

(2023) 08 MP CK 0158

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 4564 Of 2023

Devisingh

APPELLANT

Vs

Nagin And Others

RESPONDENT

Date of Decision : 29-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 227
madhya Pradesh Co-Operative Societies Act, 1960 — Section 77(14), 80A

Citation : (2023) 08 MP CK 0158

Hon'ble Judges : Subodh Abhyankar, J

Bench : Single Bench

Advocate : Ashutosh Nimgaonkar, Ashish Josh

Final Decision : Disposed Of

Judgement

Subodh Abhyankar, J

1. Heard finally, with the consent of the parties.

2] This petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 27.08.2023, passed by the M.P. State Cooperative Tribunal, Bhopal whereby, in a revision preferred by the respondent No.1, the order passed by the Joint Registrar dated 17.07.2023, has been stayed.

3] In brief, the facts of the case are that the petitioner was posted as In-charge Manager of the Society Adim Jati Seva Sahkari Samiti Maryadit, Devjhiri, Jhabua (in short 'the Society'), and on 15.07.2023, a resolution was passed by the Society that in place of the petitioner who was posted as In-charge Manager, the respondent No.1 shall take the charge, and subsequently a separate order to this effect was also passed on 15.07.2023 itself. These orders were challenged by the petitioner in a revision before the Joint Registrar, Cooperative Society, Indore, who, under Section 80-A of the M.P. Co-operative Societies Act, 1960 (in short 'Societies Act, 1960') vide its order dated 17.07.2023, has stayed the order

dated 15.07.2023 passed by the Society. Against the aforesaid order, a revision was preferred by the respondent No.1 under Section 77 (14) of the Societies Act, 1960 before the Co-operative Tribunal, and in the aforesaid revision the impugned order dated 27.08.2023 has been passed, whereby the order passed by the Joint Registrar has been stayed for want of jurisdiction.

4] Shri Ashutosh Nimgaokar, learned counsel for the petitioner has submitted that while passing the impugned order of stay, the Tribunal has literally decided the case on merits, holding that the Joint Registrar has no jurisdiction to pass the order. It is also submitted that before passing the order, objections raised by the petitioner regarding maintainability of the revision filed by the respondent No.1, have not been considered. It is further submitted that the respondent No.1 was not even a party before the Joint Registrar, and still the revision preferred by him has been entertained. Thus, it is submitted that the impugned order is liable to be set aside.

5] On the other hand, Shri Ashish Joshi, learned counsel appearing for the respondent No.1 has submitted that no illegality has been committed by the Tribunal in passing the impugned order for the reason that vide order dated 15.07.2023, passed by the Society the respondent No.1 has been appointed in place of the petitioner and thus, he was a necessary party to the lis, and as per the II proviso to Section 80-A of the Societies Act, 1960, it was incumbent upon the Joint Registrar to give an opportunity of hearing to the respondent No.1 whereas he has not even been made a party by the petitioner. Thus, it is submitted that no interference is called for.

6] Counsel has also drawn the attention of this Court to the recent order of suspension of the petitioner dated 19.08.2023, passed by the Society whereby the petitioner has been suspended on account of financial irregularities. Thus, it is submitted that on this account also, the petition is liable to be dismissed.

7] Heard learned counsel for the parties and perused the record.

8] From the record, it is apparent that the petitioner was replaced by the Society with the respondent no.1 on the post of in-charge manager of the Society vide order dated 15.07.2023, which order was challenged by the petitioner before the Joint Registrar, without making the respondent no.1 as a party, and the Joint Registrar has stayed the order passed by the Society without considering the fact that the respondent no.1 was not even made a party to the said revision. So far as S.80-A under which the order has been passed is concerned, the same read as under:-

"80-A. Power of Registrar to call for proceedings of subordinate Officers and committee of a society and to pass orders thereon.- The Registrar may, at any time on his own motion or on the application made by any party, call for and examine the record of any enquiry or the proceedings by any sub-ordinate officer or a decision or order of the Board of Directors of a society for the purpose of satisfying himself as to the legality or propriety of any decision or order passed

and as to the regularity of the proceedings of such officer or Board of Directors. If in any case it appears to the Registrar that any decision or order of proceedings so called for should be modified, annulled or reversed, the Registrar may pass such order thereon as he may deem fit:

Provided that in case of co-operative credit structure, the findings observed by the Registrar shall be communicated to the society, and the society shall place on record before the committee the advice so communicated and take appropriate decision:

Provided further that no order under this section shall be made to the prejudice of any party unless such party has had an opportunity of being heard:

Provided also that powers of Registrar under this Section shall not be delegated to an officer not below the rank of Joint Registrar.]”

(Emphasis supplied)

9] It is apparent from the aforesaid provision that it is necessary for the joint registrar to pass the order only after giving due opportunity to the person concerned, whereas the respondent no.1 was not even made a party by the petitioner, in such circumstances, and also considering the fact that the petitioner has already been suspended on account of financial irregularities, no case for interference is made out.

10] However, it is directed that the observations made by the Tribunal regarding the jurisdiction of the Joint Registrar are hereby set aside and it shall not come in his way to pass the final order, after giving due opportunity of hearing to the respondent no.1.

11] Resultantly, the impugned order dated 27.08.2023 is hereby affirmed to the aforesaid extent.

12] Petition stands disposed of, accordingly.