
(2010) 05 UK CK 0066

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No's. 306 of 2007, 1348 of 2008 and 188 of 2009

Himanshu Dewedi

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Citation : (2011) 2 UC 971

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Advocate : H.S. Sharma, in Writ Petition M/S Nos. 1348 of 2008 and 188 of 2009 and A.K. Sharma, holding brief of H.S. Sharma, in Writ Petition M/S No. 306 of 2007, for the Appellant; K.P. Upadhyay, Additional C.S.C. for Respondent Nos. 1 to 3, V.K. Kohli I.P. Kohli, for Respondent No. 4, Rakesh Thapliyal and Arvind Vashist, for Interveners Mahendra Kumar etc. in Writ Petition (M/S) Nos. 1348 of 2008 and 188 of 2009 and K.P. Upadhyay, Additional C.S.C. for Respondent Nos. 1 to 3, V.K. Kohli and I.P. Kohli, for Respondent Nos. 4 and 5 in Writ Petition (M/S) No. 306 of 2007, for the Respondent

Final Decision : Allowed

Judgement

B.S. Verma, J.—Since the controversy involved in these writ petitions is similar and the Petitioners have assailed the order dated 12-4-2007 (correct date being 12-2-2007/22-2-2007) passed by the Respondent No. 2, therefore, for the sake of convenience, they are being decided by this common order.

2. By means of writ petitions, bearing WPMS No. 1348 of 2008 and P.M.S. No. 188 of 2009, the Petitioners have sought the following relief:

(a) Issue a writ, order or direction in the nature of certiorari quashing the order dated 12-4-2007 made by the Respondent No. 2.

(b) Issue a writ, order or direction in the nature of mandamus to stay the allotment of 1140 plots and the complete allotment process conducted by Respondent No. 3 to 5 in Phase 5 of the Samiti in pursuance of advertisement

dated 18-2-2004.

(c) Issue a writ, order or direction in the nature of prohibition to Respondents not to proceed with the allotment process and ask for installments and give possession of the plots and disputed Phase 5 of the Samiti till implementation of order dated 8-11-2005.

(d) Issue an order or direction to an independent agency to probe all the allotments made by the Samiti leading to a scam running into several crores.

(e) Issue a writ, order or direction in the nature of mandamus to enforce/the implementation of the order dated 18-11-2005 of the Registrar Co-operative Societies (Annexure-17).

(f) Issue a writ, order or direction in the nature of mandamus directing the Respondent to resume fresh allotment process after implementing the order dated 8-11-2005.

(g) Issue any other appropriate writ, order or direction that the Hon"ble Court deem fit and proper in the circumstances of the case.

(h) Award the writ petition with cost.

3. In writ petition bearing W.P.M.S. No. 306 of 2007 Jai Prakash Singh and Anr. v. State and Ors. the Petitioner has sought a writ in the nature of certiorari quashing the impugned order dated 12-2-2007 (Annexure-8 to the petition) passed by the Respondent No. 1.

4. By the order dated 12-2-2007/22-2-2007 the Respondent No. 2- Registrar, Cooperative Societies has revised his earlier order dated 3-10-2005 (Annexure-17 to the writ petition) in exercise of revisional jurisdiction, on the ground that the requirement of Proviso appended to Sub-section (ii) of Section 126 of the Uttaranchal Co-operative Societies Act, 2003 (for short the Act) has not been complied with.

5. Relevant facts giving rise to these writ petitions are that the District Assistant Registrar Co-operative Societies Haridwar by his letter dated 27-5-2005 (Annexure-11 to the petition) informed the B.H.E. Sahkari Grih Nirman Samiti Ltd., Shivalik Nagar (Haridwar) (hereinafter referred to as the Grih Nirman Samiti) that the committee of management is not in existence and directed it to send proposal for conducting election of the committee of management. The Assistant Registrar Co-operative Societies also appointed Administrator of the Grih Nirman Samiti and asked him to conduct the election within six months by his letter dated 12-7-2005. It was also ordered by him that the policy decision shall be taken only by the duly elected committee of management.

6. It appears that the State Government had ordered investigation to be made by the District Assistant Register regarding the process of allotment of plots in Phase-V of the Grih Nirman Samiti, who submitted its report on 24-8-2005 and the District Assistant Registrar Haridwar by his order dated 24-8-2005 annulled

the complete allotment process of the Samiti and cancelled the allotment of plot made by the Grih Nirman Samiti in Phase-V. The Administrator on the basis of order dated 24-8-2005 of the District Assistant Registrar, Cooperative Societies Haridwar, also annulled the complete allotment process. Consequently, the Registrar Co-operative Societies by his order dated 8-11-2005 annulled the complete process of registration and allotment of plots in Phase V of the Grih Nirman Samiti. A copy of the order dated 8-11-2005 has been annexed as Annexure-17 to the W.P.M.S. No. 1348 of 2008.

