

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17984 of 2015

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Ajit Kumar Son of Late Ram Kishore Lal, presently resident of C/o- S.N. Prasad (Retd. ADM), 339, Nehru Nagar, P.O.- Patliputra Colony, P.S.- Patliputra, District- Patna at permanent resident of Mohalla- Raipura, P.O. and P.S.- Fatuha, District- Patna.

... .. Petitioner

Versus

1. The State Of Bihar through the Secretary, Cooperative Department, Bihar, Patna.
2. Registrar, Co-operative Societies, Bihar, Patna.
3. Deputy Registrar, Co-operative Societies, Patna Division, Patna.
4. Alok Sahkari Grih Nirman Samiti Limited, having its office at New A.G. Colony, West of Saguna More, Khagaul Road, P.S. - Danapur, District – Patna through its Honourary Secretary.

.... .. Respondent 1st Party

5. Janki Raman Nidhi, Son of Late Madhusudan Nidhi, resident of Mohalla- New A.G. Colony, Saguna, Khagaul Road, P.S.- Danapur, District- Patna.

... Respondent 2nd Party

6. Narendra Kumar Singh, Son of Ganesh Prasad Singh, Former Secretary, Alok Sahkari Grih Nirman Samiti Limited, resident of Mohalla- New A.G. Colony, Saguna, Khagaul Road, P.S.- Danapur, District- Patna.
7. Anil Kumar Singh, Former Secretary, Alok Sahkari Grih Nirman Samiti Limited, resident of Mohalla- A.G. Colony, Saguna, Khagaul Road, P.S.- Danapur, District- Patna. at present posted as AAO, Pension VII, Office of A.G. (A & E), Birchand Patel Path, Patna.

.... .. Respondent 3rd Party

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Appearance :

For the Petitioner/s	:	Mr. Yogendra Mishra, Sr. Advocate Mr.Arvind Kumar Jha, Advocate
For the Resp. No. 5	:	Mr. Rakesh Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date : 30-04-2019

Petitioner in this case is aggrieved by and dissatisfied with the order dated 02.07.2015/21.08.2015 as contained in Annexure ‘7’ to the writ application by which the Registrar, Co-operative Societies has upon hearing the parties and perusal of the records took a view that the subject matter



of the *lis* relates to the allotment of plot as also the execution and registration of a sale deed of the same, thus it involves a question of right, title and interest which is beyond his competence, therefore in terms of Section 48 (8) of the Bihar Co-operative Societies Act, 1935, the Registrar has exercised his power to refer the dispute to the District Judge for a decision. The prayer of the petitioner is that after setting aside the impugned order this court may be pleased to direct the respondent no. 2 to dispose of the appeal in accordance with law within a time frame. Apart from the affidavits exchanged by the parties in this case, they have also filed written notes of argument.

2. It is the case of the petitioner that the Managing Committee of the respondent no. 4 Alok Sahkari Grih Nirman Samiti Limited (in short the 'Samiti') allotted a plot bearing No. 21A measuring an area 4000 Sq. Ft. in favour of the petitioner and informed the petitioner to deposit a sum of Rs. 1,10,000/- by letter dated 20.02.1992 (Annexure '1'). The petitioner deposited the same amount in UCO Bank, Birchand patel Path, and on such deposit the allotment was confirmed vide Annexure '2'. It is stated that the petitioner had also deposited a sum of Rs. 1000/- as required vide Annexure '2'



for demarcating and putting of pillars. It is the case of the petitioner that at the relevant time he was posted at Ranchi but was regularly making request to the Society to execute a registered document in his favour with respect to plot no. 21A.

3. It is further case of the petitioner that subsequently respondent nos. 5 & 6 become President and Secretary respectively of the Society who changed the plot no. 21A as Plot No. B/13, but the boundary and dimension remained the same. Respondent no. 5 got a sale deed executed in his favour with respect to old plot no. 21A (new plot no. B/13) vide the sale deed enclosed as Annexure '3'. It is admitted that the respondent no. 5 hurriedly got constructed his building thereon. On getting this information the petitioner raised dispute bearing Dispute Case No. 18/2009 which was allowed with certain directions which are noted hereunder for a ready reference:

(a) The respondent no. 5 must pay the market value of the land as on date to the petitioner,

(b) If the amount is not paid within three months the petitioner may lodge criminal prosecution against respondent no. 4 & 5 for



committing fraud, forgery and tampering in the record of the Society,

(c) The petitioner will be free to take action for getting the building demolish and take vacant possession of the land.”

