

HIGH COURT OF MADHYA PRADESH: JABALPURSINGLE BENCH:HON. SHRI JUSTICE A.K. SHRIVASTAVAWRIT PETITION NO. 14292/2006

- Petitioners : 1. Jagat Bahadur Singh
S/o Shri Prithvi Raj Singh,
aged about 48 years,
R/o Village Dhankher, Post
Bachbai, District Satna, (M.P.)
2. Amar Beej Utpadak Cooperative
Society Maryadit, Sohawal,
through its President Bal Krishan
Gupta, S/o Ramavtar Gupta,
Aged about 40 years, R/o
Padrouta, Tehsil Raghuraj Nagar,
District Satna, (M.P.)

Versus

- Respondents : 1. State of Madhya Pradesh,
Through Secretary,
Department of Co-operative
Society, Vallabh Bhawan,
Bhopal, (M.P.)
2. Registrar, Co-operative
Societies, Bhopal (M.P.)
3. Joint Registrar, Co-operative
Societies, Rewa Division, Rewa
(M.P.)
4. P.S. Tiwari, Deputy Registrar,
Co-operative Societies, Satna,
(M.P.)
5. Prabhakaran Prakash, Assistant
Inspector, Co-operative
Societies, Satna, (M.P.)

6. Mukesh Kumar Gupta, S/o Kedar Nath Gupta, Manager, Amar Beej Utpadak Sahkari Samiti Maryadit, Sohawal, Satna, (M.P.)

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Petitioners	-	Shri Manoj Sharma, Advocate and Shri Siddharth Patel, Advocate.
Respondent Nos.1 to 3	-	Shri Kapil Patwardhan, Advocate.
Respondent nos.4 & 5	-	None
Respondent No.6	-	Shri Hitendra Singh, Advocate.
Intervener	-	Shri V.K. Shukla, Advocate.

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Date of hearing : 16/03/2011

Date of Order : /04/2011

ORDER

(/04/2011)

1. By this petition under Article 226 of the Constitution of India, the petitioners are seeking the following reliefs:-

- (i) A writ of mandamus to Respondent no.1 to inquire into the illegal actions taken by Respondents No.4 and No.5.
- (ii) A writ of 'Certiorari' quashing the orders passed by Respondents No.4 & No.5 after the services of Respondent No.6 were terminated by the Society and declare the elections conducted therein are void.
- (iii) A writ of Mandamus to Respondent No.1 to initiate criminal action against the Respondents No.4, No.5 & No.6 for embezzlement of funds of the Society.

- (iv) A command to Respondent No.2 to seize the entire records pertaining to the Society.
- (v) A command to C.B.I. to conduct an inquiry and prosecute the Respondents No.4, No.5 & No.6.
- (vi) To grant any other relief deemed fit in the circumstances.
- (vii) Direct the respondents to conduct a fresh election in Amar Beej Utpadak Cooperative Society, Suhawal, Satna by the relevant rules and the relevant voter list as available at the time of supersession of the society i.e. 30.11.2005 in a time bound manner and further declare all the proceedings as has been done by the private respondents by hijacking the society as null and void.”

2. Earlier, petitioners had approached this Court for redressal of their grievances by filing W.P. No. 4442/2006 which was decided by this Court on 17.7.2006 and directed the Joint Registrar, Cooperative Societies (respondent no.3) to decide petitioners' appeal which was in regard to the order passed by the Dy. Registrar, Cooperative Societies dated 30.11.2005.

3. Petitioner No.2 Amar Beej Utpadak Cooperative Society is a Society registered under the M.P. Cooperative Societies Act, 1960 (for brevity “the Act”). This Society was registered on 19.02.2003. The Society is only for the farmers and was limited to the number of villagers specified in its bye-laws. The petitioners have good reputation in the area and large number of farmers had placed their trust and faith in the working of the said

Society. Petitioner no.1 Jagat Bahadur Singh is the founder President of the Society and after holding valid elections one Bal Krishan Gupta has been appointed as President. The respondent no.6 Mukesh Kumar Gupta was appointed as Manager of the Society. In short time, a large number of farmers had started placing their faith and trust in the working of the Society.

4. According to the petitioners, respondent no.6 Mukesh Kumar Gupta became dishonest and his notorious activities were noticed by the President of the Society. Eventually, his services were terminated by an order dated 01.10.05 (Annexure P/4). On coming to know about the said order, the respondent no.6 along with the help of respondent no.4 (P.S. Tiwari, Dy. Registrar) got the Society suspended and the respondent no.5 (Prabhakaran Prakash) was appointed as Incharge of the said Society. Huge funds of the Society were siphoned resulting into hue and cry by the poor farmers who had invested their money and agricultural produce. According to the petitioners, the embezzlement of respondent no.6 was well known to the respondent no.4 but by abuse of process of law, petitioner Society was hijacked by the respondents no.4, 5 and 6.

