

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2312 of 2003

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Chandan Kumar Jaiswal, S/o Sri Narsingh Prasad Jaiswal at present posted at State Bank of India Sri Krishnapuri Branch, Patna, resident of village- Jaitipur, P.O. + P.S. Rampur, District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Registrar, Co-operative Societies, Bihar, Patna
3. The Additional Registrar, Co-operative Societies, Patna Division, Patna
4. The Joint Registrar, Co-operative Societies, Patna Division, Patna
5. The District Co-operative Officer, Patna
6. The Assistant Registrar, Co-operative Societies, Patna Circle, Patna.

.... Respondents 1st set

7. The Nand Sahkari Grih Nirman Samiti through its Secretary having its office at Krishna Bhawan, Post Office Road, Punaichak, Patna-23
8. Chandrama Singh, son of name not known, residing at Krishna Bhawan, Post Office Road Punaichak Patna-23
9. Smt. Lakshmi Singh, W/o Chandrama Singh, residing at Krishna Bhawan, Post Office Road Punaichak Patna-23
10. Jamuna Prasad Yadav S/o name not known, Krishna Bhawan, Post Office Road, Punaichak, Patna-23

.... Respondents 2nd set

With

Civil Writ Jurisdiction Case No. 3079 of 2003

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1. Arbind Kumar, S/o late Rameshwar Prasad Jaiswal, resident of D-10/15 Dilsad Colony, Delhi-95
 2. Nirmal Kumar, S/o late Rameshwar Prasad Jaiswal, resident of B-607, Nestle-2 P.V. Marg, Lower Parel, Mumbai-13
 3. Ragini Jaiswal, D/o late Rameshwar Prasad Jaiswal, resident of C-404, Prashray Apartment, Ara Garden, Jagdeo Path, Bailey Road, Patna-14
 4. Ponam Jaiswal, D/o late Rameshwar Prasad Jaiswal, resident of C-404, Prashray Apartment, Ara Garden, Jagdeo Path, Bailey Road, Patna-14
 5. Nutan Jaiswal, D/o late Rameshwar Prasad Jaiswal, resident of Ganesh Plaza-2, Wing-402, Khanda Colony, New Pamvet (West), New Mumbai.

.... Petitioner/s

Versus

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9. Smt. Lakshmi Singh, W/o Chandrama Singh, residing at Krishna Bhawan, Post Office Road Punaichak Patna-23
10. Jamuna Prasad Yadav S/o name not known, Krishna Bhawan, Post Office Road, Punaichak, Patna-23

.... Respondent 2nd set

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Appearance :

(In both the cases)

For the Petitioner/s : Mr. Vinod Kumar Kanth, Sr. Adv.
Mr. Rakesh Narayan Singh, Adv.

For the Respondent/s : Mr. Chittaranjan Sinha, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
CAV JUDGMENT

Date: 19-06-2018

Since the issues involved in both the writ petitions are similar, the reliefs claimed are identical and the order impugned is common, they have been heard together and are being decided by a common order. For convenience, the facts of the two writ petitions are being discussed separately.

C.W.J.C. No. 2312 of 2003

2. Petitioner Chandan Kumar Jaiswal in C.W.J.C. No. 2312 of 2003 has filed the instant writ petition against the order dated 28.12.2002, as contained in Annexure-18, by which the learned Registrar, Co-operative Societies, Bihar, Patna (Respondent No.2) has reversed the order dated 31.05.1994 passed by the learned Additional Registrar, Co-operative Societies, Patna Division, Patna (Respondent No.3) in Misc. Case No. 69 of 1992. His case is that he



