

**(2004) 05 JH CK 0023**  
**In the Jharkhand High Court**  
**Case No : LPA No. 101 of 2004**

A.G. Office Employees Co-operative House Construction  
Society Ltd. and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 18-05-2004

**Acts Referred:**

Bihar Co-operative Societies Act, 1935 — Section 65A  
Land Acquisition Act, 1894 — Section 41

**Citation :** (2004) 3 JCR 500

**Hon'ble Judges :** P.K. Balasubramanyan, C.J.;Tapen Sen, J

**Bench :** Division Bench

**Advocate :** A.R. Choudhary, Y.B. Giri, Delip Jerath, Manoj Tandon, S.N. Prasad and Shiv Shankar Kumar, for the Appellant; A.G. and I. Sen Choudhary, for the Respondent

**Final Decision :** Dismissed

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## Judgement

P.K. Balasubramanyan, C.J.—The petitioners in WP(C) No. 1603 of 2003 on the file of this Court are appellants in this appeal. They are the Accountant General Office Employees Cooperative House Construction Society Limited; its Managing Committee and a former Secretary of the Society. The Society is one governed by the Bihar Co-operative Societies Act. The appellants filed the writ petition challenging the order Annexure 7 to the writ petition, dated 11.12.2003 directing the holding up of the election to the Managing Committee of the Society, to quash Annexure 9 order superseding the Managing Committee of the Society and appointing the Circle Officer, Ranchi, as the Special Officer to be "in-charge of the affairs of the Society and for the issue of a writ of mandamus directing the concerned respondents to complete the process of election as per the programme fixed therefor. The learned single Judge interfered to the extent of permitting the election to go on, but declined to interfere with the direction made for holding an inquiry, but fixed a time limit to complete the same and further directed that until a decision is taken by the Government after the inquiry into

the complaint received by it, the present Managing Committee elected under the order of Court dated 19.12.2003, shall remain suspended. The parties were directed to cooperate with the inquiry. The learned single Judge made it clear that he was not entering into the merits of the controversy relating to the complaint received against the Society and its management. The Society and its managing committee feels aggrieved by the suspension of the newly elected Managing Committee until the proposed enquiry was completed and a decision was taken by the Government based on that inquiry.

2. The learned Senior Counsel appearing for the appellants contended that power had been exercised by a Secretary to the Government who was not an authority under the Cooperative Societies Act and that the power to suspend the election, to appoint a special officer and to direct an inquiry has been drawn from Section 65-A of the Act, which had been struck down as unconstitutional by the Patna High Court when the State of Jharkhand was not born and in view of that, the learned Single Judge should have straightaway quashed both Annexures 7 and 9 on the ground that the said orders lacked jurisdiction. Counsel further submitted that the learned Single Judge was not justified in observing that the power of the Government to act, could be found in Rule 27(4) of the Rules of Executive Business. Counsel contended that the Co-operative Societies Act, was a self contained Code, and it contained provisions to meet the contingencies that arise out of the alleged complaint in this case and the Act did not confer any overriding authority or power on the State Government or the Secretary to the Government and, therefore, it should be held that the order impugned were orders passed without authority. Counsel further contended that an election had been held, though as permitted by way of an interim order passed in the writ petition, but now that an election has been held and the Managing Committee has been elected, it was not just and proper to prevent the Managing Committee from taking charge of the affairs of the Society and running it and even if this Court were to hold that an inquiry was warranted on the complaint made by some disgruntled members of the Society that inquiry to be conducted cannot stand in the way of the newly elected office bearers being put in charge of the affairs of the Society. Counsel made it clear on behalf of the appellants that the appellants have no objection to the inquiry being conducted by the appropriate authority under the Cooperative Societies Act, which, according to the counsel, was the Registrar of Cooperative Societies and in that situation, this Court ought to allow the appeal and allow the newly elected Managing Committee to take charge of the affairs of the society. Counsel briefly touching upon the merits of the controversy, also submitted that the present complaint was nothing new, had been raised even in the year 1983, had been buried even then and there was no substance in the charge now made against the erstwhile Managing Committee of the Society. He stated that in any event the newly elected Managing Committee cannot be held responsible for any of those deeds or misdeeds.

3. Learned Advocate General appearing on behalf of respondent 1 to 5 contended that the Society was a Cooperative House Construction Society formed for the