7. According to the Petitioners, by the impugned order dated 12-2-2007/22-2-2007, the Respondent No. 2-Registrar, Co-operative Societies himself has revised his earlier order-dated 8-11-2005, which was passed by his predecessor-in-office, which gave rise to the present writ petitions.

8. On behalf of the Respondents, separate counter affidavits have been filed. The Respondent Nos. 2 and 3 have stated in their affidavits that the writ petitions on the behest of the Petitioners is not maintainable and that the Petitioners are not the members of the Grih Nirman Samiti, hence they have no locus standi to file the present petitions. It has also been stated that that a draw for allotment was held on 5th and 6th June, 2005. There had been some objections and finally the Registrar Co-operative Societies by the impugned order had constituted a committee and further directed that the plots should be given by the Grih Nirman Samiti to those who fulfill the terms and conditions of the order. After passing the said order, the said Samiti had directed the eligible allottees to deposit the first instalment of the consideration amount. It is also stated that in case of any dispute between the members and the Society, the remedy available to the Petitioners is for arbitration u/s 70 of the Act, hence even the members cannot challenge the order dated 22-2-2003 by way of present petitions. It is further stated that the Petitioners are neither employees or ex-employees of B.H.E.L. nor residents of the B.H.E.L. campus. They do not fulfill the terms and conditions of the application itself. The plots were allotted strictly in accordance with the terms and conditions as contained in the application form.

9. In its counter affidavit filed on behalf of the Respondent No. 4, it is stated that the Petitioners have no locus standi to file the writ petitions. It is also stated that the Petitioners ought to have resorted to the arbitration clause u/s 70 of the Act. It is also stated that the Registrar has a right to correct his mistake either on representation or suo-motu and the Registrar can review his own order.

10. On behalf of the Respondent No. 5, counter affidavit has been filed. The affidavit has been sworn in by Smt. Gunjan Bansal, the then Deputy Manager (HR-Law) B.H.E.L. Haridwar. It is stated in the counter affidavit that the Petitioners have never been enrolled as Member of the Grih Nirman Samiti, therefore, the Petitioners have no locus to file the present writ petitions. There is no personal grievance of the Petitioners and they are not aggrieved persons by the order impugned, therefore, the writ petitions are not maintainable. It is also stated that the Registrar is competent to annul resolution of a co-operative

society or cancel order passed by an officer of a cooperative society. The impugned order has been passed by the Registrar as provided u/s 126(ii) of the Act and the order is appealable. Since no appeal has been preferred by the Petitioners within the stipulated time, the impugned order of the Respondent No. 2 has attained finality.

11. The Petitioner in Writ Petition No. 1348 of 2008(M/S) has filed his rejoinder affidavit. The Petitioner has denied the assertions made in the counter affidavit and along with the rejoinder affidavit, the Petitioner has annexed copy of applications for registration, copy of receipt of registration fee deposited by the Petitioners, etc.

12. I have heard learned Counsel for the parties and carefully perused the entire material placed before this Court, including the memo of petitions, counter affidavits filed on behalf of the Respondents and the rejoinder affidavit filed by the Petitioner along with its enclosures.

13. It is not disputed that the term of the Grih Nirman Samiti had come to an end. Accordingly, Assistant Registrar Cooperative Societies Haridwar had appointed Administrator to the Grih Nirman Samiti and directed the Administrator to conduct elections of the committee of management within a period of six months vide his order dated 12-7-2005. It appears that an enquiry was conducted by the District Assistant Registrar on the complaint made by BHEL Mazdoor Ekta Manch and BHEL employees Ekta Manch BHEL Haridwar pertaining to the irregularities made in the allotment of plots in Phase-V by the Grih Nirman Samiti. In the result, the Enquiry Officer concluded in the enquiry report dated 24-8-2005 that since no lawful committee of management is in existence, therefore, the allotment process made by the said committee is liable to be cancelled. On the basis of the enquiry report, the Administrator passed an order of cancellation of the entire allotment process and proposed allotments made by the Grih Nirman Samiti on 25-9-2005. After perusing the enquiry report, the Registrar, Cooperative Societies Uttaranchal in exercise of powers u/s 126 of the Act, by his order dated 3-10-2005 (Annexure-17 to W.P.M.S. No. 1348 of 2008) has annulled the resolution passed by the Grih Nirman Samiti in respect of allotment of plots, Phase-V. In this order, the then Registrar has specifically mentioned that there is no legally constituted committee of management, therefore, there is no need to require the committee of management to reconsider the resolution as provided by the Proviso appended to Section 126(ii) of the Act. The said order had been passed by Sri Navin Chandra Sharma, the then Registrar, Co-operative Societies, Uttaranchal.