A copy of the order dated 06.10.2010/27.11.2010 passed in Dispute Case No. 18/2009 is available at Annexure ‘5’ to the writ application.

4. The order as contained in Annexure ‘5’ to the writ application came to be challenged by respondent no. 5 & 6 in Miscellaneous Appeal No. 09/2011 before the Registrar, Co-operative Societies (Respondent No. 2). It is the contention of the petitioner that under Rule 66 of the Rules read with Order 41 CPC the respondent no. 2 has been empowered to decide the appeal on merit but instead of deciding the matter himself, he erroneously referred the matter to the District Judge, Patna in terms of Section 48(8) of the Act. It is submitted that order of reference has been passed without following the procedure contained under Rule 69 of the Rules which says that after filing of the case any of the party will make an application to the Registrar to refer the dispute to the District Judge. In the instant case, it is submitted that none of the parties ever raised such plea either



before the respondent no. 3 or before respondent no.2, but respondent no. 2 *suo motu* passed the order as contained in Annexure '7'.

5. Learned counsel has relied upon the judgment of Hon'ble Supreme Court in the case of ***United Engineers & Contractors Vs. Secretary to Government, A.P. & Ors.*** reported in ***AIR 2013 SC 2239*** to submit that the Registrar was required to decide the appeal in accordance with the provisions of the order 41 CPC. It is submitted that in the case of ***Mohan Singh Vs. Maitrai Park Co-op. Housing Society Limited*** reported in ***AIR 1989 SC 86*** this court while considering the nature of the dispute and the bar under Section 57 of the Act held that if the dispute touches the business of the Society or affairs of the society, only the Registrar, Co-operative Societies has jurisdiction to adjudicate in the matter and the civil court cannot entertain a suit for purpose in this connection.

6. Reliance has also been placed on the judgment of this court in the case of ***Radha Krishna Jaiswal vs. Sheela Kanchan*** reported in ***2003 (1) PLJR 18***. Paragraph 11, 12 & 15 of the judgment read as under:



“11. Thus, conjoint reading of sections 48 and 57 of the Act show that in case of any dispute touching the business of a registered society arises amongst the members shall be decided by the Registrar and no Civil or Revenue Court shall have any jurisdiction with regard to the same.

12. The Act is a comprehensive one and it contains a complete mechanism for redressal of the dispute between the Society and members and past members etc. Section 57 of the Act clearly bars the Civil and Revenue Court to entertain the dispute mentioning therein including a dispute which is required to be determined under Section 48 of the Act. Thus, if any dispute is covered by Section 48 of the Act, then the dispute has to be referred to the Registrar and the jurisdiction of the Civil Court will be barred with regard to the same. The dispute which can be said to be the touching the business of a registered society not only includes the business of a registered society but it also includes the affairs of a registered society. A wider meaning has been given to the aforesaid provision. This court has occasioned to consider the aforesaid provision in several cases. A Division Bench of this Court in the case of **Ramashanker Tiwari vs. Gopal Banerjee & others**, reported in 1971 BLJR 671, held that the expression “if any dispute touching the business of a registered society” cannot be given a narrow meaning and even the affairs of a registered society is included within the dispute touching the business of a registered society. The said view has been affirmed by a Full Bench of this Court in the case of **TISCO Oriya Co-operative Credit Society Ltd. vs. The Assistant Registrar, Co-operative Society Jamshedpur Circle and another**, reported in AIR



1975 Patna 208 : [1975 PLJR 290].

15. Coming to the facts of the case, admittedly in this case the society's business is to acquire the land and sold to its members. The Society has sold the land to both its members, namely, defendant No. 3/petitioner and plaintiff/opposite party no. 1 and the dispute is as to identity of the land. As the object of the society is to acquire land and sold it to its members, then it is the duty of the society that the members are put in possession over the land sold to them. In other words, identification of the land and putting the members in possession over the land sold to them is a part of the business of the registered Society or at any rate it relates to the affairs of registered society. It cannot be said that it has no connection with the business of a registered society. Thus, I am of the considered view that the Court below has committed jurisdictional error in rejecting the objection raised by defendant no. 3/petitioner. The dispute is fully covered by Section 48 of the act and thus, the suit is barred under Section 57 of the Act."

