
(2015) 03 MP CK 0164
In the Madhya Pradesh High Court
Case No : CON.C. No. 1994 of 2006

Ku. Vijay Bhatnagar and Others

APPELLANT

Vs

Tarachand Goswami

RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 64

Citation : (2015) 03 MP CK 0164

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Umesh Shrivastava, Learned Counsel, for the Appellant; Megh Nath Benerjee, Learned Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.K. Trivedi, J—This Contempt Petition is filed complaining non-compliance of order passed by the Joint Registrar, Cooperative Societies, Jabalpur, which was passed in terms of the directions issued by this Court in the writ petition M.P. No. 5022/1989. It is contended in the petition that the petitioners are the daughters of one late Shri N.P. Bhatnagar and Smt. Sarita Bhatnagar, who were the founder members of Siddharth Co-operative Society. The land so obtained by the said society was subsequently acquired by the Jabalpur Development Authority. A compromise had taken place between the Co-operative Society and the Jabalpur Development Authority and 45 plots were made available for allotment of the same to the members of the said Cooperative Society. Since the plot was not allotted to the above said founder member late Shri N.P. Bhatnagar, he was required to file a writ petition before this Court. This Court directed that in fact a dispute under Section 64 of the M.P. Co-operative Societies Act should be fled.

2. The issue was raised before the Deputy Registrar, Cooperative Societies in Misc. Case No. 63-8/1995. The said dispute was decided and it was specifically ordered that the allotment of Plot No. 585 made in the name of Shri K.D. Barapatre, was to be cancelled and that plot was to be allotted to the father of

the petitioners. The appeal was preferred against the said order before the Joint Registrar, Co-operative Societies, who passed the order on 18.5.2005 categorically directing that the amount was deposited by the appellants in Appeal No. 77-5/1996 in the name of the Co-operative Societies. There was no need to make any deposit in terms of the resolution of the Society dated 22.8.1982. In fact, the respondent Co-operative Society was required to obtain consent from Smt. Tara Bai Barapatre, who was appellant in Appeal No. 77-80/95 and the plot No. 585 may be allotted to the petitioners. In case the consent is not granted, any other plot available with the respondent-Society may be allotted to the petitioners. This common order was passed in the appeal fled by the petitioners and said Smt. Tara Bai Barapatre.

3. The complaint made by the petitioners is that since this order was not complied with, they fled a Contempt application before the Joint Registrar, Cooperative Societies, where the notices were issued to the respondents and an order was passed on 30.5.2006 by the Joint Registrar, Cooperative Societies. In the said proceeding, it was held that the original founder member was senior to Shri K.D. Baraparte the husband of said Smt. Tara Bai Barapatre in the Scheme prepared by the Housing Society and, therefore, in fact, the plot was to be allotted to the senior member and not to the junior one. It was held that the President of the Society has committed a contempt by not complying with the order passed by the Joint Registrar, Cooperative Societies and, therefore, the matter was required to be referred to the competent Court for taking action in that respect.

4. This Contempt Petition is fled only on the basis that such an order was passed by the Joint Registrar, Cooperative Societies, holding that the order passed by the said authority was not complied with by the respondent and, therefore, contempt of the Court was committed. A reply has been fled by the respondent stating inter alia that the common order passed by the Joint Registrar, Cooperative Societies on 18.5.2005 was complied with. Since Smt. Tara Bai Barapatre had not given the consent for allotment of the plot to the petitioners, the plot in question was allotted to Smt. Tara Bai Barapatre. Since thereafter, no plot was available with the Society, it was not possible for the Society to allot any plot to the petitioners. This fact was pointed out to the Joint Registrar, Cooperative Societies when a reply was fled in the Contempt Case fled by the petitioners before the said authority. However, the original order of the Joint Registrar itself was modified saying that seniority of the membership was not to be interfered with by the President of the Society and since the consent was not shown by said Smt. Tara Bai Barapatre, even than according to the seniority of the founder member in the society, the plot was required to be allotted to the said founder member, and as such it was said that the order passed by the Joint Registrar, Cooperative Societies on 18.5.2005 was not complied with. By fling an affidavit, this fact is clarified that since the consent was not given by Smt. Tara Bai Barapatre, the Plot No. 585 already stood allotted in her name. There was no question of changing the said allotment as this was not the specific order passed

