

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 460 of 2019

{Arising out of order dated 20.08.2019 passed by the learned learned Single Judge in WPC No. 2353 of 2019}

- Atem Sahakari Vipnan Evam Prakriya Samiti Maryadit Prem Nagar District Surajpur, Through The President Jagdish Gupta S/o Late Umashankar Gupta, Aged 60 Yrs. R/o Tarkeshwarpur, Post - Umeshwarpur, District Surajpur Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Co - Operative Department, Mantralaya Atal Nagar, Raipur Chhattisgarh.
2. The Registrar Co - Operative Societies, Indravati Bhawan, Atal Nagar, Raipur.
3. The Deputy Registrar Co -Operative Societies Surajpur, District Surajpur.
4. The Asst. Registrar Co - Operative Societies Surajpur District Surajpur Chhattisgarh.
5. Shri Sainath Kerketta Co - Operative Inspector Appointed As Liquidator of Atem Sahakari Vipnan Evam Prakriya Samiti Maryadit Prem Nagar, District Surajpur.

---- Respondents

For Appellant : Shri Prafull N. Bharat, Advocate.
For Respondent/State : Shri V. R. Tiwari, Additional Advocate General.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

P. R. Ramachandra Menon, Chief Justice

14.10.2019

1. Interference declined in the writ petition, relegating the Appellant to pursue the remedy by way of appeal under Section 78 of the Chhattisgarh Co-operative Societies Act, 1960 (for short, 'the Act') in respect of supersession of the Society in terms of Section 69 (3) of the Act is under challenged in this appeal.
2. Heard the learned counsel for the Appellant as well as the learned counsel representing the Respondents/State.
3. The sequence of events is as follows:

(a) The Appellant was served with a show cause notice in exercise of power under Section 69 (3) of the Act, as to why proceedings shall not be pursued to have the Society wound up for the reasons stated therein. On receipt of the said notice, a reply was submitted by the Appellant, explaining the facts and circumstances and rebutting the various allegations levelled against the Society. However, the matter was finalised by the 3rd Respondent by passing Annexure P/1 order dated 18.06.2019, superseding the Society and appointing Shri Sainath Kerketta, Co-operative Inspector as the Administrator of the Society to deal with the affairs, which made the Petitioner to cause the same to be challenged by filing writ petition with the following prayers:

“10.1 To call for the records of the case for the kind perusal of this Hon'ble Court.

10.2 To issue an appropriate writ or order and declare that the order dated 18.06.19 (Annexure P-1) is illegal, arbitrary, bad in law and without jurisdiction.

10.3 To issue an appropriate writ or order ad quash the order dated 18.06.19 (Annexure P-1).

10.4. Any other relief deemed fit in the facts and circumstances of the case may also be granted.”

(b) The said writ petition was disposed off relegating the Appellant to pursue the statutory remedy in terms of Section 78 of the Act. The operative portion of the judgment as contained in Paragraph 10 is in the following terms:

“10. In the instant case the orders have been passed by the Deputy Registrar and the opportunity of hearing has been given. Therefore jurisdictional issue do not come to fore for judicial scrutiny. There is no reason as to why the petitioner may not avail alternative remedy of filing statutory appeal as contemplated under Section 78. Record would show that orders have been passed and direction were given by the State in general to the

Registrar of Co-operative Society to make an enquiry in respect of all the Co-operative Society within the State who have not followed the Act and Rules of Co-operative Societies Act. Therefore no bias can be attributed to State. Pursuant thereto different notice were issued under such notice enquiry came to fore. The State has contemplated that there was no audit as is required under Section 58 of the Act of 1960. The necessity of audit is corroborated by the Rule 50 of Chhattisgarh Co-operative Societies Rules, 1962 and if the audit have not been taken place and accounts have not been maintained then contemplated enquiry suo moto by the Registrar cannot be side lined only on the ground of bias. Considering the authority of the Registrar, no substitution is possible and no one else under the Act is empowered to act. Therefore when there is no substitution possible and no one else is empowered to act, then the natural consequence would be necessity has to be given a way or otherwise there would be no means of deciding and machinery of justice or administration will break down. When the statute empowers a particular officer to act, there is no way to escaping the responsibility even if he is in other capacity notices were served. Transfer such statutory mandate and responsibility indeed would be recognized as ultra vires.”

