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**(2013) 02 AHC CK 0234**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 1248 (M/B) of 2013

Pawan Kumar

APPELLANT

Vs

Housing Commissioner/Registrar U.P. Awas Evam Vikas  
Lucknow and Others

RESPONDENT

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**Date of Decision :** 19-02-2013

**Acts Referred:**

Uttar Pradesh Co-operative Societies Act, 1965 — Section 29(2), 35

**Citation :** (2013) 3 ADJ 421

**Hon'ble Judges :** Virendra Kumar Dixit, J; Uma Nath Singh, J

**Bench :** Division Bench

**Advocate :** Nirankar Singh, for the Appellant; Mahesh Chandra, for the Respondent

**Final Decision :** Disposed Of

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## **Judgement**

1. We have heard learned counsel for parties and perused the pleadings of writ petition. Brief facts leading to filing of this writ petition are as:

AJPA Parishad Sahkari Awas Samiti Ltd. (hereinafter referred to as "society") GH 1/11, Sector 11, Vasundhara, Ghaziabad, U.P. is a registered Co-operative Housing Society having its registration No. 2087 dated 24.02.1995 and petitioner herein is a member of society having membership No. 786. The said society is governed by the U.P. Co-operative Societies Act, 1965 (hereinafter referred to as "Act 1965") and the U.P. Co-operative Societies Rules, 1968 (hereinafter referred to as "Rules 1968") and the bye-laws of society. The election of the Committee of Management was held in society in the year 2010 and thus the committee started functioning in society thereafter. The Additional Housing Commissioner vide order dated 17.2.2011 suspended the said management committee on false and flimsy grounds and initiated proceeding u/s 35 of the Act, 1965 for its supersession. The said action was done only in order to take the control of society in his own hands through his subordinate officer, who was appointed as Administrator of society. Thereafter, the management committee was superseded

by the order dated 4.10.2011 of the Joint Housing Commissioner, U.P. Awas Evam Vikas Parishad, Lucknow.

2. The said management committee of society preferred an statutory appeal before the Co-operative Tribunal, U.P. bearing Appeal No. 1/2012 which was allowed vide judgment and order dated 24.5.2012 with a direction to opposite party No. 1 that he may pass fresh order on the allegations levelled against society after giving due hearing to the parties concerned. While the said matter was pending before opposite party No. 1 the State Government vide an Ordinance No. 716/79 vi-1-12-2(Ka) 6/2012 amended Section 29(2) of the Act, 1965 whereby the term of the committee of management of Cooperative Societies in U.P. was reduced to two years. Due to promulgation of the said ordinance, the term of management committee of society was automatically truncated on 19.10.2012.

3. Opposite party No. 1 had issued a Circular dated 31.3.2011, whereby standing orders were issued by opposite party No. 1 that no Co-operative Officer/ Supervisor be appointed as Administrator in any suspended/superseded Co-operative Societies and the concerned District Magistrate or any person nominated by him be appointed as Administrator after taking his opinion in the matter. According to the petitioner, the said office order/circular has not been amended/withdrawn by opposite party No. 1 till date nor has it been quashed by any competent Court of Law.

4. In utter defiance of the order dated 31.03.2011, opposite party No. 2 vide his Order No. 10176 dated 31.3.2012 appointed a two member administrative committee consisting of one Co-operative Officer (Housing) as its President and another officer on the same post as its member. The said violation wherein cooperative officers were appointed on the administrative committee as President and member was brought to the knowledge of opposite party No. 1 who took serious exception to the action of his subordinates and issued specific directions that only after consultation with the District Magistrate concerned, the administrative committee of society be constituted under Presidentship of the person nominated by him.

5. After the said order dated 17.11.2012, opposite party No. 2 issued another order No. 11355/sah/dated 5.12.2012 whereby Shri Ghanshyam Singh, A.D.M. (Land Acquisition) was nominated as President of the Administrative Committee of Society. The said President of Administrative Committee gave his joining to Secretary of society on 10.12.2012. Thereafter, on the very same day, the Administrative Committee passed a resolution as regards the operation of bank accounts of society wherein it was resolved that all bank accounts of society shall be operative by the joint signature of President and Secretary and in his absence by the joint signature of society Accountant and Secretary.

6. In spite of the said resolution, Secretary in collusion and connivance with Accountant caused to withdraw huge amounts of money i.e. Rs. 14,50,056/- on

10.12.2012 and Rs. 75,00,000/- on 11.12.2012, from the bank account No. CBCA/01/000383 of society maintained at Corporation Bank, Ghaziabad causing financial loss to it. Besides, Secretary of society again caused to withdraw an amount of Rs. 10,00,056/- and Rs. 30,06,750/- on 17.12.2012 from another bank account No. SB/01/00/607 maintained by society.

7. As per clause 109 of the bye-laws of society for, any payment related to construction work in society, and any grant of contract for building could be made in the following manner.

(a) Upto Rs. 25 lacs by the approval of Secretary and President/Administrator

(b) Rs. 25 lacs to Rs. 50 lacs after approval by the management committee, and

(c) Rs. 50 lacs and above, information has to be given to the Housing Commissioner who may appoint an officer for supervision.

