
(2011) 04 GUJ CK 0174

In the Gujarat High Court

Case No : Special Civil Application No. 4353 of 2011

Umeshbhai Shantilal Shah

APPELLANT

Vs

Authorised Officer and Cooperative Officer Attached To
Market and Others

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Gujarat Co-operative Societies Act, 1961 — Section 108, 110

Citation : (2011) 04 GUJ CK 0174

Hon'ble Judges : R.M. Chhaya, J;D.H. Waghela, J

Bench : Division Bench

Advocate : V.C. Vaghela and Dilip B. Rana, for Petitioners 1, for the Appellant;
Monali Bhatt, Asstt Government Pleader for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

D.H. Waghela, J.—Rule of which notice is waived by learned A.G.P. and learned Counsel Mr. Vaghela, appearing for Respondents. The petition was heard for final disposal, by consent and at the request of learned Counsel on both sides.

2. The Petitioner has called into question order dated 25.3.2011 of Authorized Officer and Co-operative Officer (Markets) in the office of District Registrar of Co-operative Societies, Vadodara, whereby objection of the Petitioner to inclusion of the names of members of the managing committee of Respondent Nos. 3 and 4 was rejected. The controversy revolves around pure question of law as to whether members of the co-operative society, which has been wound up, could be included in the final list of voters for election to the Agricultural Produce Market Committee concerned.

3. There is no dispute about the facts that Respondent No. 3 co-operative society is ordered to be wound up on 08.10.2010 and Respondent No. 4 co-operative society is ordered to be wound up on 04.02.2009. The only ground mentioned in the impugned order for including the names of members of the managing

committee of those two co-operative societies is that in spite of orders for winding up and appointment of liquidator, the liquidator has not actually taken over charge and the managing committees had continued to manage the affairs of the co-operative societies concerned. Provisions of the Gujarat Co-operative Societies Act, 1961 contains in its Chapter X, the provisions for liquidation and winding up of co-operatives societies and relevant provisions of Section 108 of that Act read as under:

Section 108 Appointment of Liquidator:

(1)

(2)

(3) When a final order is made confirming the interim order, the officers of the society,

(a) shall hand over to the liquidator the custody and control of any property, effects and actionable claims and any books, records, and other documents pertaining to the business of the society, which for any reason are not handed over to the liquidator under Sub-section (2) at the time when an interim order was made.

(b) shall vacate their offices and while winding up order remains in force, the general body of the society shall not exercise any powers.

(4) The liquidator shall, subject to the general control of the Registrar, exercise all or any of the powers mentioned in Section 110. The Registrar may remove him from his officer and appoint another in his place, without assigning any reason.

(5) The whole of the assets of the society shall on the appointment of the liquidator vest in him and notwithstanding anything contained in any law for the time being in force, if any immovable property is held by him on behalf of the society, the title over the land shall be complete as soon as the title on the ground of dispossession, want of possession or physical delivery of possession."

(6)

4. In view of the admitted fact that Registrar has issued final order for winding up of the Respondent societies concerned way back in the year 2009 and 2010, it was apparently illegal and unauthorized for anyone else, including the managing committee or the general body of co-operative society, to manage the affairs of the societies and more particularly when officers of the societies were mandatorily required to vacate their offices and not exercise any powers, the argument that the liquidator was required to take over charge cannot be accepted.

5. In the peculiar facts of the case and clear provisions of law and in view of the fact that deletion of the names of the members of the managing committees of

Respondent Nos. 3 and 4 from the final voters" list is not likely to in any way hamper or impede the process of election as also the fact that the Petitioner has approached the court before publication of the final list of voters, we consider it an extraordinary and exceptional case to exercise the writ jurisdiction of this Court in order to prevent illegality being committed during the process of election. Accordingly, the petition is allowed with the direction that the impugned order dated 25.3.2011 shall stand partly set aside as far as the objection of the Petitioner in respect of the office bearers of Respondent Nos. 3 and 4 were concerned and with the further direction that names of the members of the managing committees of Respondent No. 3 and 4 shall stand deleted from the final voters" list prepared for the election to Respondent No. 2. Rule is made absolute accordingly, with no order as to costs. Direct service.