

(2020) 12 SHI CK 0190

In the High Court Of Himachal Pradesh

Case No : Latter Patent Appeals No. 67 Of 2020

Veerta Devi And Another

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 28-12-2020

Acts Referred:

Himachal Pradesh Co-Operative Societies Act, 1968 — Section 8(4), 11A(2), 11(4), 14A(1), 37, 65, 66, 67, 68, 69, 69(1), 73, 78, 74, 80, 93, 93(2), 94, 94(1)

Citation : (2020) 12 SHI CK 0190

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Ajay Sharma, Aanandita Sharma, Ashok Sharma, Vikas Rathore, Shiv Pal Manhans, Seema Sharma, Bhupinder Thakur, Yudhbir Singh Thakur, Bipin C. Negi, Surinder Saklani

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. The moot question in this appeal is whether a revision petition under Section 94 of the Himachal Pradesh Co-Operative Societies Act, 1968 (for

short "Act") is maintainable even in case where an appeal has been preferred by the aggrieved party under Section 93 of the Act?

2. The writ petition filed by the appellants came to be dismissed by the learned writ Court on the ground of availability of an alternative remedy under

Section 94 of the Act, constraining them to file the instant appeal.

3. In order to appreciate the controversy, it would be relevant to reproduce Sections 93 and 94 of the Act, which read as under:

"93. Appeal :— An appeal shall lie under this section against—

(a) an order of the Registrar made under sub-section (4) of section 8 refusing

to register a society;

(b) an order of the Registrar made under sub-section (4) of section 11 refusing to register an amendment of the bye-laws of a society;

(c) a decision of a society refusing to admit any person as a member of the society who is otherwise duly qualified for membership under the bye-laws of the society;

laws of the society;

(d) a decision of a society expelling any of its members;

(e) an order of the Registrar removing the committee of a Co-operative society under section 37;

(f) an order of the Registrar under section 68 apportioning the cost of the enquiry held under section 67 or an inspection made under section 66;

(g) any order of surcharge under section 69;

(h) any decision or award made under section 73;

(i) an order made by the Registrar under section 78 directing the winding up of Co-operative society;

(j) any order made by the liquidator of a society in exercise of the powers conferred on him by section 80;

(k) any order made under section 74;

(l) an order of the Registrar made under sub-section (2) of section 11A; or

(m) an order of the Registrar made under sub-section (1) of section 14A.

(2) An appeal against any decision or order under sub-section (1) shall be made within sixty days from the date of decision or order,

(a) If the decision or order was made by the Assistant Registrar or the Deputy Registrar, to the Registrar or such Additional Registrar or Joint

Registrar as may be authorized by him in this behalf; or

(b) if the decision or order was made by the Joint Registrar, the Additional Registrar or the Registrar, to the Government ; or

(c) if the decision or order was made by any other person, to the Registrar or such Additional Registrar, Joint Registrar, Deputy Registrar or Assistant

Registrar as may be authorized by him in this behalf: and

(3) No appeal shall lie under this section from any decision or order made by any authority in appeal.

94. Review and Revision :—(1) The State Government except in a case in which an appeal is preferred under section 93 may call for and examine

the record of any inquiry or inspection held or made under this Act or any proceedings of the Registrar or of any person subordinate to him or acting on his authority, and may pass thereon such orders as it thinks fit.

(2) The Registrar may at any time,â?

(a) review any order passed by himself; or

(b) call for and examine the record of any inquiry or inspection held or made under this Act of the proceedings of any person subordinate to him or

acting on his authority and if it appears to him that any decision, order or award or any proceedings so called or should for any reason be modified,

annulled or reversed, may pass such order thereon as he thinks fit;

Provided that, before any order is made under subÂsection (1) and (2), the State Government or the Registrar as the case may be shall afford to any

person likely to be affected adversely by such orders an opportunity of being heard.

Provided further that every application under subÂsection (1) and (2), to the State Government or the Registrar, as the case may be shall be made

within ninety days from the date of the communication of the order sought to be reviewed or revised.â??

