaid reliefs to the petitioner, the learned writ court could not be persuaded to issue a writ of mandamus commanding the respondents to ensure that a plot of land of the category and area which the petitioner is entitled to in the Society by virtue of the membership of the Society is allotted to him and the possession of the same is given to him by completing all formalities such as registration etc. and to pay a fine and suitable compensation.

3. While dismissing the writ application, the learned writ court came to a conclusion as under: -

“9. Apparently, the present position is that the petitioner is not a member of the Society as his membership has already been terminated. The termination order was not challenged even though for other reliefs the petitioner had approached the Registrar, Cooperative Societies, which would mean that he had waived his right to challenge the decision of termination of membership. Moreover, even in the termination



order, it has clearly been mentioned that the petitioner may file review/appeal within thirty days from the date of receipt of the order but the petitioner failed to avail of the remedy of review/appeal.”

4. On going through the materials available on the record and in the narration of facts in the impugned judgment of the learned writ court, we find that the writ petition was initially filed by one Bhup Narayan Lal Das, who died during pendency of the writ application on 09.03.2011, thereafter these petitioners-appellants along with the wife of the deceased petitioner were substituted. The wife of the deceased petitioner also died on 28.07.2014, and, thereafter, the present appellants who remained on the records are the two sons and two daughters of the original writ petitioners.

5. The undisputed facts of the case have been noticed by the learned writ court from paragraph-6 onwards. The dispute seems to have arisen when the Society earlier allotted a plot to the original petitioner and 12 other members of the Society but because the allotment could not materialize as the land could not be made available to the Society, the allotments so made were subsequently revised in which a plot measuring 3885 sq. ft. was allotted to the petitioner. Twelve other members were also given



land either of the same area or even similar than which was allotted to the petitioner. The petitioner was however was not satisfied with this revised allotment which was a little bit lesser than the earlier area of 3926 sq. ft. allotted to the petitioners. The other members accepted the revised allotment.

6. The original petitioner thereafter moved to the Registrar, Cooperative Societies, for a direction to the Society to ensure allotment of the land of the same area with same locations and situations. The Registrar, Cooperative Societies (respondent no. 3) issued a direction to the Society to provide land of similar area in similar location and situation, but the Society was unable to provide such plot to the petitioner, the petitioner was offered an alternative plot which was available and feasible for the Society to provide him at that point of time. The original petitioner did not agree with the offer made by the Society, rather he filed a complaint before the Registrar alleging that his direction was not complied with by the Society. The Registrar, Cooperative Societies ordered supersession of the Society which was challenged up to this court in CWJC No. 4541/1999 which was allowed and the order of supersession was quashed vide order dated 04.03.2005.

7. The learned writ court has quoted the relevant part of the order dated 04.03.2005 in CWJC No. 4541/1999. The



learned writ court while taking note of the facts and circumstances of the case with reference to the grievance of the original petitioner took note of the attempts made at the earliest stages of the proceedings of the writ court to reconcile the matter between the parties and found that in the 4th supplementary affidavit filed on behalf of the newly added President and Secretary of the Society, the resolution of the Society taken in its meeting on 14.02.2005 has been brought on record and through the resolution so taken by the Society an offer was made to the original petitioner to accept a plot from survey plot no. 370 (as indicated at serial 4 (ka) of the resolution) or the other two plots, but in reply to the 4th supplementary affidavit the original petitioner did not accept the offer. At this stage, the learned writ court in CWJC No. 4541/1999 recorded *inter alia* as under: -

“From the strange and curious attitude taken by respondent no. 7 it appears that he is not interested in a plot of land but for reasons best known to him he only wants to carry on a futile and useless litigation. In course of this proceeding this Court tried to help respondent no. 7. The counsel appearing for the petitioners was told clearly that in fairness the Society must allot to him a suitable piece of land. It was



partly due to the observations of the court that the petitioners changed their attitude towards respondent no.7, agreed to redress his grievances to accommodate him. It was with that end in view that the Society made him an offer of three plots but from his obdurate stand the court is convinced that it is impossible to help respondent no. 7.

