

(2010) 12 AHC CK 0086

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25307 of 2009

Sri Adarsh Sahkari Grih Nirman Samiti Ltd. and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Citation : (2011) 1 ADJ 713

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Petitioner has approached this Court questioning the validity of the order dated 20.3.2006 passed by Respondent No. 3 in Suit No. 28-E of 2004, Sri Adarsh Sahkari Grih Nirman Samiti Ltd. Varanasi and Anr. v. Smt. Urmila Rai with all its consequential effects and to allow the petition of the Petitioners filed before Respondent No. 3 and the order of its affirmance in Appeal dated 5.3.2009.

2. Brief background of the case is that Sri Adarsh Sahkari Grih Nirman Samiti Ltd. Mahamanapuri Colony Post Office Banaras Hindu University Varanasi is a body which is registered under the provisions of the U.P. Co-operative Societies Act, 1965 and Petitioner No. 2 was the duly elected President of the Society. Petitioners claim that tenure of the Managing Committee of the society had already run out and in spite of best efforts being made elections of the Managing Committee of the society had not at all been held. Petitioner claims that affairs of the society was being run by Managing Committee of the society out and various members of the Society indulged in the illegal activities as such resolution was passed for initiating proceedings as such suit No. 28-E of 2004, Sri Adarsh Sahkari Grih Nirman Samiti Ltd. Varanasi v. Smt. Urmila Rai was filed against Respondent No. 5 as Arbitration case u/s 70 of the Act. Petitioners have stated that thereafter pleadings were exchanged and ultimately matter was dismissed on the ground that proceedings are not competent and maintainable at the

behest of Petitioner. Petitioners have stated that thereafter Appeal had been filed and said Appeal had also been dismissed. At this juncture present writ petition in question has been filed.

3. Pleadings inter se parties have been exchanged, present writ petition has been taken up with the consent of the parties for final hearing and disposal.

4. Sri Ratnesh Kumar Pandey, Advocate appearing for Petitioner contended with vehemence that in the present case proceedings had rightly being undertaken and Petitioners claim have wrongly been non-suited, as such writ petition in question deserves to be allowed.

5. Countering the said submission learned Standing counsel as well as Dr. Yogendra Kumar Srivastava, Advocate on the other hand contended that Petitioners have no locus to initiate such proceedings as such rightful view has been taken in the matter.

6. After respective arguments have been advanced factual situation which is emerging in the present case that Petitioner No. 2 was elected as President of Adarsh Sahkari Grih Nirman Samiti Ltd. Mahamanapuri B.H.U. Varanasi in the elections which were held in the year 1997 on 27.7.1997. This is accepted position that tenure of the said Committee of Management of the Society had already run out. Petitioners had passed resolution on 14.1.2002 for holding of elections but no election has been held under the provision of U.P. Cooperative Societies Act, 1965 after expiry of tenure of the Committee of Management of the society and thereafter as per the provisions of U.P. Cooperative Societies Act, 1965 Administrator has to be appointed and further election has to be held through Administrator. Further where term of the Managing Committee of the society expired and, Administrator has also not been appointed then to run day to day affairs of the society, Secretary is entitled for Section 29 of the U.P. Co-operative Societies Act, 1965 is being looked into.

Section 29: Committee of Management:

(1) ...

(2) (a) The term of every Committee of Management shall be [five] years and the term of the elected members of the Committee of Management shall be co-terminus with the term of such Committee.

(b) The provision of Clause (a) shall apply also to a Committee of Management in existence on the date of the commencement of the Uttar Pradesh Co-operative Societies (Amendment) Act 2002] and to the elected members of such Committee.

(c) The term of the Committee of Management, which has completed, on or before the date of the commencement of the Act, referred to in Clause (b), the period of three years from the date of its constitution and the term of its elected members shall expire on such commencement.]

(3) ...

(4) ...

(5)(a) Where, for any reason whatsoever, the election of the elected members of the Committee of Management has not taken place or could not take place before the expiry of the term of elected members, the Committee of Management shall notwithstanding anything to the contrary in this Act or the rules or the bye-laws of the society, cease to exist on the expiry of such term.

(b) On or as soon as may be after the expiry of such term, the Registrar shall appoint an Administrator or Committee of Administrator (hereinafter, in this Section referred to as the Committee) for the management of the affairs of the society until the reconstitution of the Committee of Management in accordance with the provisions of the Act, the rules and the bye-laws of the society and the Registrar shall have the power to change the Administrator or, as the case may be, any members of the Committee or to appoint a Committee in place of an Administrator or vice versa from time to time.

(c) ...

(d) ...

(e) So long as no administrator or, as the case may be, the Committee is appointed under Clause (b), the Secretary or the Managing Director, as the case may be of the society shall be in charge only of the current duties of the Committee of Management.

Explanation.--Where results of the election of the members of the Committee of Management have not been or could not be declared, for any reason whatsoever before the expiry of the term of the elected members of the outgoing Committee of Management, it shall be deemed that the election of the elected members of the Committee of Management has not taken place within the meaning of this Sub-section.

(6) The Administrator or the Committee appointed under Sub-section (5) shall subject to any directions which the Registrar may from time to time give, have the power to perform all or any of the functions of the Committee of Management or of any officer of the society and shall be deemed for all purposes under this Act the rules and the bye-laws of the society to be the Committee of Management and the Chairman of such Committee shall exercise the powers and perform the functions of the Chairman of the Committee of Management.

(7) The Administrator or the Committee as the case may be appointed under Sub-section (5) shall as soon as may be but not later than the expiry of the [two years and six months] from the date of appointment, arrange for the reconstitution of the Committee of Management in accordance with the provisions of the Act, the rule and the by-laws of the society to take over the management of the society from the Administrator or the Committee, as the

case may be;

Provided that where an Administrator is replaced by a Committee or a Committee by an Administrator as provided in Clause (b) of Sub-section (5), the period of [two years and six months] shall count from the date the Administrator or the Committee as the case may be originally appointed.

Explanation.--Notwithstanding that the process of election may have commenced before the appointment of Administrator or the Committee under Sub-section (5) a fresh process of election shall commence after such appointment.]

7. On the parameter as set out the facts of the present case as is reflected is being in the present case that tenure of the Managing Committee of the Society had already run out in terms of provision as contained u/s 29(5)(a) of 1965 Act and in such a situation and in this background day to day affairs of the society could have been managed in terms of Section 29(5)(e) of 1965 Act, by Secretary of the Society, as Administrator has been appointed on 24.2.2006 in exercise of authority u/s 29(5)(b) of 1965 Act. In such a situation once this is factual scenario then resolution which has been passed by purported Managing Committee on the basis of which arbitration proceedings has been sought to be undertaken on behalf of Managing Committee of the Society has rightly not been entertained on the ground that Committee of Management of the society was totally non-existent body and has no authority to pass any resolution. The order passed by Assistant Registrar Co-operative Society as thus, cannot be faulted. Coupled with this on the date when Appeal in question has been filed, Administrator has already taken over the charge and Administrator in question at no point of time ever came forward to question the validity of the said award which has been passed, in such a situation and in this background challenge made by the Petitioners on the behalf of Managing Committee of the Society has rightly been held to be not competent and maintainable. In such a situation writ petition as framed and drawn to be dismissed.

8. Consequently, present writ petition is dismissed.