

CASE NO.:
Appeal (civil) 4586 of 2007

PETITIONER:
Ram Nandan Singh & Ors

RESPONDENT:
AG Office Employees Co-op House Construction Society Ltd., Ranchi & Ors.

DATE OF JUDGMENT: 28/09/2007

BENCH:
S.B. SINHA & H.S. BEDI

JUDGMENT:
JUDGMENT
(arising out of SLP(C) No. 8265/2006)

S.B.SINHA, J.

Leave granted.

(1) This appeal is directed against the judgment and order dated 6.1.2006 of the Division Bench of the Jharkhand High Court in Letters Patent Appeal No. 101 of 2004 whereby and whereunder it was directed:

\023Having heard the parties, we are of the view that this Court having become functus officio, after disposal of the appeal, is not required to decide any question in the present appeal, but only with a view to enable the competent authority to pass order under Section 41 of the Co-operative Societies Act and the other related provisions of the said Act and to find out whether nullification of some of the allotments is to be made or any appropriate steps in that behalf will have to be taken, the case is remitted to the competent authority i.e. Registrar, Co-operative Societies, Government of Jharkhand, Ranchi, who will not rely on the earlier report, submitted by the Registrar, Co-operative Societies, Government of Jharkhand, Ranchi, having been superseded by the report, submitted by Mr. Justice (Retd.) Vikramaditya Prasad. The Registrar, Co-operative Societies, Ranchi, will look into the enquiry report and after giving opportunity to the appellants and other necessary parties, will determine the question as to what action, if any, is required to be taken in accordance with law, preferably within four months from the date of receipt/production of a copy of this order. It will be open to the appellants to point out the defect, if any, in the enquiry report, submitted by Mr. Justice (Retd.) Vikramaditya Prasad. The Registrar, Co-operative Societies, will apply its independent mind and will determine as to whether he will differ with the enquiry report or will accept the same or part thereof and what action is required to be taken under the law. No further order is required to be passed in the present case.\024

(3) Lands were acquired in the year 1970 for the benefit of the members of Respondent No.1-Society. It is stated that in the year 1983 by purported amendments carried out in the Rules, outsiders were also allowed allotment of lands by the said Society. When the question whether such amendments should be permitted or not was pending consideration before the competent authorities, serious irregularities by the members of the Managing Committee were pointed out. An inquiry was directed to be made by the Joint Registrar of Cooperative Societies on the intervention of the Chief Secretary of the State. The said authority submitted its report. On the basis of the said report, the Managing Committee of the Society was placed under suspension.

(4) A writ petition filed thereagainst by the Managing Committee of the Society was dismissed. On an intra court appeal having been preferred thereagainst being Letters Patent Appeal No.101 of 2004, the Division Bench of the High Court passed the following order on 10.3.2004:

\023It is seen that the learned single Judge has directed the Circle Officer, Ranchi to be in-charge of the affairs of the Society temporarily. We direct

him to take charge temporarily as per the direction of the learned single Judge, if he has not already done so. If warranted, the Superintendent of Police, Ranchi is directed to give him the necessary protection to comply with the direction issued by the learned Single Judge in the judgment under appeal. He will also make a search to find out whether the concerned amendment of the By-laws of the Society had been approved by the Registrar and whether any document is available in the Society in that behalf and if such a document is available, make it available to the Government counsel for being produced in this Court.\024

(5) By another order dated 18.5.2004(CAV on 20.4.2004), the Division Bench upon consideration of all

aspects of the matter directed as under:

\023Then, the question is, who would conduct the inquiry. According to learned senior counsel appearing for the appellants, it can only be conducted by the Registrar of Cooperative Societies. Counsel for the intervenor went to the extent of submitting that the inquiry should be entrusted to the Central Bureau of Investigation (CBI), since it can be seen that it was sought to be thwarted by influential persons at every stage. Consistent with our finding that the Government has the power to make an enquiry, the same can be entrusted to any agency. The learned Advocate General submitted that the inquiry must be ordered by this Court, so that any possible impediment to the inquiry could be eliminated. From the submissions of the learned Advocate General, the impression we gather is that it is possible that every attempt would be made to scuttle a proper inquiry into the complaint, unless there is backing of the authority of this Court for the conduct of the inquiry. We do not think that at this stage, we should entrust the inquiry to the Central Bureau of Investigation. We think that it will be appropriate to direct the inquiry to be made by the Registrar of Cooperative Societies as authorized by this order of this Court. The Registrar of Cooperative Societies will be directly answerable to this Court for the proper conduct of the inquiry and he will ensure that a thorough inquiry is conducted after adhering to all principles of natural justice. If the finding at the inquiry to be submitted before this Court, justifies action under section 41 of the Act and the other related provisions of the Cooperative Societies Act and the nullification of some of the allotments made, appropriate steps in that behalf will have to be taken by the Registrar. These aspects can also be taken up and considered by this Court after the inquiry is completed. Suffice it to say that in suppression of the direction of the learned Single Judge, we direct thorough inquiry to be made into the complaints by the Registrar of Cooperative Societies, after giving an opportunity of being heard to the appellants and to the interveners. The report of the inquiry in a sealed cover will be produced before this Court by the Registrar of Cooperative Societies and appropriate follow up orders obtained. The enquiry will be completed in three months. The Registrar of Cooperative Societies will be answerable to this Court for the conduct of the enquiry. On the completion of the inquiry, it will also be open to the appellants to move this Court for an appropriate direction regarding the management of the Society...\024 (emphasis supplied)

With the aforementioned directions, the appeal was dismissed.

(6) However, the question in regard to the correctness or otherwise of the report of the Registrar, Cooperative Societies again having been raised, the Division Bench of the High Court by an order dated 2.9.2005 directed as under:

\0234. Having heard the learned counsels of the respective parties on the said report and after considering the provisions of Section 41 of the Bihar Cooperative Societies Act, and having further regard to the suggestions made by Mr. Y.V. Giri appearing for the appellants that the report of the enquiry by the Registrar of Cooperative Societies was biased and did not present a true picture of the situation, we are of the view that a fresh enquiry may be made by a retired High Court Judge at the expense of the

appellants so that the controversy can be set at rest.

5. Having regard to the above, we appoint Mr. Vikramaditya Prasad, a former Judge of this Court to hold an enquiry into the allegations made against the Managing Committee and the irregularities said to have been committed even during the holding of the elections and to submit a report to this Court within a month from the date on which he chooses to enter upon the reference, which we hope will be not later than one week after receipt of this order. For the purpose of enquiring into the allegations, the learned Judge may be assisted by the parties involved and their learned Advocates who are all requested to cooperate with the learned Judge. The learned Judge will be paid a consolidated remuneration of Rs.30,000/- to be deposited by the appellants with the Registrar General of this Court within a week from date. The learned Judge will be entitled to withdraw the said amount towards his remuneration.\024(emphasis supplied)

(7) Pursuant thereto, an inquiry was made and a report filed. Respondent No.2 herein - the Managing Committee of the Society questioned the correctness of the said report by filing another application in the said Letters Patent Appeal. A Division Bench of the High Court although noticed that the Letters Patent Appeal was heard and disposed of by an order dated 18.5.2004 and, thus, the Court had become functus officio, yet proceeded to make certain observations which, in our opinion, were wholly unwarranted. The said observations are as under:

\023\005. the case is remitted to the competent authority i.e. Registrar, Co-operative Societies, Government of Jharkhand, Ranchi, who will not rely on the earlier report, submitted by the Registrar, Co-operative Societies, Government of Jharkhand, Ranchi, having been superseded by the report, submitted by Mr. Justice (Retd.) Vikramaditya Prasad. The Registrar, Co-operative Societies, Ranchi, will look into the enquiry report and after giving opportunity to the appellants and other necessary parties, will determine the question as to what action, if any, is required to be taken in accordance with law, preferably within four months from the date of receipt/production of a copy of this order. It will be open to the appellants to point out the defect, if any, in the enquiry report, submitted by Mr. Justice (Retd.) Vikramaditya Prasad. The Registrar, Co-operative Societies, will apply its independent mind and will determine as to whether he will differ with the enquiry report or will accept the same or part thereof and what action is required to be taken under the law. No further order is required to be passed in the present case.\024