had applied for membership of Nand Sahkari Grih Nirman Samiti (for short 'the Society') on 15.06.1983. He was enrolled as a member of the Society on 01.07.1983. On 05.09.1984, he was informed that the Society has decided to purchase the land for constructing house at Mauza Dhanaut (Rupaspur), Bailey Road, Patna and was requested to deposit Rs.5,000/- per katha by 20.09.1984 as advance and the rest amount was to be paid prior to the registration of the land. He claims that he had deposited Rs.41,790/- in different installments with the Society between 11.09.1984 and 06.03.1986. Apart from him, some other members of the Society had also deposited amount for purchase of land in Mauza Dhanaut, Rupaspur. The Society had obtained permission under Section 26(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act') prior to purchase of the land in Mauza Dhanaut through farmers/land owners. Thereafter, the land was transferred in favour of the Society by the farmers. The Society, in its meeting dated 31.07.1985 took a decision to allot the land to those members, who had deposited the money. The members were informed that total six plots were carved out having area of 2.16 katha and one plot having area of more than 4 katha. They were informed that plot no.1 was allotted to Smt. Bhagyawati Devi, plot no.2 to Smt. Saroj Jaiswal, plot no.3 to Dinesh Kumar Gupta, plot no.4 to Satish Chandra Karn, plot no.5 to Radhika Raman Prasad, plot



no.6 having an area of more than 4 katha to Rameshwar Prasad Jaiswal and plot no.7 to petitioner Chandan Kumar Jaiswal. The respondent no.8 himself filed an application before the Deputy Collector Urban Land Ceiling under Section 26(1) of the Act for seeking permission to transfer the land and the same was also accorded by the Deputy Collector Urban Land Ceiling. However, after obtaining permission though the land of Mauza Dhanaut was transferred in the name of other members of the Society, the same was not transferred to the petitioner Chandan Kumar Jaiswal and Rameshwar Prasad Jaiswal.

3. The further contention of the petitioner is that he sent repeated letters to the office bearers of the Society. He also sent legal notice to the respondent no.8 intimating that he had deposited full amount for the land situated at Mauza Dhanaut and requested to transfer the land. He filed a petition before the Joint Registrar, Co-operative Societies, Patna Division in the year 1991 that despite deposit of money the land situated at Mauza Dhanaut was not transferred in his name and request was made for directing the Society for registration of the land in favour of the petitioner, but no action was taken. However, in retaliation, he was expelled from the membership of the Society on frivolous charges. Thereafter, he filed Misc. Case No. 69 of 1992 before the Additional Registrar, Co-



operative Societies, Patna Division, Patna under Section 48 of the Bihar Co-operative Societies Act, 1935 with a prayer to declare the resolution of expulsion as illegal, null and void and to direct the respondents to transfer the land to him. By order dated 31.05.1994, the learned Additional Registrar, Co-operative Societies, Patna Division, Patna allowed the aforestated Misc. Case No. 69 of 1992 and the Society was directed to transfer the plot of land at Mauza Dhanaut in favour of the petitioner. The Society filed appeal against the order passed by the learned Additional Registrar, Co-operative Societies, Patna Division before the learned Registrar, Co-operative Societies, Patna vide Case No. 143 of 1994, which was allowed vide impugned order dated 10.12.2002 and the order dated 31.05.1994 passed in Misc. Case No. 69 of 1992 was quashed.

C.W.J.C. No. 3079 of 2003

4. The original petitioner Rameshwar Prasad Jaiswal had filed the instant writ petition against the order dated 28.12.2002, as contained in Annexure-13 to the writ petition, by which the learned Registrar, Co-operative Societies, Bihar, Patna has reversed the order dated 31.05.1994 passed by the learned Additional Registrar, Co-operative Societies, Patna Division, Patna in Misc. Case No. 68 of 1992 and has directed that the petitioner shall be free to exercise his option regarding acquisition of land of Mauza Sandalpur allotted to



him within the reasonable time.

