

WA 84/2015

BEFORE

HON'BLE MR. JUSTICE K. SREEDHAR RAO, THE CHIEF JUSTICE (ACTING)

AND

HON'BLE MR. JUSTICE P.K. SAIKIA

JUDGMENT AND ORDER (ORAL)

(P.K. Saikia, J)

These appeals are directed against the common judgment dated 07.04.2015, passed by learned Single Judge in W.P.(C) No. 5293/2015 and W.P.(C) No. 5298/2015 dismissing those appeals wherein the petitioners had prayed for quashing of (a) resolution No. 2 of Annual General Meeting (in short AGM) held on 18.05.2013 / 27.06.2013, (b) grant of approval to the said resolutions done on 21.05.2013 / 08.07.2013, (c) election of respondent No. 7 and 10 in WP (C) No. 5293 / 2013 as Chairman and Vice-Chairman respectively and election of respondent No. 5 and 6 in WP (c) No. 5298 / 2013 as Chairman and Vice-Chairman respectively and (d) a direction to restore / reinstate the Managing Committees constituted on 18.04.2010 / 28.06.2010.

We have heard Mr. S.S. Dey, learned Senior Counsel assisted by Mr. M. Nath for the appellants. We have also heard Dr. B. Ahmed, learned Standing Counsel appearing for respondent No. 1 to 4 and Mr. SK Singha, learned counsel appearing for respondent No. 7 in WA No. 84/2015 and respondent No. 5 in WA No. 85/2015.

The case, projected in WP(C) No. 5293/2015 in short, is that the Annual General Meeting (AGM, for short) of Dakhin Hojia Kumarakata Samabay Samity Ltd. (in short, 'Samity') was held on 18.04.2010 and vide resolution No. 2 the petitioner No. 1 was elected as Chairman of the Managing Committee whereas the petitioner No. 2 and petitioners No. 3 to 11 were elected as Vice Chairman and members of the Managing Committee respectively. The proceeding of the AGM was approved on 30.04.2010 and 1st meeting of the newly constituted Managing Committee was held on 16.05.2010.

On 06.04.2013, the Zonal Joint Registrar of the Cooperative Society (who was arraigned as respondent No. 3 in the writ petition aforesaid), addressed a letter to all Chairman/ Secretaries including the Chairman/Secretary of Samity of the petitioners, directing them to hold the Annual General Meeting for the year 2013-2014 as per the Assam Co-operative Societies Act of 2007 (in short, the Act of 2007) and Rules framed there-under. The petitioner No. 1 received such letter with directions as stated above on 03.05.2013.

Another letter dated 18.05.2013 was issued by respondent No. 3 u/s 41(2) of the Act of 2007 to all Chairmen/Secretaries including the Chairman/Secretary of Samity of the petitioners directing that the election of Directors of the Board were to be conducted before the expiry of the term of the Board so as to ensure that the newly elected members of the Board could assume office immediately on the expiry of the term of members of the outgoing Board.

In view of repeated directions, election of the Samity was held on 18.05.2013 and results of the election of the Board of Directors were declared on 19.05.2013.

In such election, the petitioner No. 1, 2, 5, 8 and 11 and respondent No. 7 to 15 in the aforesaid Writ Petition were elected. By an order dated 21.05.2013, respondent No. 3 therein accorded approval to the proceeding of the Annual General Meeting held on 18.05.2013. On 04.06.2013, respondent No. 7 and 10 were elected as Chairman and Vice Chairman respectively.

The writ petitioners felt enormously aggrieved in holding election before the expiry of the term of the Board which is fixed by the Statute as well as by the Constitution of India to be five years from the date of election. The petitioners aforesaid, therefore, initiated WP(C) No. 5293 / 2013 with aforesaid reliefs.

The facts, projected in W.P.(C) No. 5298/2013, in short, are that on 28.06.2010 the AGM of Dakhin Jugijan Samabay Samity Ltd. (in short, Jugijan Samity) was held and vide Resolution No. 1, the Managing Committee of the petitioner No. 1 was constituted with petitioner No.1 as Chairman and one Abdul Matin (respondent No. 17 in WP (c) No. 5298 /2013) as Vice President. Nine other persons were elected as members of the Managing Committee and subsequently, they were co-opted as members of the said Society.

On 10.07.2010, the proceeding of the aforesaid Annual General Meeting was approved by Asstt. Registrar, Cooperative Societies (respondent No. 4 therein). On 06.04.2013 the Zonal Joint Registrar, Cooperative Societies, (respondent No. 3 therein) addressed a letter to all Chairman/Secretaries of the Cooperative Societies including the Chairman/Secretary of the Samity of the writ petitioners in W.P. (C) No. 5298 of 2013 directing them to hold Annual General Meeting for the year 2013-2014 as per the Act of 2007 and Rules framed there-under.