by the Joint Registrar, Cooperative Societies. The question of seniority was looked into only in the contempt proceedings and not when the original order was passed in appeals of the petitioners and said Smt. Tara Bai Barapatre, therefore, no modification in the original order was permissible and it was not to be held that the respondent has committed contempt of the Court.

5. Heard learned counsel for the parties at length and perused the record.

6. It is not in dispute that this Contempt Petition is filed by the petitioners in terms of the order dated 30.5.2006 passed in Contempt Case No. 10-A/05 by the Joint Registrar, Cooperative Societies, Jabalpur Division, Jabalpur. The Joint Registrar has categorically held that the seniority of the original member was disturbed. However, this aspect is still required to be examined whether such was open to be considered in a Contempt Petition or not. Trite it is that while dealing with the contempt, the Courts have no jurisdiction to modify the orders originally passed in an appeal or matter considered on original side. In view of this, it has to be examined whether non-allotment of the plot strictly on the basis of seniority of the members of the Co-operative Societies could be said to be violative of the common orders passed in the appeal of the petitioners and said Smt. Tara Bai Barapatre.

7. For the aforesaid purposes, it would be necessary to see what was the specific order passed by the appellate authority on original side. The operative part of the order passed in the appeal on 18.5.2005, is quoted herein below :-

8. The reply submitted by the respondent was that the consent was asked from said Smt. Tara Bai Barapatre to allot the Plot No. 585 to the petitioners, but such a consent was not given by her, as a result, the plot stood allotted in the name of said Smt. Tara Bai Barapatre. No land was available with the respondent Society for the purposes of allotment of the plot to the petitioners. At the best, a plot could be purchased and allotted to the petitioners. Since the deposit was already made by Smt. Tara Bai Barapatre, the plot No. 585 was transferred by registered deed dated 6.8.2005 in the name of son of said Smt. Tara Bai Barapatre. At the best, attempt could be made for purchase of the plot, but since the funds were not available with the respondent Society, the plot could not be purchased for allotment to the petitioners. In fact, after the allotment of the plots by the Society to its members, the Society itself has become functus officio.

9. This particular plea was not considered in appropriate manner, inasmuch as, findings are recorded in the order passed by the Joint Registrar Co-operative Societies on 30.5.2006 in the following manner:-

10. This finding indicates that in fact, the original order where the question of seniority of members of the Society was never dealt with nor was raised and considered was modified. If it was the opinion of the appellate Authority that in accordance to the seniority of the members of the Co-operative Societies plot should be allotted, such should have been the order passed in the original side in appeal. It was not open to the Joint Registrar, Co-operative Societies to hold that

such a seniority was to be maintained, only in the contempt proceedings as even review of the order passed on 18.5.2005 was not sought. In the contempt proceedings, it was not open to the Joint Registrar, Cooperative Societies to exercise power of suo motu review if was available with the said authority. As such, the findings recorded by the Joint Registrar, Co-operative Societies in the contempt proceedings vide its order dated 30.5.2006 are not to be read as original order passed in the appeal of the parties. As has been discussed herein above, the order passed by the Joint Registrar, Co-operative Societies on original side has attained finality as it was not called in question anywhere. No modification in the said order was permissible by passing an order in contempt application by the Joint Registrar, Co-operative Societies on 30.5.2006. As such, no case for initiating contempt against the respondent is made out.

11. The Contempt Petition fails and is hereby dismissed. The rule issued to the respondent is discharged.