5. The case of the original petitioner was that he became member of the Society on 02.12.1983. The respondent no.8 issued a letter on 05.09.1984 by which he informed the members of the Society that the Society has decided to purchase land for constructing house situated at Mauza Dhanaut, Rupaspur at the estimated cost of Rs.18,000/- per katha. He also informed that for executing the deed of agreement for sale the Society has to make payment at the rate of Rs.2000/- per katha. The Society requested the members to deposit the amount at the rate of Rs.5,000/- per katha in the bank account of the Society in Punjab National Bank by 20.09.1984. He also informed that prior to registration of land the rest of the amount be deposited in the office of the Society and receipt be obtained.

6. In pursuance of the said notice, only the members like Smt. Bhagyawati Devi, Smt. Saroj Jaiswal, Dinesh Kumar Gupta, Satish Chandra Karn, Radhika Raman Prasad, Chandan Kumar Jaiswal and the petitioner deposited the money and showed inclination to purchase the land situated at Mauza Dhanaut.

7. His further contention was that he deposited Rs.83,780/- for purchase of 4 katha of land situated at Mauza Dhanaut. The Society purchased total 16 katha 9 dhurs of land in two phases in its name at Mauza Dhanaut. The Society carved out seven plots out of



which six plots were carved out having an area of 2.16 katha and one plot having an area of more than 4 katha.

8. His contention was that the respondent no.8 himself filed an application for obtaining No Objection Certificate from the Deputy Collector, Urban Land Ceiling for transfer of the plot at Mauza Dhanaut in favour of the petitioner under Section 26(1) of the Act. However, after obtaining No Objection Certificate, the respondent no.8 started playing delaying tactics. Since the original petitioner and his son-in-law Chandan Kumar Jaiswal refused to pay illegal demand of extra money by the respondent no.8 the land was not transferred in their favour by the Society. Being aggrieved, he sent several letters to the respondent no.8 and requested him to transfer the plot of land in his favour at Mauza Dhanaut. However, when he failed to persuade the respondent no.8, he filed a petition before the Assistant Registrar, Co-operative Societies requesting him to direct the respondent no.8 to transfer the land in his favour. The Assistant Registrar also slept over the matter and did not pass any order. Subsequently, he was informed that he has been allotted plot no.1 situated at Mauza Sandalpur by the Society. Thereafter, he filed a case before the Additional Registrar, Co-operative Societies, Patna Division, Patna vide Misc. Case No. 68 of 1992 under Section 48 of the Co-operative Societies Act, 1935 wherein a prayer was made to direct the respondents to transfer the



land at Mauza Dhanaut in favour of the petitioner. After hearing the parties, the learned Additional Registrar, Co-operative Societies vide order dated 31.05.1994 directed the respondents to transfer the plot no.6 at Mauza Dhanaut in his favour. Thereafter, the Society filed an appeal before the Registrar, Co-operative Societies, Bihar Patna vide Case No. 144 of 1994. The learned Registrar, Co-operative Societies vide impugned order dated 10.12.2002 set aside the order dated 31.05.1994 passed by the learned Additional Registrar and allowed the appeal filed by the respondent Society.

9. It would be pertinent to notice that as the original petitioner died during pendency of the writ petition, his legal heirs have been substituted.

10. Having noticed the facts of the case as stated by by the petitioners in these two writ petitions, now I would like to take into consideration the submissions advanced on behalf of the parties.

11. Mr. Vinod Kumar Kanth, learned Senior Advocate appearing for the petitioners in these cases submitted that the impugned common order dated 10.12.2002 passed by the learned Registrar, Co-operative Societies, Bihar, Patna in Case Nos. 143 and 144 of 1994 is bad in law as also on facts. He submitted that the learned Registrar failed to appreciate the fact that the respondent no.8 himself had applied for transfer of the land under the provisions of