5. After suspending the Society, the respondent no.4 with the help of respondents no.5 and 6 got inducted the sister-in-law of

respondent no.6 as President of the Society and removed the petitioner no.1 along with other office bearers of the Society from being the primary membership of the said Society and large number of new members were inducted in the Society without following the established rules and procedure of the Act. According to the petitioners, expulsion of large number of members of the Society as well as induction of new members without calling for General Body Meeting and without informing any reasons, respondents no.4, 5 and 6 terminated the membership of the members of the Society.

6. Further, it has been contended in the memorandum of petition that respondent no.4 (Mukesh Kumar Gupta) in order to avoid the termination order passed by the petitioners, by his illegal action with the help of respondents no.4 and 5 got his sister-in-law elected contrary to the bye-laws as well as the established rules against which the petitioners submitted representation to the respondent no.2 (Registrar, Cooperative Society) but no action was taken hence the petitioners approached this Court for protecting the assets of the Society and to see that the respondent no.6, being a terminated and tainted Manager should not be allowed to siphon the funds of the Board and farmers. According to the petitioners, the entire

elections conducted by respondents no.4, 5 and 6 are without authority and the same could not have been done.

7. Vide order dated 30.11.05, the Society has been superseded under section 53(1) of the Act (Annexure P/12) by the order of Deputy Registrar. The said order was assailed by the President of the Society Bal Krishan Gupta and founder President Jagat Bahadur Singh by filing an appeal to the Joint Registrar who allowed the appeal and quashed the order of supersession of Dy. Registrar on 03.02.2007 (Annexure P/13). The order passed in appeal dated 03.02.2007 was assailed in Second Appeal No. 95/2007 but the order of Joint Registrar has been affirmed by the Tribunal also vide order dated 06.12.2008 (Annexure P/14). Although the order of supersession of the Society has been set aside and had attained finality but the charge has not yet been given to the petitioners.

8. Several other contentions have been put forth by Shri Manoj Sharma, learned counsel for the petitioners that termination order of the Manager was never challenged by him, despite it, vide resolution dated 31.3.2006 he has been authorized to operate the Bank account singly which is totally *dehors* to the bye-laws which authorizes two officers to operate the Bank account. The action was highly objected and several complaints were made by the petitioners as a result of which three enquiries

were conducted including the enquiry by the Audit Officer. All the enquiry reports are placed on record in the compilation filed by the petitioners to take the additional documents on record. In each and every report, respondent no.6, Mukesh Kumar Gupta was found to be guilty and it has been found that he has embezzled a huge amount of the Society. Hence, the petitioners have filed the present petition praying for the reliefs which are quoted herein before.

9. Return has been filed on behalf of the respondents no.1 to 3 viz. State of M.P., Registrar, Co-operative Societies and Joint Registrar, Co-operative Societies. Respondent No.5 Prabhakaran Prakash has also filed a separate return. Similarly, respondent No.6 Mukesh Kumar Gupta has also filed the return. Intervention has also been made by Smt. Madhu Gupta.

10. During the pendency of this petition, admittedly the Society had gone into liquidation under Section 69(2) read with Section 70(1) of the Act vide order dated 19.01.09 passed by the Dy. Registrar, Cooperative Societies, Satna. This order has been placed on record hence it has been prayed by respondents that now no relief can be granted to the petitioners.

11. I have heard Shri Manoj Sharma and Shri Siddharth Patel, learned counsel for the petitioners, Shri Kapil Patwardhan, learned counsel for respondents no.1 to 3, Shri Hitendra Singh,

learned counsel for respondents no.6 and Shri V.K. Shukla, learned counsel for the Intervener Smt. Madhu Gupta.

12. Since on account of the subsequent development that the Society had gone into liquidation and according to the petitioners' counsel, the said order has also been challenged by the Society before the Joint Commissioner therefore, at this stage no relief can be granted to the petitioners.

13. The contention of Shri Manoj Sharma, learned counsel for the petitioners is that no notice was served and according to Sub-section 3 of Section 69 of the Act, the order of liquidation cannot be passed without issuing the show cause notice against the proposed order. But since the order of liquidation is appealable under Section 78 of the Act and further under Sub-section (4) of Section 69 of the Act, the Registrar is authorized to cancel an order for winding up of the Society, the petitioners are having an efficacious and alternative remedy. An appeal has already been filed against the said order as stated by Shri Manoj Sharma, learned counsel for the petitioners. In the relief clause, quashment of order of winding up has not been challenged nor it can be challenged in the writ petition because the petitioners are having an efficacious and alternative remedy.

14. Hence, the petitioners are not entitled for any relief although on going through the enquiry report which was conducted by very senior most officers and they are totally against respondent nos. 5 and 6 and also against the Intervener. According to the report, respondent nos.5 and 6 and also the Intervener had embezzled a handsome amount of the Society. But at this juncture, nothing can be said in this regard despite all the three enquiry reports are against the respondents no.5 and 6 and intervener Smt. Madhu Gupta.

15. Since an appeal has already been filed against the order of liquidation by the petitioners, petitioners are not entitled for any relief and, therefore, presently this petition is dismissed with no order as to costs.

(A.K. Shrivastava)
Judge