Respondent no. 7 is demanding from the Society something that is impossible for it to give. It is not that survey plot no. 362 is still available to the Society and yet it is not giving a lay plot from it to respondent no. 7. Survey plot no. 362 is not available to the Society and for that reason alone no part of it the Society can give to respondent no. 7.”

8. It is worth taking note that in the aforesaid writ application Society was the writ petitioner and the original writ petitioner in the present case was respondent no. 7.

9. In the aforementioned background when the Society allotted survey plot no. 377 to the petitioner vide order



dated 04.04.2005 and requested him to take possession of the land and invited submission of his confirmation with respect of option, the petitioner failed to avail of the opportunity within the stipulated time and once again he filed a contempt application before the Registrar, Cooperative Societies who vide his order contained in memo no. 698 dated 28.01.1997 (Annexure-6 to the writ application) referred the same to this Hon'ble Court for initiation of proceeding of contempt under the Contempt of Court Act.

10. The learned Single Judge of this court disposed of the contempt application being MJC No. 1747/2005 vide order dated 16.11.2006 saying that the court was satisfied that there was no occasion to initiate any contempt proceeding. After dismissal of the contempt application the Society in its General Body Meeting decided to terminate the membership of the original petitioner from the Society and the Board of Directors approved the same with a liberty to the petitioner to file a review/appeal, as provided by the bye-laws of the Society but the original petitioner did not file any review/appeal. Instead of filing review/appeal, he did not raise any issue in this regard. The learned writ court has found and this has not been disputed before us that the petitioner did not challenge the termination of his membership from the Society. The Dispute Case No. 103/2005 was ultimately



dismissed vide order dated 02.09.2008 as contained in Annexure-29 to the writ application. This order of respondent no. 3 has been sought to be challenged in the present writ application, and at this stage in the writ application a challenge was also made to the decision of the Society terminating the membership of the original petitioner.

11. It is further a matter of record that earlier when the original petitioner complained about non-compliance of the order dated 26.10.1994 against the Society, he had filed supersession case no. 22/1995 which ultimately reached to this court and the issues involved therein were decided in CWJC No. 4541/1999, but the application of the original petitioner seeking initiation of a contempt proceeding was registered as Contempt Case No. 23/1995 by respondent no. 3 and the learned Additional Registrar, Cooperative Societies, Bihar while considering the Contempt Case No. 23/1995 came to a conclusion that the respondents had willfully disobeyed the order of the court of Joint Registrar and therefore referred to whole matter to this court for initiation of proceeding of contempt under the Contempt of Courts Act, 1970. The records also shows that the original petitioner had filed yet another contempt Reference Case No. 85/1997 in the court of Additional Registrar, Cooperative Societies, Bihar, Patna and the learned Additional Registrar again



referred the matter to this court for initiation of contempt proceeding against all the respondents before him. On the basis of the reference made by the Additional Registrar, Cooperative Societies, Bihar, Patna vide his letter no. 7844 dated 04.09.1997 (Annexure-10 to the writ application) an original Criminal Miscellaneous (DB) No. 21/1997 was initiated by this court against the alleged contemnors. During pendency of the original criminal miscellaneous case, CWJC No. 4541/1999 had already been disposed of and the order of supersession of the Managing Committee of the Society passed by the then respondent no. 3 at the instance of the original petitioner was set aside.

12. While disposing of the original Cr. Misc. (DB) No. 21/1997 vide order dated 11.09.2008, the Hon'ble coordinate Bench of this court recorded inter alia as under: -

“We made best efforts, as could be made by us, in order to resolve the controversy between the parties in an appropriate and legal manner. However, we confess, we have failed.”

While concluding and summing up the reasons for not proceeding with the contempt application the Hon'ble Division Bench has recorded as under: -

“.. . Inasmuch as the original award is no longer there and the same stands modified by a judgment and order rendered by this Court in its



constitutional writ jurisdiction, we were not in a position to enforce the original award for which the instant proceedings had been initiated, but having regard to the fact that this Court in its constitutional writ jurisdiction directed allotment of some other plot of land in favour of the said member of the Co-operative Society, we made all out efforts to sort out the differences between the parties, but, as indicated above, we have miserably failed. ...”