Section 26(1) of the Act in favour of the petitioners. He also failed to appreciate that the land at Mauza Dhanaut was purchased out of money deposited by the petitioners and no other member apart from the petitioners had any claim over the land situated at Mauza Dhanaut. He submitted that the learned Registrar completely failed to take notice of the fact that the Society never issues allotment letters to the members prior to registration of land. The Society issues the allotment letter only at the time of registration of land or 2-3 days prior to the date of registration of the land. He submitted that the learned Registrar committed illegality in accepting the contention of the respondents that the petitioner Chandan Kumar Jaiswal was expelled from the membership of the Society on the ground of dual membership. He contended that he had applied for membership of the Society on 15.06.1983 and was enrolled as member of the Society on 01.07.1983. As far as the other Society, namely, Ambarpuri Grih Nirman Samiti is concerned, he became its member on 01.09.1983 as would be evident from Annexure-24 and, on 21.02.1985, he resigned from the membership of that Society, which was also accepted by the said Society. He submitted that the petitioner Chandan Kumar Jaiswal has been discriminated and some other members, who had also been members of different Society and had resigned, had been allotted land by the Society. He submitted that the learned Registrar also failed to



appreciate that the respondent no.8 was running the Society as his personal property and did not maintain the proceeding book properly. He also failed to appreciate that when the petitioner Chandan Kumar Jaiswal raised a dispute before the authorities, thereafter, the so called resolution of his expulsion was passed. According to him, the said resolution is forged and fabricated.

12. Mr. Kanth, learned Senior Advocate further submitted that so far as the story of allotment of land to the original writ petitioner Rameshwar Prasad Jaiswal at Mauza Sandalpur, as claimed by the respondent Society is concerned, the same is frivolous. He contended that the entire action of the respondent Society is absolutely wrong, illegal, arbitrary and fraudulent and is based upon fabrication of document. Unfortunately, the learned Registrar arbitrarily and illegally accepted the contention of the respondent Society.

13. Per contra, the contention of the respondent Society is that the Society has been registered under the Bihar Co-operative Societies Act, 1935 vide Section 11 thereof on 20.04.1982 along with its bye-laws bearing Registration No. 71 Pat 1982 and since then it has been regularly functioning as such. The Society entered into an agreement for purchase of 56 decimals of plot nos. 1277, 1276 and 1275 situated at Mauza Sandalpur under Alamganj Police Station in



the district of Patna on 05.09.1984 with the original owners, which was finally purchased by the Society on 04.04.1986. Similarly, the Society entered into an agreement for purchase of about 16 katha 6dhur and 8 dhurki of plot no. 290, Tauzi no. 5139, khata no. 14 at Mauza Dhanaut within Danapur Police Station in the district of Patna on 28.03.1984 with the original owners, which was finally purchased by the appellant on 02.05.1985. The petitioner Chandan Kumar Jaiswal had paid Rs. 37,790/- only. The Society was taken by surprise after receiving legal notice dated 22.10.1987 sent on behalf of the petitioner Chandan Kumar Jaiswal wherein a false statement had been made that he had applied for a plot in the land at Mauza Dhanaut which had been allotted to him and for which permission had also been granted by the competent authority. The Society immediately replied to the said notice vide letter dated 04.11.1987 asking the petitioner Chandan Kumar Jaiswal to refrain from committing any forgery or fraud and get plot no.10 of Mauza Sandalpur which was applied for and was allotted to him registered. Thereafter, he took no step in that regard and only after his membership was terminated on the ground of dual membership, as while being member of the Society, he became member of another Society, namely, Ambarpuri Grih Nirman Samiti on 01.09.1983 and after receiving back the deposited amount on 08.09.1992, he filed Misc. Case No. 69 of 1992



on 14.09.1992 before the learned Additional Registrar, Co-operative Societies, Patna Division, Patna on frivolous grounds.