14. It appears that subsequently, the Registrar by the impugned order dated 12-2-2007/22-2-2007 has revised the earlier order on the ground that the mandatory requirement of Proviso appended to Section 126(ii) of the Act has not been complied with.

15. For a just decision of these writ petitions, a reference to the provisions of

Sections 99-C and 126 of the Act is necessary. Section 99-C deals with the powers of revision of Registrar and Government. Relevant extract of Section 99-C reads as under:

99-C. Powers of revision of Registrar and Governmental.-(1) The Registrar may of his own motion or on application call for and examine the record of any officer subordinate to him being an officer exercising the powers of the Registrar, and the Government may of their own motion or on an application call for and examine the record of the Registrar including any officer exercising the powers of the Registrar in respect of any proceedings not being a proceeding in respect of which an appeal to the Tribunal is provided by Section 98 to satisfy himself or themselves as to the regularity of such proceedings, or the correctness, legality or propriety of any decision passed or order made thereon, and if in any case, it appears to the Registrar or the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration he or they may passed orders accordingly:

Provided that every application to the Registrar or the Government for the exercise of the powers under this section shall be preferred within three month from the date on which the proceeding decision or order to which the application relates was communicated to the Applicant.

16. From a perusal of Section 99-C of the Act it is obvious that it is the Government alone, which has revisional powers to examine the propriety of the orders passed by the Registrar including any officer exercising the powers of the Registrar, while in the case of Registrar, he has revisional powers against the orders passed by any officer subordinate to him. This Section nowhere authorizes the Registrar to examine the propriety or the correctness of the orders passed by him.

17. Section 126 of the Act deals with the power of the Registrar to annul resolution of a co-operative society or cancel order passed by an officer of a co-operative society in certain cases. Section 126 reads as under:

126. Registrar's power to annul resolution of a co-operative society or cancel order passed by an officer of a co-operative society in certain cases.-The Registrar may:

(i) annul any resolution passed by the Committee of Management, or the general body of any co-operative society; or

(ii) cancel any order passed by an officer of a co-operative society; if he is of the opinion that the resolution or the order, as the case may be, is not covered by the objects of the society, or is in contravention of the provisions of this Act, the rules or the bye-laws of the society, whereupon every such resolution or order shall become void and inoperative and be deleted from the records of the society:

Provided that, the Registrar shall, before making any order, require the Committee of Management, general body or officer of the co-operative society to

reconsider the resolution, or as the case may be, the order, within such period as he may fix but which shall not be less than fifteen days, and if he deems fit may stay the operation of that resolution or the order during such period.

Applicability-The Registrar can annul a resolution of the general body if he is of the opinion that the resolution is in contravention of the provisions of the Act. A party aggrieved by such resolution is entitled to invoke the powers of the Registrar and request him to annul the resolution.

18. The short controversy to be resolved in these writ petitions is whether the Petitioners have any locus to file the writ petitions against the impugned order passed by the Registrar, Cooperative Societies and whether the Registrar was competent to revise its own earlier order.

19. So far as the locus of the Petitioners to file the writ petitions is concerned, admittedly, the Petitioners have applied for registration of membership of the Grih Nirman Samiti and have deposited the membership fee of Rs. 100/- along with registration fee with the Bank in the account of the Grih Nirman Samiti. It is the positive case of the Petitioners that the Grih Nirman Samiti has never informed the Petitioner that he (Himanshu Dewedi) is not a member of the Samiti. Petitioners' names were also considered for the draw held for allotment of plots. Moreover, it is admitted by the Respondent No. 4 and 5 in Writ Petition (M/S) No. 306 of 2007 that the Petitioners Jai Prakash Singh and V.P. Singh took part in the draw, which was held on 5th and 6th June, 2005, therefore, it does not lie in the mouth of the Respondent Nos. 4 and 5 that the Petitioners are not having locus to file the writ petitions. The participation of the Petitioners in the draw itself is sufficient to indicate that the Petitioners must have fulfilled the conditions for allotment of plots, else there was no occasion for the Respondent Nos. 4 and 5 to have permitted the Petitioners to participate in the draw. I am of the considered view that the Petitioners have locus to file the present writ petitions.