7. It is thus the submission of learned counsel for the petitioner that Registrar, Co-operative Societies is the only authority who can decide the validity of the action and take suitable action against respondent nos. 5 & 6 whose action have been condemned in the report as contained in Annexure '6' to the writ application.



8. On the other hand, learned counsel representing the respondent nos. 5 & 6 submits that the law is well settled that with the consent of the parties no jurisdiction will be conferred upon a court of law and where the dispute involves adjudication on the issue of right, title, possession and cancellation of the registered deed, the Registrar, Co-operative Societies would have no jurisdiction and these issues would fall for consideration before a competent civil court. Learned counsel has relied upon the judgment dated 24.06.2016 passed in CWJC No. 12255/2007 and in CWJC No. 3277/2009 and the judgment dated 08.02.2016 passed in CWJC No. 10027/2014. Learned counsel submits that the judgment reported in AIR 1967 SC 1494 (Jugal Kishore Vs. Sitamarhi Central Co-op. Bank) on which reliance has been placed upon on behalf of the petitioner in course of argument has been considered by this court in it's judgment dated 24.06.2016. It is submitted that the judgment also deals with the another judgment of this court in the case of **Swati Pande Vs. Registrar, Co-operative Societies** reported in **2007 (2) PLJR 525** which has been relied upon by the answering respondent in course of argument.

9. It is the contention of the answering respondent



that the dispute as disclosed in the plaint which is available on the record would essentially show that in ultimate result it involves cancellation of the registered sale deed of the answering respondent. The petitioner claims his right over the piece of land which has been transferred to the answering respondent vide registered sale deed dated 20.07.2000, thus, the petitioner can get this land only when the sale deed is declared null and void by a competent court.

10. It is submitted that the answering respondent was a founder member of the Cooperative society, he was also entitled for getting the land from the society and now after getting the land he has constructed residential house and is living thereon for the last about 15 years and except the said land and house he has no other land/house in Patna. It is submitted that the society had issued notice to all the members but the petitioner did not turned up under fear of antisocial elements.

Consideration

11. After hearing learned counsel for the parties and on perusal of the records, this court finds from the statements made in the application under Section 48 of the



Co-operative Societies Act, 1935 filed by this petitioner in the court of Joint Registrar, Co-operative Societies giving rise to Dispute Case No. 18/2009 (Annexure '8') that the petitioner has stated in paragraph '9' of the petition that after depositing the cost of the plot the petitioner was not given possession of the plot no. 21A, he had requested the management to register the same in his name. The petitioner was in government service posted at Ranchi from where he retired on 30.11.2006.

12. It is the case of the petitioner that before retirement and after retirement he was in regular touch with the management and several requests were made to register the plot but in vain. He has also alleged that the plot in question was illegally registered in favour of the private respondent who had misused his position as Secretary of the Society. In paragraph '21' and the prayer portion of the petition it has been prayed that the sale deed of the private respondent (opposite party no. 4 in the said case) be declared void, illegal and without jurisdiction and the same be directed to be registered in the name of the petitioner.

13. The relief prayed by the petitioner in the Dispute Case is definitely looking towards cancellation of the



sale deed as contained in Annexure '3' to the writ application. The grounds set-forth for such setting aside of the sale deed may be touching upon the manner in which the private respondents have utilized their position as an office bearer of the Society but then the question is whether only because the ground set-forth for cancellation of a sale deed and for a direction to execute a sale deed in favour of the petitioner somewhere touches upon the manner in which the affairs of the Society were conducted by an office bearer, the Registrar, Co-operative Societies gets jurisdiction under Section 48 of the Co-operative Societies Act, 1935 to decide the dispute and grant reliefs prayed in the application by setting aside the sale deed of the private respondents and also by issuing a direction to the Co-operative Society to execute a sale deed of the plot in favour of the petitioner.