13. In the aforementioned background of the case when the writ application giving rise to the present Letters Patent Appeal was heard by the learned writ court, the learned writ court held that under the circumstances, no relief can be granted to the petitioners and the writ application has been dismissed accordingly.

14. Mr. Yogendra Mishra, learned Advocate representing the appellants in the present case has sought to challenge the judgment of the learned writ court. His submission is that the learned Single Judge has gone by the past history of the case and could not appreciate that a fresh cause of action arose to the original petitioner under the order of this court dated 04.03.2005 passed in the writ application as contained in



Annexure-15 to the writ petition. It is submitted that the learned Single Judge has returned a wrong finding that the father of the appellants did not respond within thirty days to the respondent society, therefore, it is a perverse kind of finding. It is further submitted that under the orders of this court (Annexure-15 to the writ application) the appellant's father indicated his choice of plot no. 377 vide Annexures- 18 & 19 and the respondent Society allotted the said plot to him vide Annexure-20, and therefore the right once vested in the appellant's father cannot be divested after subsequent events whatsoever.

15. It is further contention of Mr. Mishra, learned Advocate, that the finding of the Hon'ble Single Judge that the membership of the appellant's father had been terminated and the original member did not challenge the termination letter and so the appellant has no cause is fully erroneous, misconceived and perverted inasmuch as the said finding has been recorded without going into the provisions of Section 48 of the Bihar Co-operative Societies Act, 1935 under which the dispute has been raised before the respondent Registrar. It is submitted that even if the decision of the Society terminating the membership of the appellant's father was not challenged before the Registrar, Cooperative Society, the dispute between the past member or the persons claiming through the deceased member is very much



maintainable so the dismissal of the writ petition is completely perverse and erroneous. Lastly, it is submitted that the termination of membership was itself in violation of the principles of natural justice.

16. Learned counsel representing the State has opposed the Letters Patent Appeal. It is his submission that the appellants are pursuing a frivolous kind of litigations which will be evident from the various orders passed by this court in this writ application, contempt petition and the original Cr. Misc. which were disposed of earlier.

17. It is submitted that the contention of Mr. Mishra, learned Advocate for the appellants that a fresh cause of action arose to the original petitioner under the orders of this court as contained in Annexure-15 is a misconceived submission. It is submitted that on perusal of Annexure-15 to the writ application, it would appear that so far as the claim of the petitioner for the same plot of the same area and location was concerned, it was not possible for the Society to provide him the same and therefore taking what was offered to the petitioner is in full satisfaction of the direction issued by the Joint Registrar, Cooperative Societies to the Society, the learned writ court had set aside the impugned order of supersession of the Society. In the concluding part of the judgment, the learned writ court observed as under: -



“Before closing this matter the court would still like that respondent no. 7 be given one more chance. It is accordingly directed that it will be open to respondent no. 7 to intimate the Society in writing within two months from today in regard to his acceptance of any of the three plots offered to him or in lieu of the land to accept the money as offered to him by the Society. In case respondent no. 7 gives such an intimation to the Society within two months, the Society will allot in his favour the plot of land opted by him and shall complete the formalities of transfer and registration without any delay. In case respondent no. 7 opts for payment of money, it would be similarly paid to him within two months from the date of receipt of his letter. In case, however, respondent no. 7 fails to exercise his option within two months from today, the Society will be free to dispose of three plots of land as it may deem fit and proper, in accordance with law and the rules and by-laws governing it. ...”

