

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.121 of 2017

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1. Rajiv Nagar Sahkari Grih Nirman Sahyog Samiti Ltd., registered under the Bihar Co-operative Society Act, 1935 bearing registration no.51 of 1982 and having its registered office at Digha Ghat, P.O + P.S.- Digha, Patna-800011, through its Secretary Sri Sona Singh.
 2. Rajiv Ranjan, Son of Late Rajendra Prasad, Chirman of Petitioner No. 1
 3. Sona Singh, S/o Late Panchhi Lal Yadav, Secretary of Petitioner No. 1, Both Resident of Mohalla- Digha Ghat, Patipul, P.O.- Digha Ghat, P.S. Digha, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through the Registrar Co-operative Societies, Co-operative Department, Govt. of Bihar at Patna.
2. The Registrar Co-operative Societies, Co-operative Department, Govt. of Bihar at Patna
3. The District Co-operative Officer, Patna Sadar, Budha Marg, Patna-800001.
4. Braj Bhushan Prasad Mehta, S/O Late Sita Ram Mahto, Resident of Mohalla-Digha Ghat, Patipul, P.O.-Digha Ghat, P. S.-Digha, District- Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chiranjiva Ranjan- Advocate
For the State	:	Mr. Manoj Kr. Ambastha- SC-26
		Mr. Subodh Kumar-AC to SC-26

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

24-02-2023 Heard learned counsel for the petitioners and

learned A.C. to S.C. 26 for the State.

The present writ application has been filed seeking quashing of the order dated 20.09.2016 passed in Election Dispute Case No. 56 of 2016 by the Registrar, Co-operative Societies whereby notices were issued upon the petitioners to appear and contest the case and also the Joint Registrar,

Co-operative Societies was directed to hold an inquiry with respect to the charges leveled in Case No. 56 of 2016 filed by the respondent no.4.

The Court, initially, was not inclined to entertain the writ petition as no order adjudicating any lis was under challenge rather the notices issued to the petitioners and the direction upon the Joint Registrar, Co-operative Societies to hold an inquiry was only under challenge, but when the matter was taken up, the learned counsel for the petitioners submitted that after notice was issued on 20.09.2016, the Registrar, Co-operative Societies (Respondent No.2) passed final order dated 13.07.2017, whereby he rejected the contention of the petitioners that the issues raised in Case No. 56 of 2016 by the respondent no.4 is barred by *res judicata* and directed the Joint Registrar, Co-operative Societies to submit a report within two months with regard to the allegations alleged against the petitioners Co-operative Societies and based on the report to take action in accordance with law. It is next submitted that the order dated 13.07.2017 has been challenged by filing I.A. No.

8257 of 2017, thus prayed to allow the I.A. No. 8257 of 2017. The I.A. No. 8257 of 2017 is allowed.

The learned counsel for the petitioners assails the order dated 13.07.2017 passed by the respondent no.2 on the ground that the same is hit by the principles of constructive *res judicata*. In order to buttress his arguments, the learned counsel draws the attention of the Court to the facts of the case for persuading the Court that the order dated 13.07.2017 is hit by the principle of constructive *res judicata*. It is next submitted that the private respondent no.4 had filed Election Dispute Case No. 282 of 2014 before the respondent no.2, wherein a prayer was made for taking appropriate action against the petitioners who fraudulently got elected as Secretary and President of Rajiv Nagar Sahkari Grih Nirman Sahyog Samiti Limited, Patna respectively (hereinafter referred to as "the said Society") by violating all the necessary statutory provisions of law. It is next submitted that the petitioners herein challenged the initiation of Election Dispute Case No. 282 of 2014 in CWJC No. 13962 of 2015. The CWJC No. 13962 of 2015 was

taken up and after hearing the parties was disposed of by order dated 04.09.2015 with liberty to the petitioners to raise all the issues, which have been raised in the writ application before the respondent no.2 in Election Dispute Case No. 282 of 2014, as maintainability of the Election Dispute Case No. 282 of 2014 was also an issue in the writ application.

