

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1075 of 2016

Pataliputra Co-operative House Construction Society Ltd. through its Honorary Secretary, Pataliputra Colony, P.S. Pataliputra, Town and District- Patna- 800013.

... ... Petitioner
Versus

1. The State of Bihar through the Secretary Co-operative Department, Bihar, Patna.
2. The Registrar Co-operative Societies, Bihar, Patna.
3. The Deputy Registrar (Head quarter), Co-operative Societies, Bihar, Patna.
4. The District Co-operative Officer, Patna.
5. A.M. Prasad (Akhouri Maheshwar Prasad) S/o Late Akhouri Parameshwar Prasad, Plot No.158, Pataliputra Colony, P.S.- Pataliputra, Town & District- Patna 800013

... ... Respondents

Appearance :

For the Petitioner	:	Mr. Amit Shrivastava, Advocate
		Mr. Girish Pandey, Advocate
For the State	:	Mr. Sita Ram Yadav, GP-16
For respondent no. 5	:	Mr. Rajeev Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

CAV JUDGMENT

Date : 21-12-2018

This writ petition has been filed by the petitioner for quashing the original order dated 02.09.2014/10.12.2014 as contained in Annexure-1/A passed by the District Co-operative Officer (for short 'DCO'), Patna and the appellate order dated 30.09.2015/08.10.2015 as contained in Annexure-1 passed by the Deputy Registrar (Head Quarter) (for short 'Deputy Registrar'), Co-operative Societies, Bihar.



2. Mr. Amit Shrivastava, learned counsel for the petitioner submitted that the aforestated original and the appellate orders have been passed without taking into consideration clause 4 of the bye-laws of the Society and the ratio laid down by the Division Bench of this Court in the **Patliputra Co-operative House Construction Society vs. the State of Bihar & Ors.**, since reported in **1972 PLJR 481**. According to him, the impugned orders are wholly without jurisdiction, illegal, arbitrary and unstainable. They suffer from inherent lack of jurisdiction.

3. He pleaded that only the Registrar can entertain a dispute of the nature raised by the respondent no. 5 and that too under Section 48 of the Bihar Co-operative Societies Act, 1935 (for short ‘the Act of 1935’). Hence, the order passed by the DCO is *coram non judice*. As a corollary, his order as contained in Annexure-1/A is void and a nullity.

4. He argued that upon rejection of the application of respondent no. 5 for admission as a member of the Society, he did not file any application before the Registrar, Co-operative Societies, Bihar rather he raised an issue directly before the DCO, Patna and upon such application the DCO, Patna himself entertained and adjudicated the issue and passed



order as contained in Annexure-1/A which is wholly without jurisdiction.

5. He, however, urged that the Society has no objection even in granting membership of the Society to either of the two brothers subject to issuance of no objection by one of them in favour of the other in terms of the bye-laws of the Society.

6. *Per contra*, Mr. Sita Ram Yadav, learned Government Pleader No. 16 appearing on behalf of the State submitted that the DCO had heard the matter as a miscellaneous petition and not as an appeal under the provisions of the Act of 1935. He had exercised powers under Rule 7(2) of the Bihar Co-operative Societies Rules, 1959 (for short 'the Rules of 1959'). He further contended that the petitioner had moved before the Registrar Co-operative Societies, Bihar in appeal against the order passed by the then DCO, Patna and the Registrar had transferred the appeal to the Court of the Deputy Registrar, who has passed the impugned order dated 30.09.2015/08.10.2015 in exercise of powers conferred upon him under Section 48(6) of the Act of 1935. He pleaded that the orders passed by the DCO and the Deputy



Registrar are based on evidences placed before them and there is no illegality in those orders.

7. Mr. Rajeev Rai, learned counsel appearing for the respondent no. 5 contended that the assertion of the petitioner that the judgement of this Court in the matter of **Patliputra Co-operative House Construction Society** (Supra) prohibits respondent no. 5 to become member of the Society is misconceived and illegal. The said judgement squarely covers the case of respondent no. 5. He pleaded that the father of respondent no. 5 being founder member of the Society had become member when the earlier bye-laws, prescribing the subscription of minimum five years was in force. He had subscribed and held five shares. Since he had five shares and those devolved into his two sons, including the respondent no. 5, who are the legal heirs and successors of the original member, sufficient number of share would come to him making him eligible for membership of the Society.