18. Learned counsel submits that keeping in mind the operative part of the judgment of the learned writ court in



CWJC No. 4541/1999 (Annexure-15 to the writ application), when this court would look into the order dated 11.09.2008 passed in original Cr. Misc. (DB) No. 21/1997 disposed of on 11.09.2008, it would be apparent and evident beyond any doubt that the opening which was provided to the petitioner in the concluding part of the judgment of the writ court was not availed of by him within the stipulated period, still the Hon'ble Division Bench of this court while hearing the Cr. Misc. Case tried to resolve the controversies in an appropriate and legal manner but the original petitioner was insisting for the enforcement of the original order directing the Society to allot him the same plot. The Hon'ble Division Bench of this court has recorded in so many words that the efforts taken by court have miserably failed. It is, thus submitted that the contention of learned counsel for the appellant at this stage that he had a fresh cause of action under the order of the writ court dated 04.03.2005 is nothing but an attempt to mislead this court. It is submitted that MJC No. 1747/2005 which was filed alleging non-compliance of the order passed in CWJC No. 4541/1999 was also dismissed.

19. It is further pointed out that after the order passed by the learned writ court the Secretary of the Society communicated to him allotment of plot no. A/50 measuring 3000 sq. ft. in Thana no. 11, Tauzi No. 5765, Khata No. 348, Survey



Plot No. 377 of village – Khajpura, P.S. – Shastri Nagar, district – Patna vide Annexure-20 to the writ application. The petitioner however did not accept the same and with his writ application the petitioner has not brought on record any documentary evidence to show that he was ready to accept the offer made by the Society. The petitioner was raising various kind of disputes against the offer made by him and was not willing to accept it. It is because of these reasons when the contempt petition came for consideration before this court the same was dismissed.

20. Learned counsel further submits that the finding recorded by the learned Single Judge is based on the materials available on the record and no part of the finding can be said to be perverted. The petitioner has raised grounds which are ornamental in nature without there being any pleadings or materials in support of the same. Hence, it is contended that the submission of learned counsel for the appellant that termination of the membership was done in violation of the principles of natural justice is again wholly misconceived because in case of Society where the decision has been taken in the General Body Meeting of the members of the Society and the same has been approved by the Board of Directors, the same cannot be said to be in violation of the principles of natural justice.

21. From the pleadings of the petitioner in the writ



application, learned counsel has argued that in fact in various paragraphs the petitioner has made contemptuous statements as attempts have been taken to challenge the correctness of the order passed in the contempt petition by which the court refused to initiate a proceeding for contempt. It is submitted that in view of the order passed in original Criminal Miscellaneous Case by the Hon'ble Division Bench of this Court all contentions of the petitioner that he had been willing to get possession of the allotted plot and ought to get registration of the same done are liable to be rejected. The petitioner was not agreeing for the said plot is a fact now conclusively proved from the order passed by the Hon'ble Division Bench in original Criminal Miscellaneous Case.

22. Learned counsel for the State further points out that in the writ petition the petitioner has contended that for the first time in the 5th supplementary affidavit filed on behalf of the Society he came to know that a show cause notice was issued to him to explain as to why his membership be not terminated for causing financial loss to the society and for making allegations against the society. He has further mentioned that the resolution dated 30.09.2007 (Annexure-26 to the writ application) passed by the members in the General Meeting was also brought on record with regard to which the petitioner had no information prior to the date when the said 5th supplementary affidavit was filed, a copy of



which was served on the petitioner's counsel on 07.09.2008. Therefore, it is submitted that from his own statement made in the writ application it nowhere appears that the petitioner had ever challenged the order of termination of membership in Dispute Case No. 103/2005 and Dispute Case No. 13/2006 which were dismissed on 02.09.2008, rather his plea is that it could not have been challenged because he came to know about the Resolution only on 07.09.2008. It is thus pointed out that the grounds raised in the Letters Patent Appeal saying that the finding of the learned writ court that the original member did not challenge the termination letter cannot be said to be perverted. It is based on the materials available on the record. This court has to take into consideration the nature of disputes involved and the chequered history of the case and conduct of the original petitioner, his submission is that the principles of natural justice cannot be put in a straight jacket formula and it has to be applied on case to case basis.