14. The further case of the respondent Society is that the petitioners of these two cases could never produce any letter of allotment or any application with respect to the land at Mauza Dhanaut and based their claim only on two papers, namely, alleged notice of the Society dated 05.09.1984 and an alleged no objection certificate of Deputy Collector, Urban Land Ceiling dated 26.12.1985. In this regard, it has been submitted that the notices signed by the President and Secretary of the Society were kept in the office without filling the blank portions thereof which is used to be filled up later by the office as the necessity arose. Anyhow, the petitioners managed to obtain one such blank notice and permission form and filled them up with respect to the land of Mauza Dhanaut in their own handwriting in order to claim their right over the plot at Mauza Dhanaut. In that view of the matter, the alleged notice did not confer any legal right on the petitioner. Similarly, the purported no objection certificate granted by the Deputy Collector Incharge, Urban Land Ceiling, Patna would also not confer any right upon the petitioner for allotment of land at Mauza Dhanaut. It has been contended that apart from the fraud and misstatement committed by the petitioner, his membership was in clear violation and



contravention of the bye laws of the Society according to which he could not legally acquire the status of member and enjoy the privilege of the Society as he was member of another Society. When the Managing Committee made enquiry and found about dual membership of the petitioner Chandan Kumar Jaiswal, he was asked to show cause why his membership should not be terminated. When he did not care to reply to the show cause notice dated 25.02.1991, the Managing Committee vide its resolution no.3 dated 26.05.1991 expelled him from the membership of the Society in terms of clause 41(k) of the bye laws and the same was approved in the general body meeting of the Society on 29.12.1991 of which information was also sent to him.

15. As far as the claim of the original writ petitioner Rameshwar Prasad Jaiswal is concerned, the contention of the Society is that the Society vide its letter dated 01.05.1986 asked him to obtain permission for sale from the relevant authority with regard to the land of Mauza Sandalpur, which had been allotted to him. In this regard, several letters were sent to him between 19.01.1989 and 05.10.1993. However, he did not reply to any of the letters of the Society and kept silence for reasons best known to him and all of a sudden on 14.09.1992 he filed Misc. Case No. 68 of 1992 before the learned Additional Registrar, Co-operative Societies, Patna Division,



Patna on frivolous grounds that 4 katha 1 dhur 12 dhurki of plot no. 290, khata no.14, Tauzi No. 5139 of Mauza Dhanaut (Rupaspur) was allotted to him by the Society. He could not produce any letter of allotment nor any application with regard to the land of Mauza Dhanaut and raised his claim only on so called no objection certificate granted by the Deputy Collector, Urban Land Ceiling, Patna. It has been contended that no such letter of allotment of land of Mauza Dhanaut was issued by the Society. With regard to the no objection certificate granted by the Deputy Collector, Urban Land Ceiling is concerned, the Society in its counter affidavit has taken the same plea as in the case of the petitioner Chandan Kumar Jaiswal.

16. Mr. Chittaranjan Sinha, learned Senior Advocate appearing for the Society submitted that there is no merit in the case of the petitioners. The learned Registrar, Co-operative Societies has passed a reasoned order on correct appreciation of facts and law. The findings on facts given by the learned Registrar do not suffer from any illegality. According to him, even though written arguments were filed by the Society in Misc. Case Nos. 68 and 69 of 1992 before the learned Additional Registrar, he completely ignored and overlooked the written arguments and passed ex-parte order in favour of the petitioners, which have rightly been set aside in appeal by the Appellate Authority vide impugned order dated 10.12.2002. He



submitted that when the petitioners were inducted as members of the Society, no promise was made to them to allot any land at Mauza Dhanaut. At that point of time the Society did not even possess any land at Mauza Dhanaut. According to him, no allotment letter showing any allotment of land at Mauza Dhanaut was ever produced by the petitioners. Though, allotment letter of land at Mauza Sandalpur was issued to petitioner Chandan Kumar Jaiswal on 03.07.1986, he had sworn a false affidavit that he was not a member of any other Society and it was found on enquiry that he was actually a member of another Society. Thus, after giving an opportunity of hearing to him, he was expelled from the membership of the Society and the entire money deposited by him was returned to him through bank draft and was also accepted by him. Hence, his claim is not bonafide. Lastly, he contended that as on date there is no land left with the Society for transfer in favour of the petitioners.