4. The learned writ Court held that a revision would still be maintainable even when an appeal under Section 93 of the Act is preferred by the

aggrieved party as would be evident from para 4 of the order, which reads as under:

â??In my considered view, the contention of learned Senior Counsel for the petitioners cannot be accepted. Section 94(1) of the 1968 Act is to the

effect that the State Government, except in a case in which Act is to the effect that the State Government, except in a case in which an appeal is

preferred under Section 93, may call for and examine the record of any inquiry or inspection held or made under this Act or any proceedings of the

Registrar or of any person subordinate to him or action on his authority and may pass thereon such orders as it thinks fit. Thus, what Section 94

envisages is that in a case where an appeal is preferred under Section 93 of the 1968 Act, State Government cannot simultaneously exercise its power

of revision so conferred under Section 94 of the 1968 Act. However, the language of Section 94 cannot be construed that an order which stands

passed by the Appellate Authority in an appeal preferred under Section 93 of the

1968 Act is also not revisable. Had that been the intent of the Legislature, then the language of Section 93 would have been explicit that the State Government cannot exercise the power of revision in a case in which an order stands passed in an appeal preferred under Section 93 of the 1968 Act. Further, in my considered view, once an appeal is preferred under Section 93 of the 1968 Act and the same culminates into an order passed by the Registrar, then the State Government has the power of revision, because then the adjudication of the appeal becomes any proceedings of the Registrar and these proceedings are revisable as per statutory provisions of Section 94(1) of the 1968 Act.

5. In our considered view the judgment rendered by the learned writ Court is in the teeth of the two judgments rendered by the learned Division Bench of this Court in *The Tiara Co-operative Agriculture Service Society Ltd. vs. State of Himachal Pradesh and others*, 2016 (6) ILR (HP) 64 and *Nikku Ram vs. State of H.P. and others* 2016 (3) ILR (HP) 2118.

6. In *Tiara Co-operative Agriculture Service Society's* case (supra) one of us (Justice Tarlok Singh Chauhan, J.) authored the judgment, the petitioner therein had filed a writ petition seeking quashing of the inspection note and office order whereby the Assistant Registrar, Co-operative Societies, Dharamshala had on the basis of the inspection note, ordered an inquiry (surcharge proceedings) against the petitioner under Section 69 (1) of the Act by appointing the Block Inspector as an Inquiry Officer. The question then arose as to whether the writ petition would be maintainable especially when the petitioner had an alternative and efficacious remedy available under the Act.

7. Learned counsel for the petitioner therein contended that no statutory remedy was available to him under the Act and, therefore, he had filed the instant petition.

8. Holding the petition to be not maintainable, it was observed as under:

5. We have gone through the provisions of the Act and Rules and are of the considered view that the petitioner has not only an alternative but efficacious statutory remedy available to it under the Act.

6. Chapter VIII of the Act specifically deals with the audit, inquiry, inspection and surcharge. Section 65 therein deals with inspection of co-

operative societies. Section 67 deals with inquiry by the Registrar. Whereas, Section 69 relates to surcharge proceedings, which are to be initiated in case during the course of an audit, inquiry, inspection or the winding up of a co-operative society, it is found that any person who is or was entrusted with the organization or management of such society, or who is or has at any time been an officer or an employee of the society, has made any payment contrary to the provisions of the Act, the rules or the bye-law or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to the society, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorized by him, by an order in writing in this behalf, to inquire into the conduct of such person.

7. Chapter XII relates to the jurisdiction, appeal and review and the relevant provisions for the adjudication of this petition is contained in Section 94, which reads thus:

4. Review and Revision: (1) The State Government except in a case in which an appeal is preferred under section 93 may call for an examine the record of any inquiry or inspection held or made under this Act or any proceedings of the Registrar or of any person subordinate to him or acting on his authority, and may pass thereon such orders as it thinks fit.