benefit of the employees of the office of the Accountant General; that the land was acquired under the Land Acquisition Act, 1894 on the request of the Society on the basis of an agreement executed in that behalf u/s 41 of the Land Acquisition Act that the object of the acquisition was to provide housing for the employees of the office of the Accountant General as would be clear from the notification issued u/s 4 of the Land Acquisition Act; that the Society had no authority to make allotments of land to the persons who are not eligible to be member of the Society, not being employees of the Office of the Accountant General that there was no valid amendment of the bylaws of the Society permitting induction of non-employees of the Office of the Accountant General as members of the Society and that the complaints against the Society were of such a grave nature that it would be inappropriate for this Court to exercise its discretionary jurisdiction under Article 226 of the Constitution of India to stall the inquiry as wanted by the appellants. He submitted that in terms of the agreement executed u/s 41 of the Land Acquisition Act, which was marked Annexure-1/2, in the application for intervention filed in the writ petition, the Government had the power to intervene when the land given over to the Society was misused; that the Government even had a right of re-entry on that ground and the only requirement was that the Government had to give notice and to conduct an inquiry before assuming possession or resuming possession of the land. Learned Advocate General pointed out that a notice was given, objection invited and it was only thereafter that the inquiry was ordered and an order passed appointing the Special Officer to be in charge of the affairs of the Society until the inquiry was completed. Of course, there was also an order to keep in abeyance the fresh election, but by the intervention of the learned Single Judge at the interlocutory stage, the election was conducted. He also submitted that de hors the Cooperative Societies Act, in the case on hand, the Government had an overriding power to order an inquiry when it received a serious complaint against the management of the Society and the misutilisation of the land of the Society and the funds of the Society. Learned advocate General referred to the complaint and to the conduct of the Managing Committee of the Society in refusing to cooperate with the inquiry, notwithstanding the order passed by the Secretary to the Government in that behalf, notwithstanding the direction issued by the learned Single Judge in the judgment under appeal and notwithstanding the interim order passed by this Court in this appeal on 10.3.2004. He, therefore, submitted that this was not a fit case for interference by this Court against the exercise of discretion by the learned Single Judge or for exercise of its jurisdiction to come to the aid of the appellants who were "allegedly guilty of serious misconduct in the conduct of the affairs of the society. In response to the order passed by us on 10.3.2004 the learned Advocated General submitted that there was no record in the department to show that the alleged amendment of the bye-laws permitting enrolment of non-employees of the Office of the Accountant General as members of the Society, was approved in terms of Section 12 of the Act. He submitted that the documents relied on by the appellants to contend that there was an amendment, were all unreliable, nay even forged, and

in that situation, there was no occasion for this Court to interfere with the decision of the learned Single Judge. Learned Advocate General submitted that the conduct of the Managing Committee was such that if the newly elected Managing Committee is put in charge of the affairs of the society, the inquiry ordered will be stultified by the Managing Committee and this Court should not permit that to happen, given the graveness of the charges made against the society.

4. Learned counsel for the intervener submitted that the alleged amendment of the byelaws expanding the membership of the Society was not validly passed and, in any event, it was never approved by the competent authority and in the circumstances, it was imperative that there should be an inquiry into the affairs of the Society and the management should not be given back to the newly elected Managing Committee. There was clear misutilisation of land by the Society and misapplication of funds and an inquiry was imperative. The intervener supported the arguments of the learned Advocate General.

5. It is true that the Co-operative Societies Act contains provisions for dealing with charges of misappropriation and misapplication of the assets of the Society. In fact, there is a built-in hierarchy in the Act to look into the affairs of the Society and to take necessary remedial steps. The ultimate authority in that behalf rests with the Registrar of Cooperative Societies. At the relevant time, it is common case, that there was no one holding the post of Registrar of Cooperative Societies. The land was admittedly acquired under the Land Acquisition Act, and the notification u/s 4 of that Act, and the agreement entered into by the Society with the Government in terms of Section 41 of the Act, are both before us. It is clear therefrom that the land was acquired for the purpose of providing residential accommodation to the employees of the Office of the Accountant General. It has to be remembered that when the agreement was entered into the Society had come into existence and the membership of the society was confined to the employees of the Office of the Accountant General. Clauses 2, 3, 7, 11, 13 and 14 of the agreement give the Government adequate power to control the use of the land and also to resume the land in the contingencies referred to in the agreement. The Society had covenanted that it would not act without the previous sanction of the State Government to use the land for any purpose other than that for which it was acquired. There cannot be any doubt, as can be seen from the notification issued u/s 4 of the Land Acquisition Act, that the purpose of the acquisition was to provide land for allotment to the employees of the Office of the Accountant General for their residential purposes. The Society has a contention that even though originally, the membership was confined to the employees of the Office of the Accountant General, the relevant bye laws were amended validly and the membership was extended to other government servants who were not employees of the Office of the Accountant General. But there is a serious controversy as to whether such an amendment was made or validly made in terms of the Act, obviously, that would be one of the aspects to be covered by the inquiry. Suffice it to say, we find that even de hors, the

Cooperative Societies Act, there is a power in the Government in terms of the agreement u/s 41 of the Land Acquisition Act, to control the use of the land by the Society and in case of transgression by the Society even to re-enter the property and to demolish the various constructions put up by the Society. All that is insisted upon is that there should be a notice given in respect of the proposed action. In the context of this clause in the agreement and the purpose for which the acquisition was made, we are of the view that when a complaint, like the one here, against misutilisation of the land by the Society and its office bearers is made before the Government, the Government does have a right to order an inquiry or to make an inquiry in terms of Clause 11 of the Agreement. Obviously, the nullification of the transfer of land to the Society could not be made by the Governor unless and until the Government makes an inquiry; finds that the charges are true and recommends action to the Governor. In that context, it cannot be said that the Government, or the Secretary to the Government acting on behalf of the Government, did not have the power to order an inquiry into the complaint received by the Government. We may notice that the complaint involved misutilisation of land, misappropriation of the land for purposes other than for which they were intended and user of land for commercial exploitation against the object and byelaws of the Society and financial irregularities. There is also a complaint of derivation of undue benefit by some members closely associated with the affairs of the Society. In this context, we are inclined to agree with the learned Advocate General that the agreement between the Society and the Government entered into u/s 41 of the Land Acquisition Act gives the Government adequate power to order an inquiry into the complaint received by the Government.

