

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1051 of 2024

Md. Ashaphak Ahamad Son of Md. Ashalam, Resident of ward no. 6,
Sadapur, Lakhminiya, P.S. Sahebpur Kamal, District - Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Cooperative Department, Government of Bihar, Patna.
2. The Minister, Co-operative Department, Government of Bihar, Patna, New Secretariat, Patna.
3. The Registrar Cooperative Societies, Bihar, Patna, New Secretariat, Patna.
4. The District Cooperative Officer, Begusarai.
5. The Senior Audit Officer, Cooperative Societies, Samastipur.
6. The Cooperative Extension Officer, Block - Sahebpur Kamal, District- Begusarai.
7. The Block Cooperative Officer, Begusarai, District- Begusarai.
8. Sadpur Purvi Primary Agriculture Credit Cooperative Society Ltd. Block - Sahebpur Kamal, District - Begusarai.
9. The Chairman, Sadapur Purvi Primary Agriculture Credit Cooperative Society Ltd. Block - Sahebpur Kamal, District- Begusarai.
10. Navin Kumar Mishra, the erstwhile Manager, Sadapur Purvi Agriculture Credit Cooperative Society Ltd. Block - Sahebpur Kamal, District- Begusarai, son of Umakant Mishra, resident of village and P.O. - Gokhle Nagar, Bishanpur, Via Lakhminiya, P.S. Baliya, District- Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Jha, Advocate
For the State : Mr. Venkatesh Kirti, JC to GA 2

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

4 27-08-2024

Heard the parties.

2. The present writ petition has been been
preferred for the grant of following reliefs:-

*“(A) Issuance of an appropriate order/
direction/ writ preferably in the nature of
certiorari quashing order dated 14.09.2023*



contained in memo No. 73/ML dated 20.09.2023 (Annexure-P-5) passed by the Hon'ble Minister, Cooperative Department, Government of Bihar in surcharge Appeal Case No. 09/2018 so far as it relates with the petitioner whereby and where under it has been held that the "Surcharged amount" is recoverable combindly (SAMEKIT) from the petitioner with respondent No.10 namely Navin Kumar Mishra although, the petitioner was not the party either in the original surcharge proceeding or in the appeal in question. Further the petitioner was not named in enquiry report based on which surcharge proceeding was initiated and conducted, he was not surcharged by the order against which aforesaid appeal no. 09/2018 was filed by respondent No. 10 as only against him the order of surcharge dated 05.05.2018 u/s. 40(1) of the Bihar Cooperative societies Act, 1935 was passed by the District Cooperative Officer, Begusarai for recovery of Rs. 2318457/-;

(B) Issuance of an appropriate order/ direction/ writ preferably in the nature of certiorari quashing letter No. 1064 dated 08.12.2023 of the District Cooperative Officer, Begusarai (Annexure-P-6) so far it



relates to the petitioner whereby in compliance of order of the Hon'ble Minister, Cooperative Department, Government of Bihar contained in Memo No. 73/ML dated 20.09.2023, direction has been issued to the petitioner as well, to deposit the "Surcharged amount" in the account of the society. The stipulation of the letter is that the surcharged amount is Rs. 42,70,460/- whereas as per the surcharge order dated 05.05.2018, the Surcharged amount is Rs. 2318457/-.

(C) Issuance of an appropriate order/ direction/ writ in the nature of certiorari quashing Special Audit Report dated 25.02.2020 (Annexure-P-4) based on which the aforesaid order of the Hon'ble Letter Cooperative Minister and letter of respondent No.4 contained in Annexure-P-5 and P-6 respectively have been passed and issued. The Special Audit has been conducted behind back the petitioner and it is in teeth of section 33A of the Bihar Cooperative Societies Act, 1935 itself;"

3. At the outset, learned counsel appearing on behalf of the Chariman (respondent no.9) of the Sadapur Purvi Primary Agriculture Credit Cooperative Society, Sahebpur Kamal, Begusarai, (hence for short 'the Society)



has submitted that the orders in question i.e. the order dated 14.09.2023 in surcharge Appeal Case No.09 of 2018 (Navin Kumar Mishra vs. District Cooperative Officer, Begusarai and Ors.) as also the Memo No.1064 dated 08.12.2023 issued by the respondent District Cooperative Officer, Begusarai, are not the final orders inasmuch as pursuant to the show cause notice issued by the District Cooperative Officer, Begusarai, the Central Cooperative Bank Begusarai has filed Certificate Case No.25 of 2024 against the Petitioner as also Navin Kumar Mishra. A copy of the said document has been provided to this Court by learned counsel for the respondent no.9.

4. At the stage, learned counsel for the petitioner submits that the money is of the PACS of 'the Society' and as such the Bank does not come into picture. He submits that in that background, he must have the opportunity to raise all the objections including the preliminary objection on the maintainability of the case that the Central Cooperative Bank, Begusarai has no jurisdiction in the matter to file the aforesaid case.

5. Learned counsel appearing on behalf of the



respondents including the Chairman submits that once the certificate proceeding has been preferred, the petitioner will have the liberty to bring on record all the objections/preliminary objections on this maintainability.

6. Appreciating the stand of the parties and since the certificate proceeding has been preferred as stated above, it will be appropriate that the petitioner avail remedy. He will have the liberty to raise all the objections/preliminary objection on the maintainability of the certificate proceeding.

7. The writ petition accordingly, disposed of, with a direction to the Certificate Officer to take the matter to its logical conclusion at an earliest after hearing all the necessary parties/putting them on notice.

(Rajiv Roy, J)

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