

(1999) 01 MP CK 0053
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1778 of 1998

Ram Singh Chauhan

APPELLANT

Vs

Dinesh Ambedkar and others

RESPONDENT

Date of Decision : 14-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Co-operative Societies Act, 1960 — Section 64, 67, 67(1), 80

Citation : (2000) 2 MPLJ 94

Hon'ble Judges : Tej Shanker, J

Bench : Single Bench

Advocate : R.D. Jain with S.K. Jain, for the Appellant; R.K. Gupta for respondent No. 1 and T.M. Dhamdar, for the Respondent

Final Decision : Allowed

Judgement

Tej Shankar, J.

This petition under Article 226 of the Constitution of India has been presented by the petitioner for quashing the order passed by the Board of Revenue Annexure P/1 and the proceedings pending before the Board of Revenue.

The Learned Counsel for the petitioner contended that M.P. State Handloom Weavers Co-operative Federation is a registered Co-operative Society. It has been registered under the M.P. Co-operative Societies Act. It is governed by the bye-laws framed and registered with the Registrar. Under the provisions of M.P. State Co-operative Societies Act, the election of the Directors was held and Satish Kumar Upadhyay and Ram Singh Chauhan were elected as Chairman and Vice-Chairman respectively along with 28 Directors. The Board of Directors were empowered to elect an Executive Committee in accordance with bye-laws 20(b). The Board of Directors in its meeting dated 18-7-1996 passed a resolution empowering the Chairman and Vice-Chairman and Ram Murty Mishra and Tilakram Devangan, Directors to constitute an Executive Committee vide Annexure P/3. The Board of Directors elected/approved the election of the

members of the Executive Committee in its meeting dated 5-8-1996 and in accordance thereunder respondents 7 to 15 were elected as Executive Members. This election was not challenged before any authority and after about two years, a dispute was filed by respondent No. 1 before Joint Registrar, Co-operative Societies (Handloom), Bhopal, on 22-7-1998. An application for stay was moved, which remained pending. Before the notice could be issued to the respondents, another proceeding was initiated by respondent No. 1 challenging two resolutions Annexures P/3 and P/4 before the Board of Revenue. The Board without notice to the respondents passed an order on 24-9-1998 staying the operation of the resolutions dated 18-7-1996 and 5-8-1996 and giving directions to the Joint Registrar to dispose of the case on merits. The Learned Counsel contended that this order of the Board of Revenue is under challenge. He contended that u/s 80 of the M.P. Cooperative Societies Act, 1960, a revision lies against the order. u/s 80 the State Government or the Registrar may call for and examine the record of any enquiry or the proceedings by any subordinate officer. He urged that in the present case, there was no order, but there were resolutions which were challenged before the Board of Revenue in revision. His contention is that the Board of Revenue had no jurisdiction to stay the proceedings because power to stay was not conferred u/s 80 of the Co-operative Societies Act, 1960. As the Board of Revenue had no jurisdiction to entertain the revision petition, but passed the impugned order, which is illegal. The Learned Counsel contended that the Board of Revenue passed the final order without issuing any notice, which is illegal.

The Learned Counsel for the contesting respondents argued that power to entertain a revision includes the power to stay and as such it is incorrect to say that the Board of Revenue had no jurisdiction to pass stay order. He also urged that the Board of Revenue ought not to have passed a final order without issue of notice to the respondents.

I have considered the contentions of the Learned Counsel for the parties. Admittedly, the dispute is pending before the competent authority u/s 67 of the M.P. Co-operative Societies Act, 1960. A perusal of section 67(1) of the Act shows that it makes a specific provision for passing interlocutory orders including grant of a temporary injunction. This order can be passed by the Registrar or his nominee or Board of nominees. It has also been provided that in exercise of this power, the Registrar or his nominee or Board of nominees, as the case may be, shall follow the procedure laid down in the Code of Civil Procedure. It is significant to note that section 80 of the Act does not specifically provide for any power for passing any interlocutory order. It confers revising jurisdiction and in exercise of the revising jurisdiction, the authority mentioned therein can look to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer and it has to pass such order thereon as it or he may think fit. No specific power to pass stay order or grant of injunction has been conferred under this section. It is also significant to mention that there is a proviso appended to this section under which no order can be passed which is

prejudicial to any party unless such party has had an opportunity of being heard. In this view of the matter, even if there is any power of stay, though I am of the opinion that the section does not confer such powers, in that case too as the stay order is prejudicial to the other side, the order could not be passed unless such party has had an opportunity of being heard. There is no dispute that no notice was issued. It appears from the impugned order itself that the matter came up for hearing on 24-9-1998 and the Learned Counsel for the applicant was heard on admission as well as on stay order. By that time no notice was issued. In this view of the matter, the stay order could not be passed by the Board of Revenue. Admittedly, the proceedings are pending before the competent authority to which dispute has been made u/s 64 and, therefore, I am of the view that the petition has to be allowed and the impugned order has to be set aside so far as it relates to the passing of stay order. The petition is accordingly allowed. The impugned order is set aside to the extent indicated earlier. The matter of grant of stay is left to be decided by the competent authority before whom the dispute is pending. The competent authority shall decide the dispute in accordance with law on merits after hearing the parties.