8. He submitted that Rule 7 of the Rules of 1959 provides for admission to membership. Rules 7(1) and 7(2) of the Rules of 1959 provide that when an application of any person desiring admission to membership of a registered



society is rejected by the Managing Committee/Board of Directors, he may file an appeal before the Registrar.

9. He pleaded that Section 48 of the Act of 1935 empowers the Registrar to receive an application raising dispute. It further empowers the Registrar to either dispose it himself or transfer it for disposal to any person exercising the power of a Registrar in this behalf. He contended that Rule 7(2) of the Rules of 1959 mentions only Registrar and not as Registrar of the Co-operative Societies. Registrar as mentioned in Rule 7(2) of the Rules of 1959 would mean a person either appointed as Registrar of the Co-operative Societies for the State or any portion of it or by general or special order published in the official gazette the State Government may confer any person any of the powers of the Registrar under the Act of 1935.

10. According to him, the Registrar means a person appointed to perform the duties of Registrar and since the State Government in exercise of its powers under Section 6(2) of the Act of 1935 conferred the powers on various officers to exercise specific powers of Registrar and a notification dated 26.12.2018, in this behalf, issued by the State Government empowers all the DCOs to exercise all



powers of the Registrar, Co-operative Societies except powers provided under certain provisions of the Act of 1935 and the Rules of 1959. The DCO, Patna had been conferred with and was competent to exercise the power of Registrar.

11. I have heard learned counsel for the parties and carefully perused the record.

12. The admitted facts of the case are as under :-

a) The petitioner is a registered Co-operative Society under the Act of 1935 having its Head Office at Patna. It had allotted Plot no. 158 to the father of respondent no. 5, namely, Akhouri Parmeshwar Prasad, who was a founder member of the Society. He died in July, 1997 leaving behind his two sons including respondent no. 5 as his legal heirs without nominating the name of any of his heirs to become member of the society after his demise.

b) Respondent no. 5 had filed an application before the petitioner Society for admitting him as member of the Society. However, the Society vide Order No. 648 dated 15.03.2014 rejected his application for



admitting him as a member of the Society on two grounds;

I. Clause 4 of the bye-laws of the Society does not permit respondent no. 5 to become a member; and

II. Judgment of the Division Bench of Patna High Court in **Patliputra Co-operative House Construction Society** (Supra) prohibits him from becoming member.

c) The order of the Society dated 15.03.2014 was challenged by way of filing Miscellaneous Petition No. 217 of 2014 before the DCO, Patna.

d) The DCO, Patna vide impugned order dated 02.09.2014/10.12.2014, held that rejection of the application of respondent no. 5 for admitting him as member of the Society was improper and illegal.

e) The Society preferred an appeal before the learned Registrar Co-operative Societies, vide Appeal No. 167, against the impugned order of the DCO, Patna passed in Miscellaneous Petition No. 217 of 2014.

f) The Registrar, Co-operative Societies transferred the appeal to the court of Deputy Registrar, who, after



having heard the parties, upheld the order passed by the DCO, Patna and dismissed the appeal vide impugned order dated 30.09.2015/08.10.2015.

13. Since one of the grounds on which the petitioner Society did not permit respondent no. 5 to become a member of the Society was that clause 4 of the bye-laws of the Society did not permit him to be a member, it would be apposite to reproduce clause 4 of the bye-laws hereunder.

“4. The membership of the Society shall be open only to Government employees, who have signed application for registration or who may be admitted to membership subsequently by the Board of Directors or to the nominees or legal heirs of such members in accordance with bye-laws-9. The transferees and successors of such members will also be eligible for membership.”

14. On perusal of the aforesaid clause 4 of the bye-laws, it would be evident that besides the nominee of the original member, the legal heirs and successors of the members are also eligible for members of the Society.