14. Section 48 of the Bihar Co-operative Societies Act, 1935 provides that if any dispute touching the business of the registered society (other than a dispute regarding disciplinary action taken by the society or it's managing committee against a paid servant of the society) arises - (a) amongst members, past members, persons claiming through members, past members or deceased



members, and sureties of members, past members or deceased members, whether such sureties are members or non-members or any of the kinds of dispute provided under Clause (b), (c), (d) & (e), such dispute shall be referred to the Registrar.

15. Under sub-section (2) the Registrar may (a) decide the dispute himself; or (b) transfer it for disposal to any person exercising the power of a Registrar in this behalf; or (c) Subject to any rules refer it for disposal to an arbitrator or arbitrators.

16. According to sub-section (3) of section 48, subject to any rules, the Registrar may withdraw any reference transferred under clause (b) or sub-section (2) or referred under clause (c) of the said sub-section and deal with it in the manner provided in the said sub-section. Sub-section (6) of Section 48 provides for an appeal to be preferred before the Registrar if a person finds himself aggrieved by any decision even in dispute transferred or referred under clause (b) or (c) of sub-section (2) within three months from the date of such decision, appeal to the Registrar.

17. In the present case, the Dispute case was transferred to the Deputy Registrar in terms of Clause (b) of



sub-section (2) of Section 48 and thereafter his decision was challenged under sub-section (6) of Section 48 before the Registrar. Sub-section (8) of Section 48 reads as under: -

“(8) The Registrar may where it appears to him advisable, either of application or of his own motion, state a case and refer it to the District Judge for decision, and the decision of the District judge shall be final.”

The impugned order has been passed in terms of sub-section (8) of Section 48 of the Co-operative Societies Act.

18. Since reliance has been placed on behalf of the petitioner on Section 57 of the Bihar Co-operative Societies Act, 1935 it would be just and proper to quote Section 57:

“57.Bar of jurisdiction of Court. - (1) Save in so far as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of any matter concerned with the winding up or dissolution of the registered society or suspension of the Managing Committee of a registered society under its act, or of any dispute required by setion 48 to be referred to the Registrar or of any proceedings, under Chapter VIIA.

(2) While a society is in liquidation, no suit or other legal proceeding shall be proceeded with or instituted against the liquidator as such or against the society or



any member thereof on any matter touching the affairs of the society, except by leave of the Registrar and subject to such terms as he may impose.

(3) No order of the State Government, District Judge, Registrar, a person appointed to assist the Registrar, liquidator, or any arbitrator or arbitrators purporting to be one, which under any provision of this Act is declared to be final shall be liable to be challenged, set aside, modified, revised or declared void in any Court upon merits or upon any ground whatsoever except want of jurisdiction.”

19. A bare perusal of Section 57 would show that it starts with saving provision inasmuch as it says “save in so far as expressly provided in this Act”. It is thus evident that if the Registrar exercises his power under sub-section (8) of section 48 of the Act of 1935 to refer a case to the District Judge for decision, even if the case involves a collateral issue which would require the learned District Judge to go into the affairs of the Co-operative Societies, it would not be covered under the bar of jurisdiction created under Section 57 of the Act of 1935.

20. To this court it appears that in the facts of the present case where the ultimate relief was prayed by cancelling the sale deed of respondent no. 5, it involved question of right, title and interest, hence the exercise of



power by the Registrar under sub-section (8) of Section 48 of the Act of 1935 cannot be faulted with.

21. The submission of learned counsel for the petitioner that only because the ground set-forth by the petitioner touches upon the business of Co-operative Society, the dispute could not have been referred to a learned District Judge for a decision is neither in terms of scheme of the Act of 1935 nor is based on any judicial pronouncements on the subject.

22. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **Jugal Kishore vs. Sitamarhi Central co-op. Bank** reported in **AIR 1967 SC 1494** (paragraph 11); to submit that the Registrar has been empowered under the Act and the Rules to decide the dispute as a civil court. Paragraph '11' of the said judgment is quoted hereunder for ready reference: -

“11. it will be noted from the above that the jurisdiction of the ordinary civil and revenue courts of the land is ousted under S.57 of the Act in case of disputes which fell under S.48. A Registrar exercising powers under S.48 must, therefore, be held to discharge the duties which would otherwise have fallen on the ordinary civil and revenue Courts of the land. The Registrar has not merely the trappings of a Court but in many respects he is given



the same powers as are given to ordinary civil Courts of the land by the Code of Civil Procedure including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in S.151 of the Code of Civil Procedure. In such a case there is no difficulty in holding that in adjudicating upon a dispute referred under S.48 of the Act, the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law is expected to do.”

23. When this court goes into the facts of the said case to find out the actual context in which the aforesaid observations have been made this court finds that in the case of **Jugal Kishore (Supra)** the appellant before the Hon’ble Supreme Court was found to be guilty of contempt of court i.e of the Assistant Registrar, Co-operative Societies who was exercising the powers of the Registrar under Section 48 of the Bihar & Orissa Co-operative Societies Act, 1935.

24. While hearing the appellant three questions were raised and one of them was as to whether the Assistant Registrar, Co-operative Societies was a court within the meaning of the Contempt of Courts Act. Thus, in the said case the scope and ambit of sub-section (8) of Section 48 was not



under consideration. It is well settled in law that every judgment has to be read in the context in which it has been rendered. Reliance in this regard may be placed in the judgment of the Hon'ble Supreme Court in the case of ***Bharat Petroleum Corporation Limited and Others vs. N.R. Vairamani & Anr*** reported in ***(2004) 8 SCC 579*** where their Lordship have held that the judgment of the court should not be cited like an euclid's theorem as the slightest of change in the facts of the case would make a sea difference in the judgment of the court.

25. The another judgment relied upon by learned counsel for the petitioner in the case of M/s United Engineers and Contractors (supra) would also not apply in the facts of the present case. In the said case there was a suit for damages before the learned Sub-Judge, Nizamabad. The suit was decreed awarding damages to the appellant to the tune of Rs. 9,51,650/- but the decree was reversed by the Hon'ble High Court of Andhra Pradesh in First Appeal under Section 96 of the Code of Civil Procedure. The appellant challenged the judgment of the High Court on the ground that the High Court had committed an error while deciding the First Appeal in a cursory manner without meeting the requirement of order 41



Rule 31 CPC. In that context the Hon'ble Supreme court referred the catena of decisions of the Hon'ble Apex court including in the case of **B.V. Nagesh and Anr. Vs. H.V. Sreenivasa Murthy** reported in **(2010) 13 SCC 530**. This court finds that the said case has no relevance to the facts of the present case.

26. The another judgment relied upon by learned counsel for the petitioner is that of **Radha Krishna Jaiswal (Supra)** which came to this court at the instance of defendant no. 3 who was aggrieved by order dated 08.02.2002 passed in Title Suit No. 11 of 1998 by the Execution Munsif, Patna rejecting the petition with regard to maintainability of the suit raised by him and holding that the dispute in the suit is not within the purview of Section 48 of the Co-operative Societies Act, 1935 and as such the same is not barred under Section 57 of the Act. In the said case the only question which fell for consideration before the court was as to whether the dispute with regard to which the suit had been filed is covered by Section 48 or not and as such the suit is barred under Section 57 of the Act.

27. Referring to the Hon'ble Division Bench of



this Court in the case of **Ramashankar Tiwari Vs. Gopal Banerjee and Ors.** Reported in **1971 BLJR 671** and the Full Bench Judgment of this court in the case of **TISCO Oriya Co-operative Credit Society Ltd. Vs. The Assistant Registrar, Co-operative Society Jamshedpur Circle and another** reported in **1975 PLJR 290**; this court came to a conclusion in the facts of the said case that the dispute was touching upon the business of the society, hence the suit was barred under Section 57 of the Act.