8. The above withdrawals and payments were not only contrary to the bye-laws of society but were also made behind the back of President of Administrative Committee, which is not only illegal but is also a case of serious fraud; financial bungling, and misappropriation. When the said fraud came to the knowledge of said President of Administrative Committee, he issued a show-cause to Secretary of Society vide his letter dated 17.12.2012. In spite of the show-cause issued to Secretary seeking his explanation about specific transaction of Rs. 14,50,056/- caused by him in the bank account of society, no reply was received. Again the said President sent a reminder, alongwith details of bank transactions made without his knowledge, to Secretary seeking his specific reply by 24.12.2012 to which he again opted not to respond.

9. In the meantime, it also came to light that some builder viz. Ekdant Builder Pvt. Ltd. was taking advance deposits from people in lieu of its upcoming project at the site of society. The said deposits were being taken by the builder with the connivance of some antisocial elements and Secretary of Society.

10. One FIR has also been lodged by some persons who although were not members of society but had been allured by one builder viz. Milan Infrastructure Pvt. Ltd. The building boasted of doubling their investment and allured them to invest in the flats being built by him in society and took heavy advances for the flats. Some of the members of the superseded management committee and present Secretary of society in collusion with and connivance of some antisocial elements forcibly occupied two flats B16 and B17 in another Housing society of the area in which an FIR dated 8.11.2012 was registered against them including against present Secretary of society.

11. As soon as the move to check financial misappropriations, which were prevailing rampant in society being caused by Secretary in collusion with some antisocial elements, started and his explanations were sought, opposite party No. 2 in a hasty manner arbitrarily and illegally passed the impugned order whereby President of Administrative Committee was replaced. The impugned order was

passed in clear defiance of office order dated 30.3.2011 as well as 17.11.2012 issued by opposite party No. 1 and the same was also passed without any consultation with the District Magistrate concerned.

12. Inspite of the term of the management committee having expired on 19.10.2012 it continued to function and took policy decisions as regards appointment of contractor etc. during the period 19.10.2012 to 31.10.2012. Opposite party No. 3 also cancelled the allotment of allottee members of flat Nos. C-103, C-204, C-605, F-619, F-618 and F-819 and allotted these flats to some other persons who are not even the members of society, which is per-se illegal. Opposite party No. 3 is playing like a puppet in the hands of Secretary of society and the misappropriation of funds of society is continuing unabated and unchecked.

13. It is amply clear that opposite party No. 3, being President of Administrative Committee of society rather than taking steps for holding the election of society is engaged in all other activities prejudicial to the interest of society. It has been observed by this Hon"ble Court that an Administrator as soon he holds charge should take steps to hold the election in society. The Administrator is not ordinarily required nor expected to take policy decisions. Inspite of such clear observations, in the instant matter, opposite party No. 3 is taking policy decisions and has not taken any step to conduct the elections of society.

14. In the above back ground, learned counsel for petitioner, submitted that as the earlier administrator appointed in consultation with the District Magistrate, namely, Shri Ghanshyam Singh, Additional District Magistrate (LA) had directed holding of enquiry against Secretary of Society, who is alleged to have embezzled crores of rupees from the bank accounts of Society without drawing it in the manner provided by bye-laws/resolution of society and without the signatures of President, he was removed and another Administrator has been appointed who is acting in the hands of Secretary and is rather trying to cover the financial irregularities committed by him. It is also a submission that the present Administrator has cancelled the allotment of four flats as aforesaid and given them to outsiders, who are not even the members of society.

15. Thus, it is submitted that in order to ensure transparency and fair enquiry into the allegations of embezzlement, this Court may consider to constitute an Administrative Committee to be headed by Shri Ghanshyam Singh, the earlier President, who had been appointed in consultation with the District Magistrate under the Government circular dated 31.3.2011 and also comprising other members of the Cooperative Department.

16. On the other hand, there is no force in the contentions of learned counsel for opposite party No. 1, Shri Mahesh Chandra to reject the prayer of learned counsel for petitioner.

17. In the premises set out herein-above and rival submissions made by learned counsel for parties, we are of the considered view and also direct that an

Administrative Committee to be headed by earlier President, Shri Ghanshyam Singh, A.D.M. (LA) who had been appointed in consultation with District Magistrate and the office order dated 30.3.2011 as well as 17.11.2012 issued by opposite party No. 1 namely Housing Commissioner, be constituted, which shall besides Shri Ghanshyam Singh, also comprise such other members as would be nominated by opposite party No. 1 from the department of cooperative. The Administrative Committee shall exercise day-to-day functions of society but it shall not take any policy decision which shall act prejudicial to the interest of society during the interregnum period till the election to the managing committee of society is conducted. It is also directed that the present President of society as well as superseded managing committee shall not operate the bank accounts of the committee till the committee headed by Shri Ghanshyam Singh and other members takes over the management. We also direct that the election of society shall be completed within a period of three months from the date of receiving a copy of this order. With the aforesaid directions, the writ petition is disposed of.