

K. S. Padwal and ors Vs. State of Jandk; and ors

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Court : Jammu and Kashmir

Decided On : Nov-06-2012

Judge : Hon'ble Mr. Justice M. M. Kumar

Appellant : K. S. Padwal and ors

Respondent : State of Jandk; and ors

Judgement :

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU. LPAOW No. 76 OF 201.K. S. Padwal & Ors Petitioners State of J&K & ors Respondent !Mr. B. S. Manhas, Advocate ^Mr. Inderjeet Gupta, Dy AG. Honble Mr. Justice M. M. Kumar, Chief Justice Honble Mr. Justice Mohammad Yaqoob Mir, J Date:

06. 11.2012 :

JUDGMENT

: Per Yaqoob J 1.Clandestine move of the petitioners, erstwhile Managing Committee of the Co-operative House Building Society attracts applicability of the proverb greediness is curse obvious consequence of which is to be in the lurch.

2. Petitioners were elected as members of the Managing Committee of the Sainik Co-operative House building Society on 24.07.2008, in terms of Section 29 of the Co-operative Societies Act, 1989 (hereinafter for short referred to as the Act) the term of the office of the Committee is three years. Sub Section 3 of Section 29 of the Act enjoins upon the Committee to take steps for the constitution of New

Committee in accordance with the provisions of the Act, Rules and Bye-laws that too 90 days before expiry of its term.

3. In keeping with the said mandate, the petitioners Managing Committee as it then was before the expiry of 90 days of its term had issued notification dated 23.04.2011, in terms whereof, one Ghulam Nabi Malik former Tehsildar was appointed as Returning Officer. The said Returning Officer issued notification dated 24.06.2011 which provided schedule for the elections of Management Committee, as such; election was to be held on 24.07.2011. The Deputy Registrar, Co- operative Societies (Agri) Jammu vide communication dated 07.07.2011 addressed to the said Returning Officer had advised for the postponement of the elections.

4. One Ram Swaroop Sharma and others filed OWP No. 983/2011 seeking quashment of the engagement of said Returning Officer as well as the notification dated 24.06.2011 providing schedule for elections. On 21.07.2011 in the said Writ petition by way of interim direction, status quo was directed to be maintained, but subsequently, order has been modified with direction to the respondents to proceed with the elections.

5. Another Petition OWP No. 996/2011 has also been filed by Dev Raj Choudhary and others seeking quashment of the notification whereunder former Tehsildar was appointed as Returning officer. The said Writ petition stand disposed of.

6. The Deputy Registrar, Co-operative Societies, noticing that the statutory period of three years of the erstwhile Managing Committee (petitioners) has expired on 24.07.2011 invoked the powers vested in him under sub-Section 4 of Section 29 of the Act, therefore, appointed Administrator till the elections for management of the Society are held.

7. The appellants (petitioners) filed OWP No. 949/2011 seeking quashment of order dated 07.07.2011 passed by Deputy Registrar, Co-operative Societies (Agri), Jammu, whereunder; Returning Officer was advised to postpone the elections. It is during pendency of the said writ petition, Registrar Co-operative vide his order dated 14.08.2012 appointed the Administrator. Against the said

order, the petitioners filed one more writ petition OWP No. 1175/2012 seeking its quashment. Furthermore have prayed that respondents shall be restrained from interfering with the working of the Managing Committee. In short, the petitioners contended that they shall be deemed to be the members of the Managing Committee so as to continue in the office until elections of the new Managing Committee.

8. The petitioners erstwhile Managing Committee has ceased to be the Management Committee w.e.f. 24.07.2011. The Act as well as the Rules and regulations framed there-under nowhere provides that in case new Management Committee is not constituted for any reason for any period, the Managing Committee earlier elected will continue to hold the office beyond its statutory period. Instead sub Section 4 of Section 29 of the Act clearly provides that where any Committee has ceased to hold office and the new Committee has not been constituted in accordance with the provisions of this Act, Rules and Bye-laws made there-under, the Registrar, may, by an order in writing, appoint an Administrator.

9. The petitioners, thus, have no locus to challenge the appointment of Administrator or to claim to sit in office beyond the period of three years.

10. As a last ditch effort, learned counsel for the appellants tried to project that no steps have been taken nor there is any direction which would provide for elections of the Management Committee of the Society. Learned counsel for the respondents produced Photostat copy of the order dated 09.10.2012 passed in OWP No. 983/2011 whereunder it has also been provided that the elections of the Management Committee of the Society shall be held immediately after decision in respect of review of the rules. Further it is provided that Registrar shall ensure conduct of elections strictly in accordance with the Mandate contained in the J&K Co-operative Societies Act, 1989 and J&K Co-operative Societies Rules, 2001.

11. In the said background, we find the impugned judgment in terms whereof writ petition has been dismissed and costs amounting to Rs. 50,000/- have been imposed, does not call for any interference.

12. Appeal dismissed accordingly. (Mohammad Yaqoob Mir) (M. M. Kumar) Judge
ChiefJustice. JAMMU 06 11.2012 Vijay

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