17. I have heard learned counsel for the parties and carefully perused the record.

18. From perusal of the order impugned, it would be manifest that the learned Registrar allowed the appeal and rejected the claim of the petitioners on the following grounds :-

- (1) Right to allot the land rests with the Managing Committee of the Society and not with the members;



- (2) The permission under the Act has got no relevance and there is no proof that the Society ever took part in the proceeding of the Act;
- (3) The letter dated 05.09.1984 has got no relevance unless there is allotment and approval by the Managing Committee;
- (4) The petitioner Chandan Kumar Jaiswal was member of another Society in violation of clause 7 of the bye laws of the Society and, as such, his membership was void ab initio;
- (5) Clause 45(2) of the bye laws provides that only the Managing Committee can authorize and approve the selection of a plot by the members; and
- (6) The Society denied the claim of the original petitioner Rameshwar Prasad Jaiswal time and again because he was allotted land at Mauza Sandalpur and not at Mauza Dhanaut.

19. It would be manifest from the pleadings of the parties and the records that the petitioners could not produce any letter of allotment of land at Mauza Dhanaut. Their entire claim is based only on two papers, namely, notice dated 05.09.1984 issued under the signature of the President and Secretary of the Society and a no



objection certificate granted by the Deputy Collector Urban Land Ceiling dated 26.12.1985 for purchase of land at Dhanaut. A plea has been taken by the respondent Society that notice duly signed by the President and Secretary of the Society was kept in the office without filling blank portions thereof which was used to be filled up latter by the office as the necessity arose and the petitioners anyhow managed to obtain signed blank notice and permission form and misused the same. Though bonafide of such plea can only be decided on the basis of evidence, even otherwise, in the opinion of this Court, such notice or no objection certificate granted by the Deputy Collector, Urban Land Ceiling would not confer any right on the petitioners for getting the land at Mauza Dhanaut transferred in their name. The notice is dated 05.09.1984 whereas admitted case of the parties is that the land at Mauza Dhanaut was purchased by the Society on 02.05.1985. The fact that the petitioner Chandan Kumar Jaiswal became member of another Society, namely, Ambarpuri Grih Nirmal Samiti while being member of the Society has not been denied by him. In this regard, he has taken a plea that his subsequent membership of another Society would be of no consequence as he had resigned from the same on 21.02.1985. However, the fact remains that he had suppressed this fact and filed a false affidavit that he was not a member of any other Society and on this ground the Society had expelled him from the



primary membership of the Society as he had acted in violation of clause 7 of the bye laws of the Society and refunded the amount deposited by him with the Society which was duly received by him on 08.09.1992. Since petitioner Chandan Kumar Jaiswal ceased to be a member of the Society pursuant to a resolution taken by the Managing Committee, he had no right or claim upon the Society and was not entitled to any land of the Society, which was meant for its members only. I further find that there is no cogent material to support the contention of the original petitioner Rameshwar Prasad Jaiswal that he was allotted land at Mauza Dhanaut.

20. At this stage, I must record that the petitioner in C.W.J.C. No. 2312 of 2003, by way of filing interlocutory applications has raised serious disputed questions of fact primarily in respect of resolution of the Managing Committee of the Society for his expulsion on 26.05.1991. However, no material was brought to the notice of the learned Registrar to substantiate the claim that no such resolution was passed by the Managing Committee of the Society. This Court would not embark upon and decide the matters involving serious dispute of facts. The writ petition would be limited to testing the legality and validity of the impugned order passed by the learned Registrar dated 10.12.2002.

21. The order impugned does not suffer from jurisdictional



error or any illegality, irrationality or procedural impropriety.

22. Thus, I find no reason to interfere with the order impugned.

23. Accordingly, the writ petitions are dismissed, but, in the facts and circumstances of the case, there shall be no order as to costs.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25-06-2018
Transmission Date	

