
(2010) 04 PAT CK 0068
In the Patna High Court

Ratneshwar Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145

Citation : (2010) 04 PAT CK 0068

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navaniti Prasad Singh, J.—The present writ application relates to the dispute with regard to the property of Ugna Housing Co-operative Society Limited. The said society was registered in the year 1982 and operates in Ward No. 11, Madhubani. It was registered under the Bihar Co-operative Societies Act, 1935 and the rules framed thereunder being Bihar Co-operative Societies Rules, 1959. It appears that the said Co-operative Society, for its members, who are large in number, had acquired , inter alia, about 10 kathas of lands out of which 7 kathas were distributed to some of the members. In 1986, two plots about 1 katha each were allotted to two persons, namely, Smt. Shila Devi, who happens to be the wife of the Chairman and Mr. Basudeo Pathak, who was the then Secretary of the Co-operative .The private -respondents, who are members of the Co-operative and at whose instance the litigation started, dispute knowledge of the aforesaid transfer as effected in the year 1986. They support their submissions that, in fact, this 3 kathas contained a Pokhar (a small domestic pond) and with reference to Resolution of the General Body of the Co-operative dated 17.8.1993, they submit that the decision of the Society was to maintain it as a pond for the members of the society having land adjacent to it and to construct a small Shiv Temple . It is submitted by the respondents in this regard that this would show that earlier allotment of the said plots of land in favour of Smt. Shila Devi and Mr. Basudeo Pathak were kept secret all along otherwise there was no necessity for such a deliberation. Be that as it may, in 1994, the petitioner, by registered sale

deeds, purchased the aforesaid two plots of land .As per petitioners assertion, he had become a member of the Co-operative on 29.3.1993 and his name also appeared in the list of members ,as circulated by the Secretary of the Co-operative dated 23.9.1993. Thus the petitioner in 1994, purchased the entire three kathas of land ad measuring about 4720 square feet from the two persons aforesaid. Apparently when efforts were made to fill the pond by the petitioner , dispute arose. Apart from Sections 144 and 145 Cr.P.C. proceedings being initiated, some of the members, who are respondents herein filed an application before the Assistant Registrar Co-operative Society, Madhubani challenging the transfer of two plots to the petitioner primarily on two grounds. Firstly, a plot of land left by the society for common use of members could not be transferred to any person and secondly petitioner not being a member, could not be permitted to purchase the plots from the members of the co-operative. The Assistant Registrar by his order, as contained in Annexure 6 to the writ petition, negated both the contentions and dismissed the application holding that there appeared no pond on the disputed land and then he found that the petitioner had been allotted share as member of the co-operative. Respondents being aggrieved preferred an appeal to the Joint Registrar wherein petitioner also appeared. The matter was considered and the Joint Registrar reversed the order of Assistant Registrar holding that it was a land left for use as pond by several members of the co-operative and further he held that the transfer of land, as made by the Co-operative , in the year 1986 in favour of Smt. Shila Devi and Mr. Basudeo Pathak was wrong as also that the petitioner was wrongly shown as a member and as such he could not validly purchased the said plots.

2. Petitioner being aggrieved by this decision given by joint Registrar in appeal, filed a revision before the Registrar, which was dismissed by order, as contained in Annexure 8 and being aggrieved there from the present writ application has been filed.

3. On behalf of the petitioner, two contentions have been raised. Firstly, that the respondents could not have filed any application purporting to be an application in terms of Section 48 of the Co-operative Societies Act before the Assistant Registrar, as the competent authority u/s 48 of the Act was the Registrar and as such all appeal, revision etc. based on this coram non-judice was invalid. It was then submitted that the sale of the two aforesaid plots made in the year 1986 to Smt. Shila Devi and Mr. Basudeo Pathak were sought to be challenged in the year 1994, which was impermissible as the same was hit by the provisions of the Limitation Act and in particular Article 59 thereof. The transfer made in 1986, if not opened to challenge the transfer as made in 1994 by those persons could not be challenged. As usual. Mr. Yogendra Mishra strongly and forcefully contents to the contrary on behalf of the respondents.

4. Having considered the matter and the arguments advanced in so far as first issue is concerned, it must be decided as against the petitioner. Petitioner refers to Section 48 of the Act, which deals with these disputes. It is not in dispute that

the dispute in question is covered by provisions of Section 48 of the Act . The question is, who is the competent authority to decide and whether the said dispute could be taken to Assistant Registrar under the said provision.

5. Learned Counsel for the petitioner refers to Sub-section 1 of Section 48, which, inter alia, provides that the designated dispute shall be referred to the Registrar. With reference to Sub-section 2 thereof, he submits that the Registrar on the dispute being referred to him ,may either dispose of the dispute himself or transfer it to a person exercising the power of the Registrar . He thus submits that the application must be made to the Registrar and it is upon such an application to Registrar that the lis is put in motion for adjudication. In my view, the submission is not acceptable for the simple reason that a reference has to be made to Section 6(1) of the Act which would show that the State Government is to appoint person as Registrar and person (Assistant Registrar) to assist the Registrar. Thus, seen the Assistant Registrar is none else than a person duly authorized by the State Government to assist the Registrar. He has all powers of the Registrar and original application can be made to him directly, which would be deemed to be an application transferred to him in terms of Sub-section 2(b) of Section 48.

6. If that be so , then in terms of Sub-section 6 of Section 48 of the Act, an appeal would lie to the Registrar but here again by virtue of Section 6 Joint Registrars have been notified by the State Government conferring upon them the power of the Registrar and as such an appeal from Assistant Registrar in terms of Section 48(6) of the Act would lie to the Joint Registrar. Once that stage is crossed, then we come to Section 56 that specifically authorizes the Registrar to revise any order passed by any authority exercising the power of the Registrar. It may, however, be noticed that it is the petitioner himself, who had moved the Registrar in revision and he cannot make any grievance of it . Thus, seen the application before the Assistant Registrar was duly maintainable so also the appeal before Joint Registrar and so also the revision application before the Registrar. Thus, first point stands decided against the petitioner.

7. Coming to the second issue of limitation, the first thing to be noted is that though the Registrar under the Co-operative Society Act has been vested with several powers of Civil Court; it is not a Civil Court where statute of limitation being Limitation Act, 1963 would apply. It may have the trapping of Civil Court but it is not a Civil Court. If we refer to the Schedule and in particular Article 59 thereof, it deals with the Suit relating to decree and instrument. The application filed before the Assistant Registrar is not a Suit. Thus, period of limitation as is being sought to be read into the provision of the Co- operative Act by the petitioner opposing challenge to transfer cannot be accepted. The transfer made in 1986 and in 1994 were both amenable to challenge if they were not in accordance with law and period of limitation could not be step in to restrict the exercise of jurisdiction by the Registrar in that regard and hence could not restrict the exercise of jurisdiction by the Joint Registrar or for that matter by the

Registrar.

8. In that view of the matter, I find no merit in this application and it is dismissed accordingly.