

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMP No. 4371 of 2026 in

CWP No. 11486 of 2024

Reserved on: 23.09.2026

Date of Decision: 28 .09.2026

Narinder Kumar

.....Non-applicant/Petitioner

Versus

State of Himachal Pradesh & others ...

Applicants/Proforma respondents/respondents.

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Applicants/: Mr. Ajay Sharma, Senior Advocate **with**
proforma-respondents: Mr.Tarun Brakta, Advocate.

For the Respondents: Mr. Rajan Kahol & Mr. Vishal Panwar,
Additional Advocate Generals with Mr. Ravi
Chauhan & Mr. Anish Banshtu, Deputy
Advocates General, for the respondents-
State.

Mr. Surinder Saklani, Advocate, for
respondents No.4 & 5.

Mr. Devender K. Sharma, Advocate, for
respondent No.3(a)

Sandeep Sharma, Judge

By way of instant application filed Under order 23 Rule 1-

A read with Order 1 Rule 10 and Section 151 CPC, prayer has been
made on behalf of applicants/ proforma-respondents for reviving the

¹ Whether the reporters of the local papers may be allowed to see the judgment?

writ petition and transposing the applicants/ proforma-respondents, namely S/Sh. Prabhat Singh, respondent No.8, Raj Kumar, respondent No.9, Chaman Lal, respondent No.10 and Megh Nath Sharma, respondent No.13 as petitioners, with further prayer to allow them to continue with the writ petition involving questions of law/substantial questions required to be decided against other contesting respondents.

2. Pursuant to the notices issued in the instant proceedings, respondents No. 3 to 6 have filed reply, wherein prayer made in the application at hand has been seriously opposed on the ground of maintainability of the application.

3. Quintessential facts, as emerge from the pleadings adduced on record by respective parties, are that religious society namely, Jai Guga Jahar Peer Mandir Sewa Samiti, Village Alshan, Post Office Bhiambi, Tehsil Bangana, District Una, filed an application to the office of Sub Divisional Magistrate-cum -Deputy Registrar Societies, Bangana, District Una, in the year 2023, praying therein for its registration under Section 4 of Himachal Pradesh Societies Registration Act, 2006 (**for short 'Act'**). In terms of Notification No. 7-50/2007-Coop(A&S), dated 08-08-2014 issued by respondent No.2 i.e. Registrar, Cooperative Societies Himachal Pradesh, application, as detailed hereinabove, came to be sent to Tehsildar, Bangana vide

letter dated **04.10.2023** by Sub Divisional Magistrate-cum Deputy-Registrar of Societies with a direction to conduct an inquiry and submit a report. Tehsildar, Bangana District Una vide letter dated 05.01.2024 submitted his inspection report, stating therein that mainly two stakeholders are found in the case, out of which one is Jai Gugga Jahir Peer Mandir Sewa Samiti, Village Alsahan, which has applied for registration and second stakeholder is Gugga Jahir Peer Mandir (Chela) Sewa Samiti Alsahan, who had previously filed an application for registration of the society. Tehsildar, Bangana concluded in his report that all the members of Gugga Jahir Peer Mandir Sewa Samiti Alsahan were in favor of registration of society and there was no statement from any member that was found contrary. He also submitted that most of the members of Gram Panchayat Sukhdiyal have also advocated for the registration of society. In view of afore report dated 05.012024, Gugga Jahir Peer Mandir Sewa Samiti located at village Alsahan came to be registered by the then Sub Divisional Magistrate-cum-Deputy Registrar Societies vide registration No. HPCD-15949 on 15-02-2024 under the Act.

4. It is apt to take note of the fact that Gugga Jahir Peer Mandir (Chele) Sewa Samiti village Alsahan had also moved an application to Sub Divisional Magistrate-cum-Deputy Registrar Societies on 26.07.2023 for its registration and same was also sent to

Tehsildar, Bangana, District Una vide letter dated 07.08.2023 with the direction to conduct an inquiry. Tehsildar, Bangana, District Una vide letter dated 13.09.2023 submitted inquiry report stating that there exists already an unregistered religious committee named “Jai Gugga Jahir Peer Mandir Sewa Samiti, which is managing the affair of Gugga Jahar Peer Mandir at Village Alsahan since long time. During inquiry, committee members filed their objection in writing against the registration of religious society named “Gugga Jahir Peer Mandir (Chele) Sewa Samiti Alsahan” and claimed themselves as stakeholders of the said society. The Sub Divisional Magistrate-cum-Deputy Registrar of Societies, Bangana also found that some members, who are willing to register this religious society belong to same family, which is in contravention of Section 4 of Himachal Pradesh Societies Registration Act, 2006 and as such vide order dated 04.10.2023 rejected the application of the applicant religious society i.e. Gugga Jahir Peer Mandir (Chele) Sewa Samiti Alsahan for its registration under Act.

5. Being aggrieved and dissatisfied with aforesaid order passed by Sub Divisional Magistrate-cum-Deputy Registrar of Societies, aforesaid “Gugga Jahar Peer Mandir (Chele) Sewa Samiti filed an appeal No. 28 of 2023 before Registrar of Societies, Himachal

Pradesh under Section 51 of Himachal Pradesh Societies Registration Act.