Another letter dated 18.05.2013 was issued by the respondent No. 3 under Section 41 (2) of the Act of 2007 to all the Chairmen/Secretaries of the Cooperative Societies directing that the election of the Directors were to be conducted before the expiry of the term of the Board so as to ensure that the newly elected members of the Board could assume office immediately on the expiry of the office of members of the outgoing Board.

In view of repeated directions, election of the Society was held on 27.06.2013 and results thereof were declared on 28.06.2013. In such election, petitioner No. 1, 2, 3, 4 as well as respondent No. 5 to 15 therein were elected. By an order dated 08.07.2013, the respondent No. 3 therein accorded approval to the proceeding of the Annual General Meeting held on 26.07.2013. In the meeting held on 15.05.2013, the respondent No. 5 and 6 were elected as Chairman and Vice Chairman respectively vide Resolution No. 1. The Writ Petition (Civil) No. 5298/2013 was, therefore, initiated seeking similar relief as sought for by the petitioners in the Writ Petition (Civil) No. 5293/2013.

Both the proceedings were contested by respondents therein alleging that there was no infirmity in holding election of the AGMs of the Samities on the dates aforesaid since such elections were held in accordance with the prescription of law and consequently, a new Board was constituted in accordance with law which was duly approved by the authority concerned. Therefore, both the proceedings are liable to be dismissed.

Refuting such contention, Mr. S. S. Dey, learned Senior Counsel appearing for the respondents contends that in the terms of Article 243 ZJ (2) of the Constitution of India and Section 31 of the Act of 2007, the Boards aforesaid were entitled to complete its term which is 5 (five) years from the date of election. However, because of unwarranted and uncalled-for pressure, exerted by the State respondents, the petitioners in the aforesaid writ petitions were forced to hold the AGM / Election well before the expiry of the term of earlier Board which is unsustainable in law. Therefore, the petitioners are entitled to reliefs sought for therein.

Learned Single Judge had considered the rival submissions, having regard to the law holding the field and other relevant consideration. On considering the submissions, advanced by the learned counsel for the parties, in the light of law holding the field, the learned Single Judge was pleased to reject the same on concluding that the claims of the petitioners are unsustainable since, according to law

learned Single Judge, the petitioners in those writ petitions instead of giving in to the pressure tactics, allegedly exerted by State instrumentalists upon the petitioners, ought to have resisted the same and ought to have approached the Court seeking quashment of such an illegal order(s).

Instead, the learned Single Judge found that they had acted in accordance with the directions of the State instrumentalists which they alleged to be illegal and participated in the elections as well and allowed the new committee to come into existence in place of the outgoing one. According to learned Single Judge, having done so, the appellants had forfeited their right to question the correctness of the order(s) which are challenged in the aforesaid writ petitions and therefore, the petitioners are not entitled to the reliefs, sought for. For ready reference, the relevant part of the judgment is reproduced below : -

I have considered the submissions of the learned counsel for the parties and perused the materials available on records.

From the facts narrated above, it is seen that the Annual General Meeting and Election of Dakin HojaiKumarakataSamabaiSamity Limited and DakhinJudijanSamabaiSamity Limited were earlier held on 18.04.2010 and 28.06.2010, respectively. So far as Nagaon Wholesale Consumer Co-operative Society Stores Limited is concerned, the specific date is not available but it is on record that the Board had taken charge on 20.04.2010. Subsequently, in respect of DakhinHojaiKumarakataSamobaiSamity Limited, DakhinJugijanSamabaiSamity Limited and Nagaon Wholesale Consumers Cooperative Society Stores Limited. Annual General Meeting and Election were held on 18.05.2013, 27.06.2013 and on 29.07.2013. respectively and after the proceedings of the Annual General Meeting were approved, newly elected Boards started functioning. Notice for holding Annual General Meeting and Election for Nagaon Wholesale Consumers Cooperative Stores Limited was issued on 12.07.2014 by the earlier Chairman, who is respondent No.4 in WP' No. 5641/2014 and in case of WP(C) No. 5293/2013 and WP' No. 5298/2013 by the earlier Chairman, namely, the petitioner No.1 of both the petitions.

The common thread that has emerged in the three writ petitions is that Boards had held Elections after completion of the term of three years and new Boards had taken over charge.

In P.R. Despande (supra), the Appeal by Special Leave was directed against an order of the High Court dismissing the revision petition challenging the order of eviction passed against the appellant. While dismissing the revision petition, the High Court granted six months' time to the appellant tenant for vacating the premises in question and directed him to file an undertaking within four weeks. The appellant-tenant, pursuant to the said direction, filed an undertaking that he would vacate the premises within six months. Preliminary objection was raised by the landlord that the tenant is precluded from approaching the Court under Article 136 of the Constitution of India after giving the undertaking before the High Court. It is in the backdrop of the aforesaid facts, the Apex Court held that the doctrine of election, which is based on the rule of estoppels, has no application when statutory rights and liabilities are involved and that it cannot impede right of appeal and particularly, the Constitutional remedy. The principle that one cannot approbate and reprobate is inherent in the doctrine of election, which is one of the species of estoppels in pais. It is laid down that the same is a rule in equity and it may preclude a person from asserting a right, which he, otherwise, could have had, by his actions or conduct or silence, when it is his duty to speak. It was also noted that there is no estoppels against a statute.

