

Kuver Nath Lal

Vs

Postal Co-Operative House Construction Society Led. and Others

Civil Appeal No. 1104 of 1978

(K.N. Singh, P.B. Sawant JJ)

30.07.1991

ORDER

1. This appeal is directed against the judgment and order of the High Court of Patna dated June 30, 1978 quashing the order of the Registrar, Co-operative Societies as confirmed by the Minister, amending the bye-laws of the Postal Co-operative House Construction Society Limited, Kidwaipuri, Patna.

2. This litigation has a long history. We consider it necessary to have a brief resume of relevant facts giving rise to this appeal. The Postal Co-operative House Construction Society Limited, Kidwaipuri, Patna was registered on December 14, 1955 under the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act'). The object of the Society was to acquire land and construct houses and allot the same to its members. Initially, membership of the Society was limited to the post office employees posted in the District of Patna who may have put in at least 3 years continuous service in the department. Soon the society realised that with the limited resources of the postal employees employed in Patna the Society could not collect sufficient funds to acquire the land for construction of the houses. Faced with this difficulty, the Board of Directors of the Society passed a resolution on November 28, 1987 amending the bye-laws of the Society permitting the Central and State Government employees also to be the members of the Society. Pursuant to the resolution, the appellants, Kuver Nath Lal, and several other State Government employees were registered as members of the Society. The Society collected money from them to the tune of Rs 62,000 and acquired land worth Rs 75,000. It appears that subsequently when the houses were constructed the Society did not allot any house to the appellants. He raised a dispute which was referred to the arbitrator and in the arbitration proceedings it was ultimately held that the appellants were entitled to continue to be members. On April 11, 1969 the Registrar, Co-operative Societies, passed a supplementary award holding that the house no. 29 should be allotted to the appellants. The Society thereupon filed a writ petition under Article 226 of the Constitution before the High Court of Patna questioning the validity of the Registrar's award. The writ petition was allowed and the award of the Registrar, Co-operative Societies, was quashed on the finding that the appellants could not be members of the Society as the Board of Directors had no power to amend the bye-laws inducting Central Government and State Government servants as members of the Society. The Court further held that the bye-laws could be amended only by the General Body or the Registrar. A special leave petition was filed in this Court by the appellants but subsequently he withdrew the same.

3. The appellants thereafter made an application to the Registrar requesting him to amend the bye-laws to protect the interest of the appellants and other government employees who had deposited money with the Society, which the Society utilised for acquiring the land and constructed houses.

The Registrar issued notice under Section 26 of the Act to the Society directing it to amend the bye-laws or in default to show cause why the Registrar should not himself amend the bye-laws. The Society failed to amend the bye-laws, thereafter the Registrar amended the bye-laws of the Society permitting the State and Central Government employees to be the members of the Society by his order dated March 8, 1972. The order of the Registrar was confirmed in appeal by the Minister of the Co-operative Department. The Society thereupon filed a writ petition before the High Court under Article 226 of the Constitution challenging the order of the Registrar as confirmed by the Minister. A Division Bench of the High Court has by the impugned order set aside the order of the Registrar and the Minister on the ground that the amendment of bye-laws was made in the colourable exercise of power. Hence this appeal by special leave.

4. After hearing the learned counsel for the parties and having regard to the history of the litigation and the facts and circumstances of the case, it is apparent that the Society had itself invited other government servants to be its members; it had collected money from them, and utilised the same for purchasing the land over which houses were constructed. The Society later on backed out and challenged the continuance of the membership of the other government servants on a technical ground that the bye-laws had not been amended by the General Body. The Registrar of the Co-operative Societies considered the entire matter and he held that having regard to the facts and the history of the Society, the public interest as well as the Society's interest required that the bye-laws be amended, to safeguard the interest of government servants whose money had been appropriated by the Society for acquiring land. The Registrar's order dated March 7, 1972 making amendments in the bye-laws was made in exercise of his statutory powers under Section 26 of the Act. The Registrar had not acted mala fide on any extraneous consideration instead he exercised his power in a just and reasonable manner to meet the exigency of the situation and to remove the injustice that was being caused to government servants who had been enrolled as members of the Society and deposited money with the Society. There was no question of any colourable exercise of power by the Registrar in amending the bye-laws of the Society. The High Court, in our opinion misdirected itself in interfering with the order of the Registrar.

5. We accordingly allow the appeal, set aside the orders of the High Court and dismiss the writ petition filed by the respondent-Society.

6. During the pendency of this litigation the appellant had been occupation of the house No. 29 which was initially allotted to him in 1967. The appellant has stated that he has been depositing money from time to time towards the cost of the house. The Society is free to appropriate that amount towards the cost of the house. However, if any amount is further due from the appellant towards the cost of the house it will be open to the Society to recover the same from him. We make it clear that the order of the Registrar dated March 7, 1972 as confirmed by the Minister on January 22, 1974 will enure to the benefit of the appellant and he will be entitled to the allotment of the house and to continue in possession of the same.

7. There will be no order as to costs.

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