

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2163 of 2016

=====

1. Rajeshwar Kumar Singh, S/o Late Beni Madhav Singh, R/o Village + P.O.-
Hathini, P.S.- Nokha, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Co-operative, Government of Bihar,
Patna.
3. The Registrar, Co-operative Society, Bihar, Patna.
4. The Deputy Registrar, Co-operative Societies, Patna Division, Patna.
5. The Sasaram Bhabhua Central Co-operative Bank, Sasaram, Rohtas through its
Managing Director.
6. The Managing Director, Sasaram Bhabhua Central Co-operative Bank, Sasaram,
Rohtas cum certificate Officer.
7. The Branch Manager, Sasaram Bhabhua Central Co-operative, Nokha, Branch,
Nokha, Rohtas.
8. The then Administrator, Sasaram Bhabhua Central Co-operative Bank Cum D.M.
Rohtas.

.... Respondent/s

with

=====

Civil Writ Jurisdiction Case No. 2165 of 2016

=====

1. Anil Kumar Singh, S/O Sri Bansidhar Singh, R/o Village + PO.- Mujradh, P.S.-
Nokha, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Co-operative, Government of Bihar,
Patna.
3. The Registrar, Co-operative Society, Bihar, Patna.
4. The Deputy Registrar, Co-operative Societies, Patna Division, Patna.
5. The Sasaram Bhabhua Central Co-operative Bank, Sasaram, Rohtas through its
Managing Director.
6. The Managing Director, Sasaram Bhabhua Central Co-operative Bank, Sasaram,
Rohtas cum Certificate officer.
7. The Branch Manager, Sasaram Bhabhua Central Co-operative, Nokha, Branch,
Nokha, Rohtas.
8. The then Administrator, Sasaram Bhabhua Central Co-operative Bank Cum D.M.
Rohtas.

.... Respondent/s

with

=====

Civil Writ Jurisdiction Case No. 2446 of 2016

=====

1. Sunil Kumar Singh, S/o Sri Ram Dayal Singh, R/o Village- Ram Nagar, P.O.-
Bhaluahi, P.S.- Nokha, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Co-operative, Government of Bihar,



Patna.

3. The Registrar, Co-operative Society, Bihar, Patna.

4. The Deputy Registrar, Co-operative Societies, Patna Division, Patna.

5. The Sasaram Bhabhua Central Co-operative Bank, Sasaram, Rohtas through its Managing Director.

6. The Managing Director, Sasaram Bhabhua Central Co-operative Bank, Sasaram, Rohtas cum Certificate Officer.

7. The Branch Manager, Sasaram Bhabhua Central Co-operative Bank, Nokha Branch, Nokha, Rohtas.

8. The then Administrator, Sasaram Bhabhua Central Co-operative Bank cum D.M., Rohtas.

.... Respondent/s

=====

Appearance :

(In CWJC No.2163 of 2016)

For the Petitioner/s : Mr. Rakesh Narayan Singh, Adv.

For the State : Mr. Birju Prasad GP-13

Mr. Ravi Kumar, A.C.to GP-13

For the Society : Mr. Bindhyachal Rai, Adv.

(In CWJC No.2165 of 2016)

For the Petitioner/s : Mr. Rakesh Narayan Singh

For the Respondent/s : Mr. GP10

(In CWJC No.2446 of 2016)

For the Petitioner/s : Mr. Rakesh Narayan Singh

For the Respondent/s : Mr. Alok Kumar, A.C. to A.C.-5

For the Bank : Mr. Bindhyachal Rai, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 01-05-2018

Heard learned counsel for the respective petitioners of these three writ petitions, learned counsel for the State and learned counsel for the Sasaram Bhabhua Central Co-operative Bank.

2. C.W.J.C. No. 2163 of 2016 has been filed by the petitioner Rajeshwar Kumar Singh for quashing the proceeding in Surcharge Case No. 39 of 2015 pending before the Deputy Registrar, Co-operative Societies, Bihar.

3. C.W.J.C. No. 2165 of 2016 has been filed by the petitioner Anil Kumar Singh for quashing the proceeding in Surcharge Case No. 38 of 2015 pending before the Deputy Registrar, Co-



operative Societies, Bihar.

4. C.W.J.C. No. 2446 of 2016 has been filed by the petitioner Sunil Kumar Singh for quashing the proceeding in Surcharge Case No. 48 of 2015 pending before the Deputy Registrar, Co-operative Societies, Bihar.