20. It is pertinent to mention here that the enquiry officer/District Assistant Registrar had already pointed out in the enquiry report that the eligibility for participation in the draw is against the rules, terms and conditions of the bye-laws of the committee of management. It was also found by the enquiry officer that the allotment committee was not approved by the Administrator.

21. From a plain reading of Section 126 of the Act, it is ample clear that the Registrar has power to annul resolution of a co-operative society.

22. On the other hand, the learned Counsel for the Respondent No. 4 has vehemently contended that the impugned order dated 12-2-2007/22-2-2007 passed by the Registrar is not an order reviewing the earlier order dated 3-10-2005 rather it is fresh order which has been passed in exercise of his power as envisaged by Proviso appended to Section 126(H) of the Act. Learned Counsel further submitted that the subsequent order dated 12-2-2007/22-2-2007 passed by the Respondent No. 2 is an order of rectification of a mistake apparent on the

face of record. Reliance has been placed in the case of Union of India (UOI) and Others Vs. Bikash Kuanar, .

23. I have pondered over the entire controversy involved in these petitions and have given my anxious thought to the provisions of Section 99-C and Section 126 of the Act. As mentioned earlier, the Registrar has revisional power in case the order is passed by an officer subordinate to him. u/s 126 of the Act, the Registrar has power (i) to annul any resolution passed by the Committee of Management or the general body of any co-operative society and (ii) cancel any order passed by an officer of a co-operative society. It finds place to mention here that on 3-10-2005, the Registrar had passed an order in exercise of his powers u/s 126 of the Act. He had examined the propriety of the allotment process of Phase-V of the committee of management. At page 2 of his order, the Registrar had categorically mentioned that the entire allotment process, pertaining to allotment of plots in Phase V is against the bye-laws of the committee of management, it was imperative to annul the entire allotment process u/s 126 of the Act. The Registrar was fully conscious of the Proviso appended to Section 126(ii) of the Act and he had mentioned that since no lawful committee of management was in existence at that time, therefore, it was not considered necessary to comply the Proviso appended to Section 126(ii) of the Act to require the committee of management to reconsider the resolution. Once the Registrar passed an order dated 3-10-2005 u/s 126 of the Act, there was no occasion for the Registrar himself to exercise revisional powers against his own order, as has been done in the instant case by the order dated 12-2-2007/22-2-2007. It is not a case of rectification of an error on the face of record as contended by the learned Counsel for the Respondent No. 4.

24. The contention of the learned Counsel for the Petitioners that the Registrar could not have, revised his own order and the revisional power lies with the State Government has force. It appears that while passing the order dated 12-2-2007/22-2-2007, the Registrar, Cooperative Societies, Uttarakhand, Dehradun, lost sight of the fact that the provisions of Proviso appended to Section 126(ii) of the Act were already considered by the then Registrar while passing the earlier order dated 3-10-2005. The order passed by the Registrar vide order dated 3-10-2005 could have been examined in revision by the higher forum, i.e. the Government as provided u/s 99-C of the Act.

25. It would not be out of place to mention here that the order dated 3-10-2005 had been passed by the Registrar, Co-operative Societies, Uttarakhand, Dehradun, u/s 126 of the Act thereby he had annulled the entire allotment process and resolution of the Grih Nirman Samiti. Against the order of the Registrar passed u/s 126, an appeal lies u/s 98(2) of the Act.

26. For the reasons and discussion above, I hold that the Petitioners have locus to file the writ petitions. I further hold that by the impugned order dated 12-2-2007/22-2-2007 the Registrar, Co-operative Societies could not have revised earlier order dated 3-10-2005 particularly when the provisions of Section

126 and the proviso appended to Section 126(ii) of the Act had already been looked into by the Registrar at the time of passing the earlier order. Both the questions are answered accordingly. Therefore, in any view of the matter, the impugned order is liable to be set aside. The writ petitions deserve to be allowed.

27. All the three writ petitions are allowed. The impugned order dated 12-2-2007/22-2-2007 passed by the Respondent No. 2-Registrar, Co-operative Societies, Uttarakhand, Dehradun is set aside. However, liberty is given to the Respondent Nos. 4 and 5 to file an appeal before the State Government against the order dated 3-10-2005 passed by Respondent No. 2 within a period of forty-five days from today, if so advised. In the circumstances of the case, no order as to costs.