6. Person. namely Narinder Kumar i.e. petitioner in CWP No.11486 of 2024 also filed an appeal bearing No. 08 of 2024 titled as Narinder Kumar & others versus Sub Divisional Magistrate-cum-Deputy Registrar of Societies Bangana, District Una, Himachal Pradesh before the Registrar of Societies, Himachal Pradesh, who vide order dated 25.09.2024 decided both the appeals quashing and setting aside the registration dated 15.02.2024 of Jai Gugga Jahir Peer Mandir Sewa Samiti, with the direction to Sub Divisional Magistrate-cum Deputy-Registrar of Societies Bangana, District Una to proceed in registration application of both the parties i.e. Jai Gugga Jahir Peer Mandir Sewa Samiti and Gugga Jahar Peer Mandir (Chele) Sewa Samiti Alsahan afresh in light of the instructions dated 08.08.2014 and rights of the appellants family and all inhabitants of village Alsahan attached with the Gugga Peer Mandir Alsahan. In the aforesaid background afore Sh. Narender Kumar filed CWP No. 11486 of 2024 before this Court in the year 2024. Vide order dated 25.09.2024, record of Registrar of Societies, Himachal Pradesh was requisitioned.

7. Precisely in afore petition, it came to be argued at the behest of the petitioner Narinder Kumar that since Registrar of

Societies Himachal Pradesh, being an appellate authority, under Act vide order 25.09.2024 had quashed and set aside registration certificate dated 15.02.2024 of petitioner's society issued by the then Sub Divisional Magistrate-cum-Deputy Registrar of Societies Bangana that too with a direction to Sub Divisional Magistrate-cum-Deputy Registrar of Societies, Bangana, to proceed further in the matter afresh, therefore, the registration certificate dated 15.02.2024 issued in favour of Jai Gugga Jahir Peer Mandir Sewa Samiti has no legal sanctity.

8. Before afore writ petition having been filed by the petitioner Narinder Kumar could be decided on its own merit, petitioner Narinder Kumar came before this Court and he was identified by respondent No.4, Sh. Narinder Kumar son of Sh. Hans Raj Sharma, who was further identified by his counsel Sh. Surinder Saklani, and stated that he does not want to continue with the case and wishes to withdraw the same. He submitted before this Court that he has requested his counsel for withdrawing the case, but the case is still being continued against his wishes. Learned counsel appearing for the petitioner though denied having received any such request made by the petitioner for withdrawing the case, but having taken note of the statement made by the petitioner, who had come present in person, writ petition was disposed of as withdrawn vide

order dated 11.03.2026 passed by Co-ordinate Bench of this Court. While doing so, Co-ordinate Bench of this Court recorded the statements of Sh. Narinder Kumar son of Sh. Faily Ram and Sh. Narinder Kumar son of Sh. Hans Raj Sharma. In the aforesaid background, application at hand has been filed on behalf of the applicants/ proforma respondents for reviving the writ petition and transposing the applicants/proforma respondents No.8, 9, 10 and 13 as petitioners with further prayer to allow them to continue with the writ petition involving questions of law/substantial questions require to be decided against other contesting respondents.

9. I have heard learned counsel for the parties and gone through the record carefully.

10. Precisely, the grouse of the applicants/proforma respondents, as has been highlighted in the application and further canvassed by Mr. Ajay Sharma, learned Senior Advocate duly assisted by Mr. Tarun Brakta, Advocate, is that great prejudice has been caused to applicants/ proforma-respondents on account of withdrawal of writ petition by petitioner Narinder Kumar, who had otherwise no authority to withdraw the writ petition without taking into confidence proposed proforma-respondents, whose interest was with the petitioner. Mr. Sharma stated that otherwise also, very conduct of the petitioner Narinder Kumar is suspicious for the reason that he

connived with opposite parties and withdrew the writ petition in most clandestine manner, wherein substantial questions of law were required to be decided against the contesting respondents. He contended that petitioner Narinder Kumar had not taken into confidence other persons, who had authorized him to file writ petition against the order passed by Registrar, thereby cancelling the registration of the society, i.e. Jai Gugga Jahir Peer Mandir Sewa Samiti, he straightaway without there being informing his counsel, made a statement before the Court, which proceeded to permit petitioner Narinder Kumar to withdraw the petition without taking note of objections raised by his counsel. Mr. Sharma further stated that since appeal filed by contesting respondents before the Registrar was barred by limitation, there was no occasion for Registrar Societies to accept the same. While referring to Section 51(2) of the Act, which provides limitation for filing appeal, Mr. Sharma submitted that appeal was barred by limitation as having been filed beyond the prescribed period of sixty days and as such, Registrar Societies, in contravention to the provisions of Section 3 of the Limitation Act, entertained the said appeal and allowed the same vide order dated 25.09.2024, as a consequence of which, registration of Jai Gugga Jahir Peer Mandir Sewa Samiti came to be set aside wrongly.