5. A common issue that the Deputy Registrar, Cooperative Societies, Patna Division, Patna, who has initiated Surcharge Case Nos. 38, 39 and 48 of 2015 against the respective petitioners and issued notices upon them, has no jurisdiction to initiate such proceedings and pass any order has been raised by the respective petitioners in these cases.

6. Having heard the parties, by a common order dated 03.02.2016 passed in C.W.J.C. Nos. 2163 and 2165 of 2016, this Court framed four issues and directed the learned Registrar to apprise the Court on those issues. They are as under :-

- (a) Whether a surcharge proceeding can be initiated by the Joint Registrar or any audit objections;
- (b) Whether any order has been passed by the Registrar to draw surcharge proceedings;
- (c) Whether the power vested in the Registrar can be delegated; and
- (d) Whether the Deputy Registrar is empowered to conduct such proceedings in view of the statutory provisions.

7. Pursuant to the aforesaid order dated 03.02.2016, learned Registrar, Cooperative Societies filed counter affidavit stating



about issue no. 1 as under :-

“5. ... so far as the first issue raised by the Hon’ble Court that whether a surcharge proceeding can be initiated by the Joint Registrar, Cooperative Societies on any audit report is concerned, it is humbly submitted that the Divisional Joint Registrar has been vested with the power of section 40 of the Bihar Cooperative Societies Act, 1935 which is about surcharge proceeding vide extra ordinary gazette notification issued under notification no. 594 dated 31.12.2008. Therefore, it is evidence from the said gazette notification that the Divisional Joint Registrar is empowered to initiate surcharge proceeding on any audit objection.”

8. With regard to the other three issues, the learned Registrar, Cooperative Societies stated in his counter affidavit as under :-

“6. That so far as the second issue raised by the Hon’ble Court is concerned, it is humbly submitted that the Registrar, Cooperative Societies has not passed any order to draw surcharge proceeding.

7. That so far as the third issue raised by the Hon’ble Court is concerned, it is humbly submitted that the Registrar, Cooperative Societies and other officers are appointed by the State Government in terms of section 6(1) of the Bihar Cooperative Societies Act. The State Government by way of special or general gazette confers power to such officers who are appointed in terms of section 6(1) to assist Registrar, Cooperative



Societies. Therefore, the powers vested in Registrar, Cooperative Societies can be delegated by the State Government.

8. That so far as the fourth issue raised by the Hon'ble Court as to whether the Deputy Registrar, Cooperative Societies is empowered to conduct such proceedings in view of the statutory provisions is concerned, **it is humbly stated and submitted that the Deputy Registrar, Cooperative Societies suo motto cannot initiate any proceeding himself.** He can pursue only those proceedings which are transferred to him under section 48(2) of the Bihar Cooperative Societies Act, 1935. So far as the initiation of surcharge proceeding is concerned, it is the Registrar, Cooperative Societies, who can transfer such proceeding to any Court below. The Divisional Joint Registrar has delegated power and such delegated power cannot be delegated further. **Therefore, the Deputy Registrar, Cooperative Societies has no power suo motto to initiate any surcharge proceeding.**

9. Thus, it would be evident from the stand of the respondent no.3 that the Deputy Registrar, Cooperative Societies, Patna Division, Patna, suo motu cannot initiate any proceeding. He can only pursue those proceedings, which are transferred to him under Section 48(2) of the Bihar Co-operative Societies Act, 1935.

10. The petitioners in these petitions have specifically stated that it was the Deputy Registrar, Cooperative Societies, Patna



Division, Patna, who had initiated the surcharge proceedings against them. The statement made by the petitioners of these cases has not been controverted by the respondents either in the counter affidavit or before this Court.

11. In that view of the matter, in absence of any dispute to the stand of the petitioners as also in view of the stand taken by the Registrar, Co-operative Societies in the counter affidavit that the Deputy Registrar, Co-operative Society has no power to suo motu initiate any surcharge proceeding, in the opinion of this Court, the very initiation of surcharge proceedings in Surcharge Case Nos. 38, 39 and 48 of 2015 is bad in law and without jurisdiction. Accordingly, those proceedings are set aside.

12. However, it would be open to the respondent no. 3 to initiate fresh surcharge proceeding against the petitioners in accordance with law.

13. With the aforesaid observation, the writ petitions stand allowed.

(Ashwani Kumar Singh, J)

Pradeep/-Sneha

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	14-05-2018
Transmission Date	

