

(1975) 02 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 7287 and 7910 of 1974

Ram Pal Singh and Another

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-02-1975

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 240G
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 240G
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 240G

Citation : (1975) AWC 394

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Judgement

Hari Swarup, J.—These two petitions raise common questions of law In either case a reference u/s 70 of the U.P. Co-operative Societies Act was made to the District Magistrate, acting as the Registrar and was transferred by him to the Respondent No. 3 u/s 71 of the Act and the same are pending there. The only difference between the two cases is that in the case of Rampal Singh the District Magistrate has referred the dispute, to Sri Fasi Uddin describing him as SDO while in the case of Sohan Singh Sisodia it has been referred to the Sub-Divisional Magistrate. Petition No. 7287 of 1974 has been filed against the reference pending before Sri Fasiuddin, Sub-Divisional Officer Iglas. According to the Respondents he is also the Sub-Divisional Magistrate of the Sub-Division Iglas. A reference was made to the District Magistrate acting as the Registrar Under the U.P. Co-operative Societies Act and he in turn referred it to the Sub-Divisional Magistrate, Koil for arbitration. Subsequently the case was withdrawn from his file and transferred to the file of Shri Fasiuddin, Sub-Divisional Officer, Iglas by an order of the District Magistrate dated 8-9-1974.

2. Learned Counsel for the Petitioners has challenged the proceedings on the ground that the District Magistrate was not Registrar within the meaning of the Act and the entertainment of the reference by him u/s 70 of the Act was invalid. For the same reason according to the Petitioner reference made to Sri Fasiuddin

was invalid. Additionally it has been urged that the reference to Sri Fasiuddin in the capacity of Sub-Divisional Officer was also bad and he cannot deal with the matter.

3. According to the learned Counsel the State Government u/s 3 of the Act can appoint a person as Registrar of the Co-operative Society for the State and then appoint other person to assist him under Sub-section (2) of Section 3. The contention is that powers can be conferred only on a particular person who has been appointed to assist the Registrar, and powers cannot be conferred on the District Magistrate in his official capacity. In the present case admittedly power of the Registrar under Sub-section (2) of Section 3 has been conferred on the District Magistrate not as a natural person but in his capacity as District Magistrate. The first question therefore, that arises is whether such an appointment or conferment of power is valid. The relevant Notification is in the following terms:

Sahkarita Vibhag. Notification No. 3328-C-XII C.A. 25(1)-67 dated June 24, 1969.

In exercise of the powers under Sub-section (2) of Section 3 of the Uttar Pradesh Co-operative Societies Act, 1968 (U.P., Act XI of 1968) the Governor is pleased to confer, subject to the provisions of the said Act and the rules, made thereunder, the powers of the Registrar under that Act and the rules, to be exercised as follows:

(1)....

(2)....

(3) An officer for the time being holding the post of District Magistrate of a district shall exercise the powers of the Registrar under Sections 70, 71 and 98 of the Act in respect of the disputes relating to the Constitution of the Committee of Management or election or appointment of any office-bearer or a delegate of a Co-operative Society, other than an apex Co-operative Society, having headquarters within the district;

(4)....

(5)....

(6) The powers relating to reference of the disputes to the Registrar u/s 70 and the decision on such disputes u/s 71 shall be exercised as provided in Rules 229 and 230.

4. According to the learned Counsel this Notification does not make any appointment but only confers powers. I am unable to agree with the learned Counsel that the appointment under- Sub-section (2) of Section 3 means the appointment of any person at any particular post. The words are appoint to assist the Registrar which mean to charge of a person with duty to assist the Registrar. If a person has been charged with such a duty then he has been appointed to assist the Registrar. By the present Notification the District

Magistrate has been charged with such a duty. It must, therefore, be held that he has been appointed to assist the Registrar. Similarly the argument that a particular individual by name should have been appointed has no merit. Sub-section (2) of Section 3 requires an appointment of a person to assist the Registrar. When the Notification says that "an officer holding the post of District Magistrate" it means a person holding the post of the District Magistrate, because an officer can be none else than a person. The word officer in the notification Refers to the person who for the time being holds the post of District Magistrate. The Notification accordingly cannot be held not to appoint the District Magistrate as a person to assist the Registrar.

5. The next contention is that Sub-section (2) of Section 3 permits appointment of a person to assist the Registrar in respect of the entire territorial jurisdiction of the Registrar as conferred on him under Sub-section (1) and powers in regard to territorial Sub-Divisions cannot be conferred under Sub-section (2). Here again I am unable to accept the contention. The Registrar is appointed under Sub-section (1) expressly for the entire State. If the intention of Sub-section (2) were also to appoint assistants for the entire State similar words would have been used in this Sub-section also. When a person is appointed to assist a person who exercises his jurisdiction all over the State, unless there is something to indicate to the contrary, it must be taken that these persons can be appointed to assist him in the territorial divisions of the State. The appointment of the District Magistrate, therefore, in respect of a particular district cannot be held to be beyond the scope of Sub-section (2) of Section 3 of the Act.