28. Again this court finds that there is no quarrel with the propositions laid down by this court in the case of **Radha Krishan Jaiswal (supra)**. It may be seen that in the said case sub-section (8) of Section 48 of the Co-operative Societies Act, 1935 had not fallen for consideration, that was not a case in which the Registrar had exercised his power under sub-section (8) of Section 48 of the Act of 1935 to refer the case to the District Judge. The said case is not an authority on the point which has fallen for consideration in the present case.

29. On the other hand, reliance has been placed on behalf of the private respondents on the judgment of the



learned coordinate Bench of this court in CWJC No. 12255/2007 and CWJC No. 3277/2009 which would go to show that in the said case the learned coordinate Bench of this court referred paragraph 14 to 18 of the judgment passed in CWJC NO. 4593/2001. Paragraph 17 & 18 of the said judgment in CWJC No. 4593/2001 are quoted hereunder for ready reference:

“17. Although the Registration Act, 1908, does not specifically provide any mode or manner in which a deed of transfer earlier registered before the Registrar or Document could be cancelled by a subsequent deed of annulment, but even if the Registrar of Document had the power to admit such a deed of annulment for registration, it had to be done as per the requirements of principles of natural justice and cannot be done to the detriment of the person in whose favour the earlier deed of transfer was registered. Furthermore, once a property is transferred by a registered document, a vested civil right devolves upon the transferee and to nullify such vested right only a Civil Court of competent jurisdiction has the authority and the Registrar has no such power or authority of a Civil Court to decide right and title of a party.

18. From the impugned order passed by the Registrar, Cooperative Societies, it is quite apparent that he has dealt with the question of determination of title of the parties on the basis of Section 48 of the Act and which provides that Registrar acts as a Court in respect of disputes between the parties, but the said provision cannot be extended beyond the limits of the Act, nor the Registrar has been authorised to exercise the jurisdiction vested in a Civil Court of competent jurisdiction for the determination of right and title of a person with respect to a property.”

(emphasis supplied by me)

30. Referring to sub-section (8) of Section 48 of the Act of 1935 the learned coordinate Bench held that “*the*



Registrar is also vested with the powers of a civil court while adjudicating on a dispute under Section 48 of the Act but such adjudication is restricted to a dispute touching the business of a society but where it comes to interpretation of a document e.g. a registered sale deed especially on its validity or legality or to set it aside then such jurisdiction stands transferred with the court of competent jurisdiction and it is for this reason that the legislature has consciously included sub-section (8) of Section 48 of the Act vesting jurisdiction in the Registrar to refer a matter to a District Judge for adjudication on any such issue...”

31. Learned coordinate Bench also relied upon the judgment of the Hon’ble Supreme Court in the case of **Gorakhnath Dube Vs. Hari Narain Singh** reported in **AIR 1973 SC 2451** (paragraph-5) and held that on a similar issue being debated before the Supreme Court as regarding the power of a consolidation authorities to set aside a sale deed it has been held that where there exists a document having a legal effect which can only be taken away by setting aside the same or by cancellation, the consolidation authorities have no power to cancel the same and the document would be binding on them as long as it is not set aside by a court having power



to cancel it.

32. In the aforementioned circumstances, learned coordinate Bench also rejected the submission that it would amount to an abdication of responsibility.

33. In tune with what has been held by learned coordinate Bench of this Court in CWJC No. 12255/2007 this court finds that in the facts of the present case sub-section (8) of Section 48 must be read with the saving part of Section 57 of the Act of 1935. In an appropriate case where the Registrar, Co-operative Societies finds that the relief prayed in the Dispute Case may be appropriately granted in accordance with law only by a civil court of competent jurisdiction, only because the grounds set-forth for grant of reliefs are touching upon the business of the Co-operative Societies or affairs of the Co-operative Societies, it would be no bar to exercise of power by the Registrar under sub-section (8) of Section 48 of the Act, and if such power is exercised, the bar of jurisdiction created under Section 57 would not come in the way because Section 57 would save the action of the Registrar expressly provided under sub-section (8) of Section 48 of the Bihar Co-operative Societies Act, 1935.



34. In the result, this court finds no error with the
impugned order. The writ application is dismissed.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	09.04.2019
Uploading Date	30.04.2019
Transmission Date	