(2) The Registrar may at any time,

(a) review any order passed by himself; or

(b) call for and examine the record of any inquiry or inspection held or made under this Act or the proceedings of any person subordinate to him or acting on his authority and if it appears to him that any decision, order or award or any proceedings so called or should for any reason be modified, annulled or reversed, may pass such order thereon as he thinks fit;

Provided that, before any order is made under sub-section (1) and (2), the State Government or the Registrar as the case may be shall afford to any person likely to be affected adversely by such orders an opportunity or being heard.

Provided further that every application under sub-section (1) and (2), to the State Government or the Registrar, as the case may be shall be

made within ninety days from the date of the communication of the order sought to be reviewed or revised.â??

8. A bare perusal of the aforesaid provisions clearly shows that this Section gives revisional powers to the State Government in a case where no

appeal under section 93 of the Act has been preferred and similar powers have been conferred upon the Registrar to be exercised either suo motu or

on an application of a party, provided the same is preferred within 90 days from the date of communication of the order sought to be reviewed or

revised and further that the person(s) likely to be effected adversely by such order is afforded an opportunity of being heard. It is immaterial whether

the revisional power is exercised, on action initiated at the instance of the interested party or suo motu, the order passed would be within jurisdiction.

9. This Section specifically deals with the power of the State Government/Registrar to call for and to examine the record of any inquiry or inspection

held or made under this Act or any proceedings. The State Government can examine any proceedings of the Registrar or any person subordinate to

him or acting on his authority, whereas the Registrar is empowered to call for and examine the proceedings of any person subordinate to him or acting

on his authority and if it appears to him that any decision, order or award or any proceedings so called or should for any reason be modified, annulled

or reversed, may pass such order thereon as he thinks fit.

10. However, it needs to be clarified that if revisional application is not maintainable, fortiori suo motu powers cannot also be exercised.

13. In view of what has been observed above, we can safely come to the following conclusions:

i) The State Government or the Registrar under Section 94 of the Act can exercise its suo motu revisional jurisdiction or on an application made by an aggrieved party;

ii) the remedy of revision before the State Government is barred only in the cases where an appeal has already been preferred under section 93 of the Act;

iii) the remedy of revision either suo motu or otherwise can be exercised only against the decision or order passed by the authority under the Act or

proceedings arising out of the Act or the Rules framed thereunder. However, this remedy cannot be invoked against an order passed by the society;

iv) the suo motu power of revision cannot be exercised by the State Government or the Registrar, as the case may be, if at the instance of an

aggrieved party, the revision is not maintainable, fortiori suo motu power cannot also be exercised.

9. In Nikku Ramâ??s case (supra), the State had dismissed the appeal filed by the petitioner as not being maintainable as the petitioner therein had

already available a remedy of filing of the appeal before the Registrar. Upholding the said decision, it was observed as under:

â??20â?|.As far as passing of order dated 20.4.2010 by respondent No.1, whereby appeal preferred by the petitioner under Section 93(2) was

dismissed on the ground of maintainability is concerned, this Court is of the view that Section 94 of the Act bars the second appeal before the State

Government. In this regard Section 94 is reproduced hereinbelow:

â?? (1) The State Government except in a case in which an appeal is preferred under section 93 may call for and examine the record of any inquiry

or inspection held or made under this Act or any proceedings of the Registrar or of any person subordinate to him or acting on his authority, and may

pass thereon such orders as it thinks fit.

(2) The Registrar may at any time,â?

(a) review any order passed by himself; or

(b) call for and examine the record of any inquiry or inspection held or made under this Act of the proceedings of any person subordinate to him or

acting on his authority and if it appears to him that any decision, order or award or any proceedings so called or should for any reason be modified,

annulled or reversed, may pass such order thereon as he thinks fit;

21. Bare perusal of the provisions, referred hereinabove, clearly suggest that State Government has no power to entertain an appeal especially where

appeal under Section 93 has already been filed by the party concerned. Section 94, as referred hereinabove, only provides for the power of revision to

the State Government that too only in those matters which are not covered by Section 93 of the 1968 Act. Hence order passed by respondent No.1

dated 20.4.2010 appears to be legally correct and cannot be interfered with.â??

