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**(2009) 04 AHC CK 0497**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No.13452 of 2009

Lal Singh

APPELLANT

Vs

State of UP and others

RESPONDENT

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**Date of Decision :** 08-04-2009

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh Co-operative Societies Act, 1965 — Section 128

**Citation :** (2009) 04 AHC CK 0497

**Hon'ble Judges :** Sunil Ambwani, J

**Final Decision :** Disposed Of

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## Judgement

Sunil Ambwani, J.

Heard Shri H.R. Mishra, Senior Advocate assisted by Shri K.M. Misra for the petitioner. Learned standing counsel appears for respondent nos. 1. Shri Chandra Shekhar Singh appears for respondent nos. 2, 3, 4 & 6.

The petitioner was serving as Secretary of the Govind Nagar Sahkari Grih Nirman Samiti Limited, Mathura. The Administrator of the Society has removed the petitioner on the ground that he has executed sale deeds between 12.11.2008 to 29.12.2008, in favour of 16 persons without making them members of the society, in accordance with the rules and that the deposit of the sale consideration in the accounts of the society is also doubtful. The order further states that the Secretary got the sale deeds registered only on the basis of the photocopies of the allotment letters. All the records of the society are kept in the custody of the Secretary of the Society. These records were reported by him to be missing but that no report was lodged with police regarding any incident of loss.

Learned counsel for the petitioner would contend that the order dated 6.2.2009 passed by the Administrator of the Society is violative of principles of natural justice. The Administrator of the Superseded Committee of Management of the Cooperative Society was not appointed in accordance with the law and that in

any case the petitioner does not have an alternative remedy under Section 128 of the U.P. Cooperative Societies Act, 1965 (in short the Act) on the ground that the order has been passed on the directions of the Joint Registrar, who exercises the powers of the Registrar under Section 128 of the Act, as a delegatee of the Registrar by the State Government under Section 3 (2) of the Act.

In the counter affidavit of Shri V.P. Upadhyay, Cooperative Officer (Housing), U.P. Awas Evam Vikas Parishad, Construction Division<sup>28</sup>, Kamla Nagar, Agra, it is stated that complaints were made to the Joint Registrar, that the petitioner has executed sale deeds in favour of persons, who were not members of the society. He had reported that the records were lost but that no FIR was lodged and thus exercising the powers under Section 38 of the Act, the Joint Registrar, acting for the Registrar, directed that the Secretary of the Housing Society may be removed.

The petitioner has not specifically pleaded that all the 16 persons were members of the Society and that the original records are available or were lost by him.

In any case, the petitioner has alternative remedy of approaching the Registrar under Section 128 of the Act to annul the order of his removal. The submission, that the Joint Registrar exercises the powers of the Registrar and that he had made up his mind and the order was passed at his instance, may not distract the Court to relegate the petitioner to the alternative remedy, inasmuch as the statutory authority, namely the Joint Registrar has to exercise powers under Section 38 as well as under Section 128 of the Act. The opinion drawn by him under Section 38 is not conclusive inasmuch the person, who has been removed in pursuance of such opinion, has a right under Section 128 to seek remedies of annulling the same resolution. To allay the apprehensions of bias the Court can issue directions that instead of delegatee of the powers. The statutory authority, may himself exercise his statutory powers under the Act. In such a case the delegation by the State Government by notification cannot be pleaded to apprehend bias.

Having regard to the facts and circumstances of the case, and the nature of the powers to be exercised by the Joint Registrar both under Section 38 and under Section 128 of the Act, I direct in exercise of the powers of the High Court under Article 226 of the Constitution of India, that if the petitioner files an appropriate petition before the Housing Registrar under Section 128 of the Act within 15 days from today, he shall himself as Housing Registrar decide the matter very expeditiously.

The writ petition is accordingly disposed of.