6. May be, this complaint, can also be looked into by the Registrar of Cooperative Societies who could take action u/s 41 of the Act, read with Section 48 of Act. But that by itself cannot be considered to be a ground to hold that the Government does not have the power to order an inquiry in respect of the dealings in lands acquired for the purpose of the Society. What we find here is that the Government has ordered an inquiry into that part of the activities of the Society and that inquiry, of course, may take in the question whether some of the allottees have been validly made members of the Society on the basis of a valid amendment of the bye laws of the Society and whether even if there was such an amendment, it was in conflict with the purpose for which the acquisition was made and the agreement u/s 41 of the Land Acquisition Act, entered into and what would be the consequences of such a violation. But suffice it to say that we cannot accept the contention of learned counsel for the appellants that the Government did not have the power to order an inquiry outside the Cooperative Societies Act, and that the power is only in the hands of the Registrar of Cooperative Societies.

7. Learned senior counsel appearing for the appellants contended that the source of power referred to by the Secretary to the Government who ordered the supersession and the inquiry, was Section 65-A of the Cooperative Societies Act,

and in that context it was not open to the respondents to contend that the Governor had power outside the Act. Whatever be the source of power, once this Court finds that there is power, normally, it is not for this Court to interfere with the order on the basis that the order is one without jurisdiction. As observed in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, , the question then would be whether the action was reasonable and in public interest. Once the Court finds that the action is reasonable and in public interest the Court would not readily interfere with the order, even though the order purports to proceed on the basis of exercise of a non-existent power. We find support for this position also from the following observations of the Supreme Court in *M.T. Khan v. Government of Andhra Pradesh* 2004 (2) JLJR 56 :

"It is now well-settled principles of law that non mentioning or wrong mentioning of a provision of law does not invalidate an order in the event it is found that a power therefore exists."

8. Of Course, learned counsel for the appellants relying on *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , argued that reasons cannot be later supplied by the Government to validate an order. But as pointed out by the learned Advocate General, the documents relied on were produced in the writ petition and the attempt now made is only to show that a power existed, to meet an argument that the power did not exist and this is not a case to which we can apply the observations in *Mohinder Singh Gill*, to exclude the argument put forward by the learned Advocate General. Thus, we have no hesitation in holding that the order for inquiry made by the Secretary to the Government is valid and has been made with authority. We may, at this stage, recall the submission of learned senior counsel for the appellants that the appellants had per se no objection to an inquiry being made into the complaint, but that their case is only that the same could be done only in terms of Section 41 and the other related provisions of the Cooperative Societies Act.

9. We could have been inclined to agree with the appellants that normally, there was no reason not to permit the newly elected Managing Committee to assume charge of the affairs of the Society now that a fresh election has been conducted. But we find that the attitude of the office bearers of the Society, whether past or present, does not inspire confidence, to enable us to take it for granted that they would cooperate properly with the inquiry as ordered by the Government. It is, no doubt, true that the Circle Officer who was directed to take charge of the Society's affairs had also acted in a haphazard manner in not taking charge of the affairs of the Society in spite of the orders in that behalf by the Secretary to the Government, by the learned Single Judge and by us in our interim order dated 10.3.2004. His conduct leaves much to be desired and we direct the Registrar of Cooperative Societies, to look into the propriety of the conduct of the Circle Officer, who was appointed Special Officer in failing to take charge of the affairs of the Society in spite of directions in that behalf. But we must also notice

here that the complaint on his behalf is that the office bearers were not cooperating in the matter of handing over charge of the Society so as to enable him to take charge of the affairs of the Society. The materials disclose that there was reluctance on the part of the office bearers of the Society, whether past or present to cooperate with the inquiry, as ordered by the learned Single Judge and as reiterated by us in our interim order. The conduct of the Managing Committees, past and present, dissuades us from interfering with the direction of the learned Single Judge to the Special Officer to take charge of the affairs of the Society. But we think that we should give an opportunity to the newly elected Managing Committee to approach us by way of an interlocutory application to put them in charge of the affairs of the Society after the inquiry has commenced and has, at least, made some progress. Only then we think that the question of interference with the direction issued by the learned single Judge in that behalf need be considered.

10. Then, the question is, who should 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 intervener 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 state, 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 authorised 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 through 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 u/s 41 of this 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 enquiry is completed. Suffice it to say that in supersession of the direction of the learned Single Judge, we direct a 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 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. Thus this appeal is substantially dismissed, subject to the above modification and directions.