10. Mr. B.C. Negi, learned senior Counsel for respondents No.4 and 5 would argue that the aforesaid judgments rendered by the learned Division

Bench of this Court as relied upon by learned counsel for the appellants are per incuriam as the earlier judgment rendered by this Court in CWP No.

9391 of 2012, titled Daulat Ram vs. State of H.P. and others, decided on 20.11.2013, has not been noticed wherein the Court has clearly held that the

revision even where the appeal has been preferred under Section 93 of the Act against appellate order to be maintainable, more particularly, the

observations as contained in para 2 of the judgment, which reads as under:

“We are of the considered view that the authority below erred in correctly and completely construing and interpreting the provisions of the Statute.

Power vested with the State Government, under Section 94 of the Act, is distinct and separate from the revisional powers vested with the Additional

Registrar, Cooperative Societies. We find that amplitude of Section 94 is wide enough and would take in its sweep, powers of calling or entertaining

petitions other than the one in which appeal is preferred under Section 93 of the Act. In exercise of its revisional jurisdiction, the authority can call for

and examine any record of inquiry or inspection under the Act or the proceedings of any person subordinate to him, acting on his authority. The

revisional authority can also call for proceedings of the Registrar or any person subordinate to him. Such revisional power is to be exercised if

the order is perverse, erroneous or illegal and can modify, annul or reverse any order passed by the Registrar. Revision petition against an order

passed by the Assistant Registrar Cooperative Societies, would lie under Section 94 of the Act.”

11. We have meticulously analyzed the observations made in above decisions and do not find any conflict. In fact, even in Daulat Ram’s case

(supra), this Court has categorically held that amplitude of Section 94 is wide enough and would take in its sweep, powers of calling or entertaining

petitions other than the one in which appeal has been preferred under Section 93 of the Act.

12. Confronted with this, learned counsel for the appellants would then rely upon the Single Bench Judgment of this Court in CWP No. 4294 of 2013,

titled Solan District Truck Operators Transport Cooperative Society Ltd. vs. Harjinder Singh and others, decided on 21.11.2014, wherein after placing

reliance on Daulat Ram’s case, it was observed as under:

“6. In view of the aforesaid authoritative pronouncement of this Court in

Daulat Ramâ??s case (supra) regarding scope of Section 94 of the Act, which is otherwise binding upon this Court, the impugned order dated 14.02.2013 cannot be sustained. The learned Division Bench has already held that amplitude of Section 94 is wide enough and would take in its sweep, powers of calling or entertaining petitions other than the one in which appeal is preferred under Section 93 of the Act. The revisional Court in exercise of its jurisdiction can call for and examine any record of inquiry or inspection under the Act or the proceedings of any person subordinate to him, acting on his authority. The revisional authority can also call for the proceedings of not only the Registrar but any other person or authority subordinate to him.â??

13. We have gone through the judgment and find that the same is not based on correct appreciation of the ratio of Daulat Ramâ??s case and for that matter even the provisions of Section 94 of the Act have been misinterpreted and misconstrued. Moreover, the judgment in Harjinder Singhâ??s case (supra) cannot withstand judicial scrutiny after the subsequent judgments of the learned Division Bench of this Court in Nikku Ramâ??s case (supra) and The Tiara Cooperative Agriculture Service Societyâ??s case (supra) and is thus overruled.

14. Learned counsel for the appellants after placing reliance on the judgment rendered by this Court in Asa Singh and others vs. State of Himachal Pradesh and another, AIR 1981 HP 75, would argue that in case appeal succeeds then the writ petition should be heard by the learned Division Bench itself as there is grave urgency involved in the same.

15. We have considered the submission and even though we are inclined to allow the appeal but we would refrain from going into the merits of the case or else that in the given facts and circumstances of the case would amount to usurping the jurisdiction of the writ Court. However, taking into consideration the urgency of the matter, we would definitely request the learned writ Court to hear the matter on priority basis.

16. In view of the aforesaid discussion, the appeal is allowed and the order passed by the learned writ Court is set aside. The parties are directed to appear before the learned writ Court on 29.12.2020.

17. The appeal is disposed of in the aforesaid terms, so also the pending application(s), if any.