It is further submitted that after the order dated 04.09.2015 was passed by the writ court, the Election Dispute Case No. 282 of 2014 was transferred to the Court of Deputy Registrar, Co-operative Societies where the Election Dispute Case No. 282 of 2014 was renumbered as Election Dispute Case No. 156 of 2014. It is further submitted that Election Dispute Case No. 156 of 2014 was dismissed by order dated 21.09.2015 on the grounds of limitation.

The learned counsel submits that though Election Dispute Case No. 156 of 2014 was dismissed on the grounds of limitation, but the private respondent in the said case had also raised the issues with regard to membership,

getting audit done by illegal means etc. From the submissions made hereinabove, it is clear that the Election Dispute Case No. 156 of 2014 was not adjudicated on merits rather was dismissed on the ground of limitation in filing the case belatedly challenging the election of the petitioners as Secretary and President of the said Society, respectively.

Learned counsel next submits that after the Election Dispute Case No. 156 of 2014 was dismissed, the private respondent herein again filed a complaint before the Commissioner, Patna Division against the present petitioners by his application as contained in Annexure-4 to the writ petition with regard to the irregularity being committed by the petitioners in the said Society. The Commissioner, Patna Division recommended for appropriate action by the authorities under the Bihar Co-operative Societies Act, 1935.

The learned counsel next submits that in terms of the recommendation made by the Commissioner, Patna Division, a proceeding was initiated before the District Co-operative Officer, Patna. The said proceeding so initiated was

challenged in CWJC No. 17662 of 2015 by the present petitioners on the ground that the Commissioner had absolutely no jurisdiction to interfere in the matter relating to Co-operative Society as Commissioner of the Division has no authority under the Act to interfere in the matters of Co-operative Society, rather the Commissioner is a stranger to the proceedings and thus had no power to order for any kind of inquiry.

The C.W.J.C. No.17662 of 2015 was allowed by order dated 04.02.2016 with a direction that petitioners would be at liberty to raise all objections as raised in the writ petition, should any proceeding be initiated at the instance of the private respondent herein.

The learned counsel for the petitioners next submits that after the order dated 04.02.2016 was passed in C.W.J.C. No. 17662 of 2015, the private respondent herein filed Election Dispute Case No. 56 of 2016 before the respondent no.2 against the petitioners and others for holding an inquiry relating to affairs of the said Society in accordance with the provisions of the Bihar Co-operative

Societies Act, 1935, apart from other reliefs. Thereafter the respondent no.2 by order dated 20.09.2016 in Election Dispute Case No. 56 of 2016 issued notice upon the petitioners which is impugned in the present writ application. The learned counsel submits that thereafter, during pendency of the writ application, the Registrar, Co-operative Societies passed final order dated 13.07.2017/03.10.2017 (Annexure-13 to I.A. No. 8257 of 2017) whereby the respondent no.2 directed the Joint Registrar, Co-operative Societies, Patna Division to hold an inquiry with regard to the allegation raised by the private respondent in Election Dispute Case No. 156 of 2014 within a period of two months and to submit a report and based on the report to take action in accordance with law.

It is this order contained in Annexure-13 by which the petitioners are aggrieved on the ground that it is barred by the principles of constructive *res judicata* and the respondent no.2 without appreciating the same, directed for holding an inquiry and to submit a report.

Learned counsel submits that constructive *res*

judicata is an artificial form of *res judicata* and provides that if a plea could have been taken by a party in a proceeding between him and his opponent, he should not be permitted to take that plea against the same party in a subsequent proceeding with reference to the same subject matter.

Learned counsel relies on a judgment of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh Vs. Nawab Hussain** decided on 04.04.1977 for substantiating his submission that the order contained in Annexure-13 to the writ application was hit by the principles of constructive *res judicata*.

