
(2014) 05 MP CK 0010
In the Madhya Pradesh High Court
Case No : W.P. No. 2650/2014

Manoj Sharma

APPELLANT

Vs

Girraj Sharma

RESPONDENT

Date of Decision : 16-05-2014

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 77(14)

Citation : (2014) 05 MP CK 0010

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Prashant Sharma and Shri Ravindra Dixit, Advocate for the Appellant; Vivek Jain, Advocate for Respondents No. 1 and 4, Shri K.S. Tomar, Sr. Advocate and Shri J.S. Kaurav, Advocate for Respondent No. 2, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—Heard on admission and interim relief.

2. Learned counsel for the petitioners submits that the order dated 26.3.2014 is bad in law inasmuch as while remanding the matter before the authority below the Joint Registrar, Cooperative Societies, has entrusted the work and charge of the society in the hands of the respondents herein, which is bad in law. To elaborate, it is submitted that the record shows that the election itself was not conducted in consonance with the provisions of the M.P. Cooperative Societies Act, 1960 (for brevity, the "Act") and the Rules made thereunder. The correctness of the membership is yet to be determined. In that situation, the charge which is entrusted on the respondents is bad in law. It is urged by the petitioners that the respondents have sold 12 properties recently after taking the charge and the society is not safe in their hands. In addition, it is submitted that the charge sheet is issued to one Shri S.K. Batham, who conducted the election without authority of law, which shows that elections are bad in law. Petitioners placed reliance on Rule 41(26) of the Rules and also relied on Thaneshwar Mishra

Vs. Jila Sahakari Kendriya Bank Maryadit, Mandla and Others, . The Collective Farming Society Ltd. and Others Vs. State of Madhya Pradesh and Others, is also relied in support of the submissions.

3. Prayer is opposed by the other side.

4. A preliminary objection is taken about availability of alternative remedy u/s 77(14) of the Act. In addition, it is urged that the petitioner No. 1 is only a Manager, who cannot raise his eyebrows in the matter of election of society. Being an employee, he has a limited locus. For petitioner No. 2, it is urged that he is not a member. It is submitted that disputed questions of facts are involved and, therefore, the petitioners be relegated to avail the alternative remedy. It is further submitted by Shri Vivek Jain that Annexure "X" (membership book) filed by the petitioners contains the names of the members in order of the year in which they became member. By drawing attention of this Court to column 2 of the said book, which deals with the date of membership, it is pointed out that the column is blank. To this, Shri Prashant Sharma submits that in column No. 3, it is mentioned that it is as per resolution of 1979. This Court desired to see the original of Annexure "X", but it was not available with the petitioners. This list also creates serious doubt about the membership of petitioner No. 1. Firstly, the relevant column in which date of membership should be mentioned is kept blank. The third column in which it is mentioned that it is as per resolution of 1979 is also doubtful because the membership is shown year wise. It begins from 1969 and leads towards 1970 onwards. Prima facie, there is a serious doubt as to how above 1969 membership, a membership of 1979 can be recorded. Thus, there are disputed questions of facts in this matter.

5. No doubt that despite availability of alternative remedy a petition can be entertained. But, this is a matter of discretion and not of compulsion. Where disputed questions of facts, locus etc. are in question, the in house remedy is a better option. Those authorities are best suited to take up the matter and examine it in its entirety.

6. Apart from this, Shri Jain has made a specific statement that the contention of the petitioners that a sizable number of property is sold, is factually incorrect. He stated that his statement can be recorded that the respondents have not sold a single property as alleged by the petitioner. Attention of this Court is drawn on Annexure Z" dated 27.1.2014 to submit that it is only a draft charge sheet sent by Deputy Registrar to the Registrar to consider suitable action. Thus, averments of this proposed show cause cannot be pressed into service.

7. In the facts and circumstances aforesaid, in my opinion, this writ petition should not be entertained and petitioners should be given liberty to avail the remedy as per Section 77(14) of the Act.

8. In the result, petition is dismissed by reserving the aforesaid liberty to the petitioner.