23. Learned counsel submits that in the facts of the present case, it cannot be said that the membership of the original petitioner was terminated in violation of principles of natural justice and hence the writ court has rightly refused to grant the reliefs prayed in the writ application.

24. In course of hearing of the Letters Patent



Appeal when we went through the observations of this court recorded in CWJC No. 4541/1999 the extracts of which have been quoted by the learned writ court in the impugned judgment and further the pain with which the Hon'ble Division Bench of this Court while disposing of the original Criminal Miscellaneous Case recorded that the Hon'ble Judges tried their best to find out an appropriate and legal solution but they had miserably failed, we pointed out to Mr. Yogendra Mishra, learned Advocate, that in the facts and circumstances of the case it is a kind of futile exercise and would be a mere wastage of time of this court but Mr. Mishra, learned Advocate, insisted with his arguments and took us through the entire records once again.

25. We have taken note of the submissions of learned Advocates representing the appellants and the State hereinabove, and have perused the records. Taking note of what have been contended before us as have been noted hereinabove we find no reason to interfere with the findings of fact recorded by the learned writ court which are all based on records. It is an admitted position that when the writ application came to be disposed of by Annexure-15 to the writ application and a last opportunity was given to the original petitioner to either accept the offer of the Society within stipulated period of two months or to take back his money, the original petitioner did not agree to



accept the offer and the allotment made to him by the Society was not accepted by the original petitioner citing various reasons which will be apparent from the correspondences which are available on the records.

26. Be that as it may, even after about three years from the date of passing of the order by the learned writ court when the Hon'ble Division Bench of this Court tried to resolve the dispute in an appropriate and legal manner, the original petitioner did not agree as a result of which the Hon'ble Division Bench expressed its displeasure by recording that despite best efforts taken by them they had failed. Thus on the question of allotment of plot and entitlement of the present appellants to claim the same through their father is no longer open for any adjudication. The past history and adjudications on the points are clinching and conclusive, therefore the learned writ court has rightly taken note of the same while rejecting the case of the present petitioners and we find no illegality in the same.

27. It is also evident from records that the membership of the original petitioner was terminated in a General Body Meeting of the members of the Society which was brought on record and according to the original petitioner he came to know about it on 07.09.2008 i.e. after disposal of the two Dispute Cases pending before the Registrar, Cooperative Societies, Bihar.



The original petitioner has thus not challenged the decision of the Society terminating his membership on the grounds stated in the order of termination. The learned writ court has therefore rightly recorded that the original petitioner did not avail the remedy of the alternative statutory remedy available to him before the appropriate court/forum.

28. We are of the considered view that the principles of natural justice cannot be put in a straight jacket formula, in the facts of the present case where series of litigations initiated at the instance of the original petitioner and repeated contempt application were being filed claiming a plot which was not available to the Society and even as efforts taken by this court to resolve the matter had failed. The society found that the original petitioner was causing financial loss to the Society by indulging the Society in so many litigations, the members of the Society decided to terminate the membership of the original petitioner. The dispute between the Society and its member is a subject which is governed by Section 48 of the Cooperative Societies Act whereunder the competent authority could have gone into the facts and issues and adjudication thereon could have been made but the original petitioner did not avail his remedy in accordance with law. This court being a constitutional court is granting it's discretionary relief(s) taking into consideration the



facts and circumstances of each case. in the background of this case, in our considered opinion the learned writ court has rightly exercised it's power under extraordinary writ jurisdiction by refusing to set aside the impugned order.

29. For the reasons mentioned above, we do not find any reason to interfere with the impugned judgment of the learned writ court, the appellants are pursuing a frivolous litigation after more than 14 years. The Letters Patent Appeal is thus dismissed but because we have come to a conclusion that the appellants are involved in pursuing a frivolous kind of litigation and despite indications given to learned counsel for the appellants, the valuable time of this court has been wasted, we find it just and proper to impose a cost of Rs. 25,000/- against the appellants which they would be liable to pay to the Society within a period of three months from the date of receipt/production of a copy of this order.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Rajeev/-

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