(8) Appellants before us were impleaded as interveners before the learned Single Judge. They, by this petition for grant of special leave, have questioned the justifiability or otherwise of the aforementioned observations of the Division Bench.

(9) Ms. Bagchi, learned Counsel appearing for the erstwhile Managing Committee questions the locus of the appellants to prefer this appeal relying on the decisions of this Court in N. Swain and Another vs. B.K. Mohapatra and Others., (1970) 3 SCC 321 and Ravi Rao Gaikwad and Others vs. Rajajinagar Youth Social Welfare Assn. And Others, (2006) 5 SCC 62.

(10) The interveners in this case were not only permitted to intervene by the learned Single Judge but as is evident from the records that they were parties in the Letters Patent Appeal also.

(11) In N. Swain\022s case (supra), this Court was concerned with grant of a certificate in terms of Article 133(1)(c) of the Constitution of India and in that context it was observed that the interveners having no statutory right to prefer an appeal such certificate could not have been granted by the High Court.

(12) In Ravi Rao Gaikwad\022s case (supra), this Court observed that the purpose of grant of application for intervention is to entitle the interveners to address arguments in support of one or the other side.

(13) Appellants are members of the Society. They have been pursuing their cause before the High Court. They were impleaded as parties in the Letters Patent Appeal. Not only in the capacity of interveners but also as persons aggrieved, they are, therefore, entitled to file petition for grant of special leave. The preliminary objection in regard to maintainability of the appeal raised by Ms. Bagchi is rejected.

(14) Indisputably, the Registrar of Cooperative Societies appointed under the Bihar Cooperative Societies Act, 1935 which was adopted by the State of Jharkhand on bifurcation of the State as per provisions of the State Organisation Act is

a statutory authority. The Registrar of Cooperative Societies in exercise of his powers conferred upon him in terms of Section 41 and/or Section 48 of the said Act is entitled to pass an appropriate order. The orders passed by the Registrar, Cooperative Societies are appealable.

(15) Whosoever had enquired into the charges levelled against the erstwhile members of the Managing Committee, indisputably the inquiry report is to be placed before the Registrar so as to enable him to arrive at a decision. An order by a statutory authority, therefore, must be passed in terms of the provisions of the Act wherefor the inquiry report must be looked into. The report of a retired Judge of the High Court, indisputably will carry great weight. It must be given an effective consideration.

(16) The State of Jharkhand in its counter affidavit stated as under:
\005 Directing the Registrar Cooperative Societies to invite objections and having the liberty of differing with the report of Mr. Justice (Retd.) Vikramaditya Prasad has opened a pandora\022s box and at the same time set a bad precedent as the executive wing does not override the report submitted by a committee duly constituted by the Hon\022ble Jharkhand High Court and moreover headed by a retired judicial authority.\024

(17) We are, thus, of the opinion that no observation was required to be made in relation thereto. Suffice, it to say that it is for the Registrar, Cooperative Societies to take a decision in the matter and for that purpose it was wholly unnecessary for the Division Bench of the High Court to make any observation as to how the said statutory authority should proceed in the matter. The statutory authority is duty-bound to proceed in accordance with law and exercise its jurisdiction within the four corners of the Statute.

(18) We are, therefore, of the opinion that the Registrar, Cooperative Societies shall now proceed to determine the issue pending before him on the basis of the inquiry report placed before him and all other relevant materials, without in any way being influenced by the observations of the High Court in its impugned judgment.

(19) The appeal is allowed with the aforementioned observations. No costs.