

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10561 of 2013

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Jawahar Prasad S/O Late Rama Prasad R/O Plot No. B-32, Biscomaun Colony, Guljarbagh, P.S.- Alamganj, District- Patna-800007

... .. Petitioner/s

Versus

1. The State Of Bihar through Secretary, Cooperative Department, Govt. Of Bihar, Patna
2. The Bihar State Co-Operative Marketing Union Ltd. At Biscomaun Bhawan, West Gandhi Maidan, P.S.- Gandhi Maidan, Patna
3. Managing Director Bihar State Co-Operative Marketing Union Ltd., Biscomaun Bhawan, West Gandhi Maidan, P.S.- Gandhi Maidan, Patna
4. Secretary The Bihar State Co-Operative Marketing Union Ltd., Biscomaun Bhawan, West Gandhi Maidan, P.S.- Gandhi Maidan, Patna
5. Registrar, Co-Operative Societies Co-Operative Department, Govt. Of Bihar, Patna
6. President Biscomaun Karmchari Sahkari Grih Nirman Samiti Ltd., Biscomaun Colony, Patna-7
7. Secretary Biscomaun Karmchari Sahkari Grih Nirman Samiti Ltd., Biscomaun Colony, Patna-7

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Mithilesh Kumar Rai, Advocate
For the Respondent/s	:	Mr. Rajendra Singh, GA 10
	:	Mr. Jitendra Kumar, AC to GA 10

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 14-02-2023 The present writ petition has been filed seeking the following relief :-

(i) For issuance of a writ in the nature of certiorari to quash the order dated- 19.7.2012, contained in Memo No. 1759, issued under the signature of the Managing Director, Bihar state Co.operative Marketing Union Ltd. Patna (Biscomaun), whereby and whereunder Plot no. B-32, initially allotted to



one Sri Chandeshwar Chaturvedi has been said to be cancelled and further issuance of a consequential writ in the nature of mandamus commanding and directing the respondents not to interfere with the allotment, title and possession of the petitioner in any manner, save and except permissible under the law.

The learned counsel for the petitioner has referred to a judgment rendered by a co-ordinate Bench of this Court vide order ***dated 10.01.2013***, passed in ***C.W.J.C. no. 262 of 2013 (Sumitra Devi v. The State of Bihar and others)***, relevant paragraphs whereof, are reproduced hereinbelow :-

“ Learned Counsel for the petitioner submits that the properties were originally allotted to her husband by the Cooperative Society and upon his death has devolved upon her in accordance with law and she has been admitted to membership of the Society. It is next submitted that the order dated 19.7.2012 proceeds on an erroneous assumption that her husband had transferred the property to a third person, an outsider, without authority of law. It is next submitted that the order dated 19.7.2012 draws its sustenance from the lease agreement between the BISCOMAUN and the Housing Society



dated 29.3.1979 and the lease agreement dated 16.2.1983 between the Member and the Society. In the former, any dispute between the BISCOMAUN and the Society had to be referred to arbitration of the Registrar of Cooperatives and the Managing Director, BISCOMAUN cannot assume any unilateral powers over the Society. Likewise under Cause 12 of the agreement dated 16.12.1983 in case of any dispute between the Society and its Member, the matter had to be referred to the arbitration of the Managing Director, BISCOMAUN. Whether it be the agreement between the BISCOMAUN and the Society or the agreement between the Society and the member both contained the requirement for arbitration which necessarily presupposes a final adjudicatory order with full opportunity of defence followed by a reasoned order. In the present case there is no dispute between the Society and the member. It deprives the Managing Director of any direct jurisdiction against the petitioner. Whether it be the agreement dated 23.9.1979 or the agreement dated 17.2.1983, the Managing Director cannot take advantage of the same merely be reason of his empowerment but has to accept the burden simultaneously with regard to the manner prescribed in the two clause for exercise of power by way of arbitration only.



Counsel for the BISCOMAUN submits that the lands were leased to the Society with a clause for reversion after specified number of years.

Her next submits that no construction has been raised on the plot claimed by the petitioner within the time period specified and therefore the impugned orders require no interference. It may only be noticed that this fact has specifically been denied by the petitioner.

Having heard Counsel for the parties the Court is satisfied that the decision making process of the Managing Director whether it be under the former agreement or the latter agreement referred to in his order are vitiated for assumption of jurisdiction contrary to the procedure prescribed in the same. The Managing Director if he so desires can only proceed for arbitration. It is the Arbitrator who shall then pass proper reasoned adjudicatory orders. The question whether the Managing Director has jurisdiction on facts to proceed with arbitration or whether the jurisdiction has been lost, is left open for him to decide if it is raised on behalf of the petitioner.”

The learned counsel for the respondent-BISCOMAUN has not disputed the law laid down by a



co-ordinate Bench of this Court in the case of ***Sumitra Devi*** (*supra*).

Accordingly, the present petition stands allowed and the impugned order dated 19.07.2012, issued under the signature of the Managing Director, Bihar state Co-operative Marketing Union Ltd. Patna (Biscomaun) is set aside, however, without prejudice to the rights of the Managing Director to proceed afresh in the matter, in terms of the law laid down by a co-ordinate Bench of this Court in the case of ***Sumitra Devi*** (*supra*).

(Mohit Kumar Shah, J)

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