6. The other contention of the learned Counsel is that Sub-section (2) of Section 3 permits only the conferment of "powers" of the Registrar on persons appointed under Sub-section (2), and that the provisions of Sections 70 and 71 do not confer on the Registrar any powers but only impose on him certain duties. In this connection learned Counsel has referred to various Sections of the Act, namely, Sections 14, 37, 69, 112, 113, 121, 125, 126 to 128 and 129 which use the words "power of the Registrar". The contention of the learned Counsel is that it is only under these sections that powers have been conferred on the Registrar, the other sections only impose on him certain duties and responsibilities or functions. From a leading of the sections in which the word "power" has been used, it is difficult to find out any particular reason for the word "power" being used therein. One of the common factors appears to be that when the word "power" is used in the Act it confers on the Registrar a right to get something done. There is, of course, nothing in Section 70 which empowers the Registrar to get something done but that by itself will not mean that the duty cast on the Registrar u/s 70 is not a power of the Registrar contemplated by Sub-section (2) of Section 3 of the Act. Power can be of different types. According to the New International Dictionary "power" has its synonym in words control, authority, jurisdiction, command, dominion, away. Section 70 confers on the Registrar the jurisdiction to entertain disputes for action. Section 71 confers on Registrar a jurisdiction to adjudicate and decide the dispute referred to him either himself or

refer the same for decision to an Arbitrator appointed by him. The jurisdiction to entertain a dispute and to decide the same or refer it, tantamounts to a power to entertain and decide the same. Looking broadly, a statutory power is always a statutory duty, and the exercise of a jurisdiction or performance of an act under the Statute is always the exercise of a power. A fortiori a duty of the nature contemplated u/s 70 and 71 of the Act is a "power" which can be conferred on the persons appointed to assist the Registrar u/s 3(2) of the Act. The Notification cannot, therefore, be attacked even on this ground.

7. The next attack of the learned Counsel is on Clause (b) of Sub-rule 2 of the Rule 229 of the Co-operative Societies Rules which provides that where the dispute relates to the constitution of the Committee of Management of election or appointment of any office bearer or a delegate of a Co-operative Society, reference shall:

(a)....

(b) In the case of a Co-operative Society other than an appex society, be made to the District Magistrate of the District to which the society belongs. The contention is that the reference can be made only to the Registrar and not to the District Magistrate. This is based on the submission that the District Magistrate remains a District Magistrate unless he acts as a Registrar and that he cannot act as Registrar till he performs some function. He cannot, according to the learned Counsel, entertain the reference. I am unable to agree with this contention of the learned Counsel because once the District Magistrate has been appointed as Registrar for purposes of Section 70 he gets power to entertain the reference. Section 2(r) defines ""Registrar" as under:

"Registrar" means the person for the time being appointed as Registrar of Co-operative Societies under Sub-section (1) of Section 3 and includes any person appointed under Sub-section (2) of that section when exercising all or any of the powers of the Registrar". The District Magistrate once appointed becomes a Registrar and gets the jurisdiction to entertain the reference u/s 70 of the Act. Relevant portion of Sections 70 and 71 may be quoted.

Section 70. Such dispute shall be referred to the Registrar for action in accordance with the provisions of this Act and the rules....

Section 71. On receipt of a reference under Sub-section (1) of Section 70, the Registrar may subject to the provisions of the rules, if any....

The making of provisions in Sections 70 and 71 subject to the provisions of the rules makes it further clear that the reference is to be received for action u/s 70 by the District Magistrate as provided under Rule 229(2)(b).

8. The other contention of the learned Counsel is that the District Magistrate under Rule 230(e) could have either decided the disputes himself or appointed any one of the Sub-Divisional Magistrate under him to act as arbitrator but could not make reference to." a Sub-Divisional Officer. It is true, that Rule 230(e) does

not permit a reference to a Sub-Divisional Officer. In the present case the order of reference is in the following terms:

Rampal Singh is absent despite intimation to him. S.D.M. Koil is appointed arbitrator.... The case is withdrawn from the file of S.D.O. Koil and transferred to the file of Sri Fasiuddin S.D.O. Iglas....

The contention is that the order of the District Magistrate means a reference to Sri Fasiuddin in his capacity as Sub-Divisional Officer and in support of this contention reliance was placed on an order passed by Sri Fasiuddin on 28-11-1974 which was signed by him giving his designation as S.D.O. Iglas and not S.D.M. Iglas. In support of his contention learned Counsel has relied on a decision of the Supreme Court in Sukhram Singh v. Smt. Harbheji 1969 RD 165. In that case matter was pending before the Compensation Officer under the U.P. Zamindari Abolition and Land Reforms Act. u/s 240-G he had to make a reference to the Assistant Collector for decision of the dispute after framing an issue. The Compensation Officer did not refer the issue to the Assistant Collector. The Compensation Officer was himself an Assistant Collector and decided the matter. It was held that no finality could be attached to such an order of, the Compensation Officer. The principle enunciated in this case could have been applied to the present case also if the reference had been only to the S.D.O. and not to him by name. In the present case the reference has been made to Sri Fasiuddin although he has been described as S.D.O. Iglas.

9. Learned Standing Counsel has produced the cyclostyled copies and the original orders about the appointment of Fasiuddin. The order dated 4-7-1974 shows that Fasiuddin, Deputy Collector, Sales Tax was transferred in place of Radhey Shyam Rastogi in regular line. Next is the order from the Appointment Department of the State Government to the effect that Fasiuddin nai been posted as Deputy Collector Aligarh. The order of the District Magistrate is dated 27-4-1974 to the effect that Fasiuddin is appointed with effect from the date he takes over the charge of S.D.O. and S.D.M. of Iglas. The Deputy Collector is normally the officer who holds magisterial powers and is a member of the Provincial Civil Service (Executive). The order of the State Government makes it clear that Fasiuddin is the S.D.M. Iglas. There is no positive assertion in the writ petition that Fasiuddin is not the S.D.M. In these circumstances it must be held that Fasiuddin is the S.D.M. and the description in the reference order about his status as S.D.O. does not affect his jurisdiction to decide the reference.

10. In the result, the petitions fail and are dismissed, but there will be no order as to cost.