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In the Jharkhand High Court

Case No : L.P.A. No. 593 of 2003

Manju Sinha and Others — APPELLANT

Vs

State of Jharkhand and Others — RESPONDENT

Date of Decision : 14-06-2005

Acts Referred:
Bihar Co-operative Societies Rules, 1959 — Rule 10

Citation : AIR 2005 Jhar 79 : (2005) 2 BLJR 1542 : (2005) 3 JCR 435

Hon'ble Judges : Altamas Kabir, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : Anubha Rawat Choudhary, L. K. Lal, for the Appellant; Sheela Prasad, for the Respondent

Judgement

1. This appeal is directed against the judgment and order dated 17th July, 2003 passed by learned single Judge in CWJC No. 12358/2000 and raises certain interesting question relating to the provisions of the Bihar Co-operative Societies Act, 1935 and the Rules framed thereunder.

2. The predecessor-in interest of the appellants, late Anil Kumar Sinha, as an employee of the A. G. Office had been posted at Ranchi and since he fulfilled all the requirements he was enrolled as a member of the A. G. Office Employees Co-operative House Construction Society Ltd. with its area of operation confined to Ranchi and its immediate vicinity within a radius of 5 miles.

3. Subsequently, on account of the fact that late Anil Kumar Sinha did not raise any construction on the plot which had been allotted to him as a member, the allotment made in his favour was cancelled by the Society by its order dated 14-11-1994. Being aggrieved thereby, Anil Kumar Sinha filed a Dispute Case before the Assistant. Registrar of Co-operative Societies, Ranchi and the same was numbered as Dispute Case No. 2/95. The same was ultimately dismissed by the said authority on 30-3-1996 upon various findings including the finding that the applicant had violated the provisions of Rule 10 of the Bihar Co-operative Societies Rules, 1959, by having acquired the membership of a similar society

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based in Patna and having constructed a house on a plot allotted to him by the said Society at Patna.

4. Anil Kumar Sinha thereafter moved before the appellate authority under the Bihar Co-operative Societies Act and such appeal was registered as Appeal Case No. 100/96. The said appeal was disposed of on 7-11-2000 by the appellate authority by affirming the order passed by the Assistant Registrar of Co-operative Societies. Ranchi. It may be indicated that while disposing of the appeal, the appellate authority referred to the submissions made on behalf of Cooperative Society, respondent No. 6 herein, with regard to the violation by the appellant of Rule 10 of the aforesaid Rules.

5. However, neither the society nor the Assistant Registrar of Co-operative Societies or the Appellate Authority came to any finding with regard to the consequences of violation of Rule 10 of the aforesaid Rules and as to whether the same would automatically disqualify a member from membership of the Society (respondent No. 6 herein).

6. Shri Sinha thereafter filed the writ petition in this Court and the same was numbered as CWJC No. 12358/2000 which, as indicated herein above was disposed of by the learned single Judge by his order dated 17th July, 2003. The learned single Judge also took note of the fact that the writ petitioner had acquired two separate plots under two separate Societies having the same object, but in two different places and on such basis chose not to interfere with the order passed by the appellate authority and dismissed the writ application. It may be indicated that during the pendency of the writ petition Shri Sinha died and he was substituted in the writ proceedings by his widow, Manju Sinha and two minor sons, Sanjeev Kumar Sinha and Saurav Kumar Sinha. At this juncture, it may not be out of place to indicate that Saurav Kumar Sinha who was substituted as the writ petitioner No. 3 in the writ petition had been nominated by Anil Kumar Sinha to be his nominee in respect of his membership of the respondent No. 6-Society and at the relevant time in 1988 his age had been recorded as 12 years. It would, therefore, appear that Saurav Kumar Sinha had since attained majority.

7. After the writ petition was dismissed, the heirs of Anil Kumar Sinha filed the instant appeal and at the time of hearing of the appeal a question was raised by Mr. Lal, appearing for the respondent No. 6-Co-operative Society that the appellant had no locus standi to maintain the appeal since at the present moment, despite nomination made in favour of appellant No. 3, he was yet to be admitted as a member of the Cooperative Society. Of course, it has been submitted by Mrs. Anubha Rawat. Choudhary, appearing for the appellants, that management of the Society has since been taken over and is now with the Circle Officer, Ranchi.

8. Mrs. Sheela Prasad, who appeared for the State of Jharkhand, while adopting the submissions made by Shri Lal also adopted her submission with regard to the

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locus standi of the appellants to maintain the appeal.

9. While a good deal can be said with regard to the manner in which the matter was dealt with from the very initial stage by the Society, the objection taken with regard to the question of locus standi cannot be avoided. Undoubtedly, the appellant No. 3 has still not been taken as a member of the Co-operative Society and as pointed out both by Sri Lal and Mrs. Prasad, the appeal, therefore, appears to be premature.

10. In such circumstances, we dispose of the appeal by granting leave to the appellant No. 3 apply before the concerned authority in management of the affairs of the Society to be admitted as a member of the Society on the basis of the nomination made in his favour by his late father. If such an application is made, the same is to be disposed of by the said authority within one month, after giving all concerned a reasonable opportunity of hearing and producing relevant documents. In the event, the appellant No. 3 is admitted as a member of the Society, he will be entitled to question the decision taken by the Society regarding cancellation of the allotment made in favour of his late father and if such objection is raised the matter is to be gone into afresh by the Assistant Registrar of Co-operative Societies in the light of the observations made by us hereinabove. Since there is no definite finding with regard to the consequences of the violation of Rule 10 of the Bihar Co-operative Societies Rules, any, discussion with regard to the same shall not be deemed to have been affected by the principle of res judicata.

11. In the event, the appellant No. 3 makes an application in terms of the liberty granted by this Court, the authorities in management of the affairs of the Co-operative Society shall not make any fresh allotment of the plot in question, unless such allotment has already been made. This interim order will be operative for a period of one month from date. The appellant No. 3 will be at liberty to apply for extension of the same before the concerned authority.

12. The appeal is accordingly disposed of with the above observations and directions. There will be no order as to costs.

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