4. The learned counsel for the Appellant points out that the allegation levelled against the Co-operative Society is rather politically motivated and that the relevant ingredients / requirements have not been satisfied to sustain the supercession. It is also pointed out that there was similar attempt earlier as well, raising almost similar allegations and the order of super-session was subjected to challenge by moving the Joint Registrar, who considered the matter elaborately and passed Annexure P/10 order dated 17.07.2014, whereby the impugned order was set aside. The matter was sought to be pursued after change in Government, more so since the present Government, as put forth by the Appellant, is desirous to change the elected member of the Apex body; which is sole motive to have the Society liquidated by resorting to

the power envisaged under Section 69 (3) of the Act, in a dubious manner. Pursuant to the notice issued without conducting proper enquiry as envisaged under the relevant provision of the statute, liquidation order was passed. It was subjected to challenge by filing Writ Petition (C) No. 1595 of 2019, which was allowed without entering into the merits, except to the extent which was necessary to have the order set aside for not complying the principle of *audi alterem partem*; with liberty to the Respondent to pursue the matter afresh after affording opportunity of hearing to the Petitioner. It is stated that the matter was finalized accordingly, and Annexure P/9 order was passed on 08.05.2019 which was put to challenge in Writ Petition (C) No. 2353 of 2019; where interference stands declined; in turn giving rise to the present appeal.

5. The learned counsel for the Appellant submits, in support of the contention that it is politically motivated, the Petitioner has produced various documents such as Annexures P/18, P/19 and P/20. The allegation against the Petitioner as to the construction of 'Godown' in Government property is stated as having no basis at all, insofar as Clause 8 of Annexure P/5 issued by the Government itself insists that, it has to be constructed on Government land. Similarly, with regard to the **second** allegation that the Appellant Society is not running a 'fair price shop', the learned counsel points out that Clause 5 of Annexure P/11 clearly stipulates that it can be done only by Societies which were registered on or before 31.05.2004. In the instant case, the Appellant Society was registered only on 18.07.2007, as borne by Annexure P/2

certificate of registration, by virtue of which, the Appellant Society is not in a position to conduct any fair price shop. This being the position, the said allegation does not have any basis at all. In respect of the **third** allegation with regard to non-conducting of sale of agricultural fertilizer, reference is made to Annexure P/12, which has been issued by the Administration department of the State, saying that such an attempt cannot be ventured by a Co-operative Society and this being the position, the Appellant / Society is not in a position to do the same. With regard to the **fourth** allegation, as to non-conducting of audit, the learned counsel submits that the Auditor was appointed only on 26.06.2018, as borne by Annexure P/23. Auditor is an officer of the State and delay in appointing the Auditor or the lethargy, if any, on his side in conducting the audit on time, cannot be shifted to shoulders of the Appellant / Society as if it were a lapse on the part of the Society. It was in the said circumstance that the Appellant was constrained to move this Court by filing the writ petition, submits the learned counsel.

6. With regard to the alternate remedy available by way of appeal under Section 78 of the Act, as ordered by the learned Single Judge, the learned counsel submits that the same cannot be an efficacious remedy in instant case. It is true that the Annexure P/1 order was passed by the Deputy Registrar i.e. 3rd Respondent in exercise of the power under Section 68 (3) of the Act and statutory appeal lies to the Joint Registrar. It is the Joint Registrar / Appellate authority, who has filed the 'return' in the writ petition, seeking to resist the prayers sought for in the writ petition. This being the position, no purpose will be

served by filing any appeal before the said authority who has filed the return and hence the appeal before this Court.

7. We find some force in the said submission. However, this is a matter where various facts and figures will have to be brought on record and the evidence so brought will have to be appreciated to arrive at a correct finding. This fact finding exercise cannot be done by this Court in the extraordinary jurisdiction under Article 226 of the Constitution of India and as such, the interference declined by the learned Single Judge is not assailable. At the same time, the appellate remedy available to the aggrieved party has to be an effective and 'meaningful remedy'. As such, this Court is of the view that the statutory appeal instead of being considered by the Joint Registrar who has filed return in the writ petition, could be caused to be considered by the 2nd Respondent herein (Registrar of Co- Operative Societies), who shall pass a speaking order on merit.
8. In the above circumstances, the Appellant is set at liberty to approach the 2nd Respondent by filing appeal under Section 78 of the Act. Since the statutory period for filing the appeal is over, we grant two weeks' time from the date of the receipt of a certified copy of this judgment, to the Appellant, to move the 2nd Respondent by filing the appeal as above. If any such appeal is filed, it shall be considered on merits with liberty to adduce evidence and also in accordance with law of course after affording opportunity of hearing to the Appellant. The matter shall be finalized as expeditiously as possible, at any rate with two months from the date of receipt of the appeal as aforesaid.

9. The writ appeal is disposed off accordingly.
10. We make it clear that we have not expressed anything with regard to the merits of the rival contentions.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Hem