15. It is not disputed that in the present case, there was no nominee of the original member of the Society. Respondent no. 5 had applied for membership on the ground of being legal heir and successor of the original member and



not as his nominee. It is also not disputed that original member being late father of respondent no.5 was allotted five shares in the Society. Since he had five shares and those devolved into two sons, including the respondent no. 5, sufficient number of share would come to him making him eligible for the membership of the Society.

16. It would also be pertinent to note here that clause 11(a) of the bye-laws of the Society prescribes that every member shall be required to subscribe and hold a minimum of one share in the Society and pay in full the value of the share.

17. It reads as under :-

“11(a). Every member shall be required to subscribe and hold a minimum of one share in the Society and pay in full the value of the share. He may further be called upon to subscribe additional shares, if necessary.”

18. It has been pleaded by the respondent no. 5 that earlier, the bye-laws of the Society had prescribed that every member shall have to subscribe and hold the minimum of five shares but, subsequently, vide amendment introduced in the bye-laws on 23.08.1972, the requirement for being a member of the Society was relaxed.



19. It has rightly been argued on behalf of respondent no. 5 that even if, there is no instruction/order of any court regarding division/partition of the share of the Society of late Akhouri Parmeshwar Prasad by operation of law, it will be deemed to be devolved between his two sons including respondent no. 5. Thus, respondent no. 5 will be deemed to be holding more than the share which is sufficient for becoming member of the Society.

20. In **Patliputra Co-operative House Construction Society** (Supra) relied upon by the petitioner, after death of one Dr. Rajendra Prasad, a member of the Society, a joint petition on behalf of his two sons was filed to be treated as the legal heirs of Dr. Rajendra Prasad and for transfer of his interest to them, the Society demanded succession certificate from them but eventually that was given up. Again, the two sons of the deceased member filed a joint petition before the Society and submitted that one of them be admitted as a member of the Society. Subsequently, they wrote another joint letter requiring the Society to admit the other brother also as a full-fledged member.

21. In that case, it was held that after death of original member, his sons (heirs) may also jointly become



member, but the joint right which they acquire in place of deceased member cannot automatically make all the members exercise that right separately and individually. The right has to be exercised by the entire bundle of heirs as if all of them are one member.

22. In the said judgement, it was also held that on partition they can claim to be members of the Society separately. But then to be a member of the Society a person must be the holder of one share at least either on transfer or on devolution of interest or by partition or family arrangement. A person holding no share cannot claim to be a member of the Society.

23. Thus, what has been held by Division Bench of this Court in **Patliputra Co-operative House Construction Society** (Supra) is that a person cannot own a fraction of share. If a member dies at a time when he was holding only one share in the Society, leaving behind two heirs, both jointly will be treated as one member of the Society and on partition between them the one share would be allotted to one heir only and it cannot be allotted half and half to both. In that circumstance that heir only will be entitled to be



member of the Society to whom the share will be allotted and not the other.

24. In the present case, the finding of **Patliputra Co-operative House Construction Society** (Supra) would not apply in the case of respondent no. 5 as his father had subscribed and held five shares which after his death was partitionable and respondent no. 5 would be entitled to get, at least, one share, which would be sufficient for becoming a member of the Society. Thus, the ratio laid down in **Patliputra Co-operative House Construction Society** (Supra) squarely covers the case of respondent no. 5 and the same can not be interpreted in any manner against his right of membership of the Society.

25. As far as the question whether a person is a member of Society or not is a dispute within the meaning of Section 48 of the Act of 1935, which can be determined by the Registrar, Co-operative Societies, in **Patliputra Co-operative House Construction Society** (Supra), the Division Bench left it open to be decided, if necessary, in future.

26. The petitioner has urged that the DCO, Patna had no jurisdiction to entertain or adjudicate a reference of dispute under Section 48 of the Act of 1935 himself. He has



pledged that upon rejection of the application of respondent no. 5 for admission as a member of the Society, he did not file any application before the Registrar, Co-operative Societies, Bihar rather he raised an issue directly before the DCO, Patna and the DCO, Patna entertained and adjudicated the issue without jurisdiction.

27. Refuting the contention of the petitioner, respondents have argued that the DCO, Patna had exercised his power under sub-rules (1) & (2) of Rule 7 of the Rules of 1959.