In JadunandanKuri (supra), the petitioner having participated in the election of a Managing Committee, the Patna High Court had held that he was stopped from challenging appointment of the Headmaster of the school by the Managing Committee on the ground that it was not properly constituted. Similarly, in Ramnath (supra), the petitioner having contested the election to the office of the President of Municipal Committee and having been defeated, the Punjab and Haryana High Court held that the petitioner cannot be permitted to question the election

by way of a writ petition. Basavanyappa (supra) and Makasudan Rout (supra) are also cases on principles of acquiescence and estoppels.

In Stroud's Judicial Dictionary of Words And Phrases, waiver is explained as passing by of a thing, or a declining or refusal to accept it, i.e. abandonment or renunciation. Waiver is express or implied; express, when the person entitled to anything expressly and in terms gives it up; implied, when the person entitled to anything does or acquiesces in something else which is inconsistent with that to which he is so entitled.

In Words and Phrases (Permanent Edition) of West Publishing Co. many situations are taken note of on the concept of waiver by referring to various judgments. Amongst others, it is noted that waiver is the voluntary relinquishment of a known right or conduct such as to warrant an inference to that effect and implies knowledge of all material facts of one's rights, together with a willingness to refrain from enforcing those rights. The term acquiescence has also been defined as a species of waiver.

In Millar Vs Diction, reported in (2002) 1 WLR Council held as follows:-

In most litigation situations, the expression 'waiver' is used to describe a voluntary, informed and unequivocal election by a party not to claim a right or raise objection, which is open to that party to claim or raise.

Though very often, the words waiver and estoppels are used synonymously, they are not necessarily same in their consequences. In waiver, there is intentional and voluntary relinquishment of a known right. By such relinquishment, no person is misled to his prejudice. But, in estoppels, the element of somebody being misled to his prejudice or to alter his position is inherent.

Estoppel in pais may also arise from an involuntary and unintentional act. Waiver depends upon what one himself intends to do; whereas estoppel is what one causes his adversary to do. Estoppel arises when the purpose or natural consequences of a person's representations or conduct is to induce another person to do or omit to do same act, the doing or omission of which would turn out to his detriment and to the inducing party's benefit, if the latter were permitted to take advantage of it. While there is no estoppel against a statute, there cannot be any waiver of any fundamental rights.

Even if a provision is mandatory, as held in General Manager, Siddeshwar a Cooperative Bank Ltd Vs Iqbal & Ors reported in (2013) 10 SCC 83, it can always be waived by a party or parties for whose benefit such provision has been made.

By virtue of Article 2437 J(2), elected members of the Board have a term of five years from the date of election. Section 31 of the Act of 2007, as amended, has also provided that the term of the Board shall be five cooperative years. When there was direction to hold election by the State authorities before the expiry of five years after completion of only three years of the term, the same was not challenged by the existing Boards and fresh elections were held with their active participation. In Nagen Deka (supra), the appellant had challenged a notice for holding fresh election contending that in view of Article 2437 (2) of the Constitution and amendment of Section 31 of the act of 2007, the term of the Board is five years and not three years. The incumbent Boards, in the instant cases, did not assert their rights which amount to voluntary relinquishment of a known right. In the facts and circumstances of the case, because of intervening developments as noticed hereinabove, this court is of the considered opinion that the Boards which were elected in the year 2010 cannot now stake their claim to continue for the period of five years on the basis of the judgment rendered in Nagen Deka (supra).

The factual matrix of the writ petitions, thus demonstrate that the petitioners in WP(C) No.5293/2013 and WP(C) No. 5298/2013 had waived their right to continue for a period of five years. Same is the case with the respondent Nos 4 to 18 in WP(C) No. 5641/2014. Apart from it, the impugned orders in WP(C) No. 5641/2014 cannot be sustained for the reason that they are devoid of any reason.

In view of the above discussions, the writ petitions, namely, WP(C) 5293/2013 and WP(C) 5298/2013 are dismissed. The writ petition, namely, WP(C) No. 5641/2014 is allowed by setting aside and quashing the orders dated 12.09.2014 and

01.11.2014. No cost .

The learned counsel for the parties has repeated their submissions which they have advanced before the learned Single Judge.

On considering the submissions, advanced by learned counsel for the parties and having regard to the law holding the field as well as the analysis of the lis in question, as has been done in the judgment under challenge, we are of the opinion that there is no infirmity in the reasoning of the learned Single Judge or for that matter the decision arrived at on such reasoning. Being so, the present appeals lack merit and same are accordingly dismissed.