

**(2014) 03 AHC CK 0115**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 17800 of 2014**

Ishwari Pal

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 27-03-2014

**Acts Referred:**

Uttar Pradesh Co-operative Societies Act, 1965 — Section 37

**Citation :** (2014) 104 ALR 139 : (2014) 4 AWC 3968

**Hon'ble Judges :** Vivek Kumar Birla, J;Amreshwar Pratap Sahi, J

**Bench :** Division Bench

**Advocate :** H.R. Mishra and Abhishek Mishra, Advocate for the Appellant;  
Nripendra Mishra, Advocate for the Respondent

**Final Decision :** Dismissed

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## Judgement

Amreshwar Pratap Sahi and Vivek Kumar Birla, JJ.—Heard Sri H.R. Mishra, teamed Senior Counsel for the petitioners and Sri Nripendra Mishra for the respondent Nos. 1 and 2. The petitioners are contending that the power exercised by the respondent Additional Housing Commissioner/Additional Registrar on 13.3.2014, is an order without jurisdiction and is mala fide.

2. Learned Counsel submits that since the petitioner Committee has restored the earlier Secretary after interim orders were passed in favour of the petitioner committee in writ petition No. 7330 of 2014, the said respondent has now in order to circumvent the same proceeded to adopt this method to arm twist the petitioner society and subject it to his directions.

3. Learned Counsel submits that there is no provision under the Cooperative Societies Act under which such an action can be justified or be legally sustainable. Sri Mishra therefore submits that the order is neither supportable in law and is even otherwise a mala-fide exercise of power.

4. We have also heard Sri Nripendra Mishra who contends that the power has been exercised keeping in view the fact that the petitioner society had not

handed over the records for such inspection, including the Secretary of the Society Mr. Arun Sharma, and as such it had become imperative to invoke the powers under the 1965 Act.

5. Having considered the submissions so raised, section 37 of the 1965 Act reads as under:

37. Registrar's emergency powers to seize records, etc.--(1) When the Registrar is satisfied that the books and records of a co-operative society are likely to be tampered with or the funds and property of a society are likely to be misappropriated or misapplied, the Registrar may issue an order directing a person duly authorized by him in writing, to seize and take possession of such books, records, funds and property of the society and the officer or officers of the society responsible for the custody of such books, records, funds and property shall give delivery thereof to the person so authorized.

(2) A person authorized by the Registrar under sub-section (1) may, for the purpose of execution of the said order, request the officer in-charge of the nearest police station to give him necessary police help and such police officer shall thereupon give him such help.

6. A perusal thereof leaves no room for doubt that if the Registrar finds reason for seizing the documents of a society such power can be invoked.

7. The contention of Sri Mishra that no such reason did exist and that the power has been exercised for mala fide reasons is unacceptable, inasmuch as, we find from a perusal of the impugned order that an inquiry had been earlier conducted and a preliminary report had been submitted on 1st of August, 2013 indicating that with regard to the allotment of plots the Secretary, Arun Sharma, had committed certain acts which allegedly amounted to embezzlement, and also tampering of the records of the society. It is this inquiry which was required to be undertaken for which the inspection of the records was necessary.

8. Sri Mishra submits that the same is not the satisfaction recorded and it is only on account of the action of the society in restoring Sri Arun Sharma as Secretary that the impugned action has been taken and which cannot be justified once the society has already passed a resolution for restoring Arun Sharma as Secretary of the Society.

9. We are unable to accept the said contention, inasmuch as, even if Mr. Arun Sharma has been restored, he cannot withhold any documents more so when the aforesaid inquiry and inspection of the records is required to be undertaken which power according to us is available u/s 37 of the Act and indicated hereinabove.

10. In our opinion, the provisions of section 37 continue to be operative with full force even after the amendment that has been brought on 15.2.2013. The writ petition lacks merit and is accordingly dismissed.