28. In order to appreciate the arguments advanced on behalf of the parties, it would be apposite to reproduce Rule 7 (1) and (2) of the Rules of 1959 hereunder.

“7. Admission to Membership. – (1) (a) Every person desiring admission to membership of a registered society shall apply in form V.

(b) The Secretary of the Society or any person duly authorised by him in this behalf shall immediately grant a receipt for the application in the form at the foot of form V.

(c) In case the Secretary of the Society or any such person as aforesaid does not receive the application or grant a receipt for it, the applicant may submit his application to the Block Development Officer or the Assistant



Registrar or Cooperative Societies or the District Cooperative Officer, who shall immediately grant him a receipt for the application in the prescribed form, and shall at once send the same to the society concerned.

(d) The application shall be considered by a Managing Committee of the Society and the decision of the Committee thereon shall be communicated to the applicant within 15 days of receipt of the application and, where the application is rejected, with reasons therefore.

(e) If no decision is communicated to the applicant within the period specified above. It shall be deemed that the application has been accepted and the applicant has been admitted to the membership of the Society.]

(2) A person whose application for admission to membership has been rejected by the managing committee may, within sixty days of the communication of the decision to him, appeal to the Registrar whose decision shall be final.”

29. On perusal of aforesaid Rules, it would be evident that when an application of any person desiring admission to membership of a registered society is rejected by the Managing Committee/ Board of Directors, he may file an appeal before the Registrar. Therefore, rejection of an application for membership itself gives rise to a dispute



between the person desiring admission to membership of a registered Society. Clause (2) of Rule 7 of the Rules of 1959 provides forum of appeal before the Registrar for resolution of such dispute. The forum under clause (2) of Rule 7 empowers the Registrar to give decision on such appeal which shall be final.

30. Thus, a plain reading of Rule 7(2) of the Rules of 1959 would show that an appeal filed before the Registrar in the matter of grant or refusal to grant membership of a registered Society shall be heard and decided by the Registrar himself. Rule 7(2) mentions only Registrar and not as Registrar of the Co-operative Societies. It has rightly been pointed out in the supplementary counter-affidavit filed on behalf of respondent no. 5 that the Registrar as mentioned in Rule 7(2) would mean a person either appointed as Registrar of the Co-operative Societies for the State or any portion of it or by general or special order published in the official gazette the State Government may confer any person any of the power of the Registrar under the Act of 1935.

31. Clause (i) of Section 2 of the Act of 1935 defines Registrar as a person appointed to perform the duties of Registrar of Co-operative Societies under the Act.



32. The State Government, in exercise of powers, as provided in Section 6(2) of the Act of 1935, conferred powers on various officers to exercise specific power of Registrar to assist the Registrar of Co-operative Societies appointed under Section 6(1) of the Act of 1935 by a notification dated 26.12.2008, as contained in Annexure-B to the supplementary counter-affidavit filed on behalf of respondent no. 5.

33. According to aforesated notification dated 26.12.2008, all the DCOs have been empowered to exercise all powers of the Registrar, Co-operative Societies except powers provided under Sections 11, 16, 26, 44(5), 48 [except the powers prescribed under sub-sections (6) and (8)] and Section 56 of the Act of 1935 as also Rules 37, 38 and 39 of the Rules of 1959.

34. Since the DCO, Patna has been conferred with the power of Registrar, he was competent to exercise the power. There is no illegality in his action by entertaining and adjudicating the appeal presented before him in the matter of rejection of an application of a person for admission to membership of a registered society.



35. In that view of the matter, the contention of the petitioner that the original order dated 02.09.2014/10.12.2014 and the appellate order dated 30.09.2015/08.10.2015 passed by the DCO, Patna and the Deputy Registrar, Co-operative Societies, Bihar, respectively is without jurisdiction cannot be accepted.

36. The forum under Rule 7(2) of the Rules of 1959 is totally independent forum and it has no conflict with Section 48(2) of the Act of 1935.

37. In that view of the matter, I see no merit in this writ petition. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	AFR
CAV DATE	28.08.2018
Uploading Date	22.12.2018
Transmission Date	NA