It is submitted that Nawab Hussain (respondent) was a confirmed Sub-Inspector of Police in Uttar Pradesh against whom two cases were registered under the Prevention of Corruption Act and Penal Code. The matter was investigated and he was dismissed from service by order of the Deputy Inspector General of Police dated 20.12.1954 against which he filed an appeal but the same was also dismissed on 17.04.1956, thereafter he filled writ petition before the Hon'ble Allahabad High Court for quashing the

disciplinary proceedings on the ground that he was not afforded a reasonable opportunity to meet the allegations against him and the action taken against him was mala fide. The said writ application was dismissed on 30.10.1959, thereafter he filed a suit in the court of Civil Judge, Etah on 07.01.1960 challenging his order of dismissal on the ground that he had been appointed by the Inspector General of Police and the Deputy Inspector General of Police was not competent to dismiss him by virtue of the provisions of the Article 311(1) of the Constitution. The suit was dismissed on 21.07.1960 and the appeal was also dismissed by the District Judge by order dated 15.02.1963 against which second appeal was filed before the High Court on 27.03.1968 and the suit was decreed in favour of Nawab Hussain. The State of Uttar Pradesh challenged the judgment of the High Court before the Hon'ble Supreme Court and the Hon'ble Supreme Court allowed the appeal by order dated 04.04.1977 holding that Nawab Hussain did not raise the plea in the writ petition which he had filed before the High Court that by virtue of Article 311(1) of the

Constitution he could not be dismissed by the Deputy Inspector General of Police as he had been appointed by the Inspector General of Police, further it is also not in controversy that was an important plea which was within the knowledge of the respondent (Nawab Hussain) and could well have been taken in the writ petition but he contended himself by raising the other pleas that he was not afforded a reasonable opportunity to meet the case against him in the departmental inquiry and that the action taken against him was mala fide. It was, therefore, not permissible for him to challenge his dismissal in the subsequent suit on the other ground that he had been dismissed by an authority subordinate to that by which he was appointed. That was clearly barred by the principles of constructive *res judicata* and the High Court erred in taking a contrary view.

Learned counsel submits that the private respondent had also initially filed Election Dispute Case No. 282 of 2014 and in the said case he had not taken the plea which he had taken in Election Dispute Case No. 56 of 2016 as such the Election Dispute Case No. 56 of 2016 was

barred by the principles of constructive *res judicata*.

The learned counsel for the State rebuts the submissions of the learned counsel for the petitioners and submits that from the pleadings made in the writ application and the submissions advanced it would manifest that petitioners are trying to scuttle the inquiry being aware of misdeeds committed by them in the Society.

It is next submitted that the respondent no.2 has passed a detailed order wherein he has considered the plea of *res judicata* raised by the petitioners herein and has very clearly held that the principles of *res judicata* will not apply in the present case as initially the dispute was with respect to election of the petitioners as Secretary and President of the said Society and the issue regarding the Society being engulfed by corruption was not an issue, further no lis was decided in Election Dispute Case No. 282 of 2014 as it was dismissed on the ground of limitation. It is further submitted that even the principles of constructive *res judicata*, which is being raised by the learned counsel for the petitioners, would also not be applicable in the present case, first for the

reason that it was not raised before the Registrar Co-operative Society and secondly for the reason that the private respondent initially had challenged the election of the petitioners which stood dismissed on grounds of limitation without any adjudication on merit and thereafter private respondent took up the cause of the Society and filed an application before the respondent no.2 after passing of the order in CWJC No. 17662 of 2015 and the respondent no.2 after hearing the parties passed the order directing for an inquiry. It is next submitted that if petitioners are clean, they should not be bothered about the inquiry but then their conduct in opposing the inquiry, so directed, speaks volume about their misdeeds.

The learned counsel for the State next submits that the Court while exercising writ jurisdiction does not sit as an appellate authority nor re-appreciates the evidence, but is only concerned with the error in the decision making process and from perusal of the order of the respondent no.2 it would manifest that the decision has been taken in accordance with law and there is no error in the order rather

the order is reasoned and merely directs for an inquiry to which the petitioners should subject.

Considering the submissions made by the learned counsel for the State, the Court is not inclined to entertain the writ petition.

Accordingly, the writ petition is dismissed but with no order as to costs.

(Satyavrat Verma, J)

Vikash/Rishi2

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	27.02.2023
Transmission Date	