11. While referring to provisions contained under Order XXIII Rule 1-A CPC, Mr. Sharma contended that where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under Rule 10 of Order 1, the Court, having due regard to the question whether applicant has a substantial question to be decided against any other defendant, may proceed to allow the application. He further stated that another very important substantial question of law has been raised, inasmuch as in view of notification dated 21.12.2006 issued by Government of Himachal Pradesh, the appeal as is entertained by Registrar Societies and decided vide order dated 25.09.2024 is without jurisdiction and substantial question of law as having been raised and so also with respect to limitation have prejudiced the interests of the applicants. He submitted that petitioner Narinder Kumar, to the best of knowledge of applicants- proforma respondents, has connived with respondents No. 4 and 5 just to humiliate them and to prejudice their interest by withdrawing the writ petition at the askance of respondent No. 4.

12. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General, representing respondent-State and Mr. Surender Saklani and Mr. Devender Kumar, learned counsel representing the respondent- State and respondents No.3(a) 4, 5 and 6 respectively, vehemently opposed the prayer made in the application. They

vehemently argued that the present application is not maintainable on account of the fact that an application for transposition, if any, in terms of Order XXIII Rule 1-A CPC can only be filed by defendants, but in the case at hand, same is being filed by proforma-respondents, whose interest is/ was with petitioner Narinder Kumar. While making this Court peruse the averments contained in the writ petition, learned counsel representing respondents argued that as per own case of applicants/ proforma-respondents, interest of applicants/ proforma-respondents and petitioner Narinder Kumar, who withdrew the writ petition, was common and as such, they ought not to have filed this application.

13. While referring to provisions contained under Order 1 Rule 10 CPC, learned counsel representing non-applicants-respondents vehemently argued that there is no provision, if any, to implead a person as proforma-respondent; rather a party can be impleaded as plaintiff or as defendant. They further submitted that objections filed by respondents, laying challenge to order passed by Sub Divisional Magistrate, ordering registration of society was not barred by limitation. They submitted that Section 3 of the Limitation Act is/ was not applicable in the given facts and circumstances of the appeal having been filed by the non-applicants/respondents, rather same was to be governed by Article 137 of the Limitation Act.

14. Before ascertaining the correctness of rival submissions made by learned counsel for the parties to the *lis*, this Court finds it necessary to take note of provisions contained under Order 1 Rule 10 and Order XXIII Rules 1 and 1-A CPC:-

Suit in name of wrong plaintiff.

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted thought a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

Withdrawal of suit or abandonment of part of claim.

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other persons.

(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject- matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be preclude from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.

1A. When transposition of defendants as plaintiffs may be permitted. _Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.

15. Careful perusal of Order 1 Rule 10(2) CPC reveals that the Court may at any stage of proceedings, either upon or without application of either party, order that name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added. Admittedly, aforesaid provision of law specifically talks about impleadment or deletion of plaintiff or defendant and there is no provision to implead or delete proforma respondent. However, it is also not in dispute that such of the parties whose interest is with the

plaintiff or petitioner and their impleadment is necessary for adjudication of the case, can be impleaded as proforma respondent or proforma defendant, if not as plaintiff.

16. Order XXIII Rule 1 CPC provides that at any time after institution of a suit, plaintiff may abandon the suit against all or any of the defendants or abandon a part of his claim, but where plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court. Order XXIII Rule 1-A CPC permits transposition of defendants as plaintiff. As per aforesaid provision of law, where a suit is withdrawn or abandoned by plaintiff under Rule 1 and a defendant applies to be transposed as a plaintiff under Rule 10 of Order 1, the Court may transpose such defendant as plaintiff, having due regard to the question whether applicant has a substantial question to be decided as against any of the other defendants. The aforesaid provision of law nowhere permits transposition, if any, of proforma respondent/defendant.

17. As has been observed hereinabove, though there is no provision to implead party as proforma respondent, but yet there is a practice of impleading a party whose interest is with the plaintiff or petitioner and whose presence is necessary for adjudication of the case. The very purpose and object of provision contained under Order

XXIII Rule 1-A CPC is to protect the interest of defendant, who otherwise, in the event of withdrawal of suit, may lose chance of getting decided a substantial question of law against other defendants. If there are more than one plaintiffs, one plaintiff being satisfied may abandon his claim at any time, but certainly another plaintiff can pursue the suit, but transposition, if any, in terms of Order XXIII Rule 1-A CPC can be from defendant to plaintiff, but certainly there is no provision for transposition of proforma defendant as plaintiff, because interest of proforma defendant is already aligned with the plaintiff.

18. In the case at hand, pleadings adduced on record of the writ petition, which stands withdrawn, clearly reveal that petitioner Narinder Kumar filed writ petition in his own name and same was also accompanied by his own affidavit and as such, he is entitled to take an independent decision with regard to continuation of proceedings or withdrawal of writ petition. Applicants-proforma respondents, whose interest is/was with the petitioner, cannot claim that petitioner cheated them and wrongly withdrew the writ petition filed on their behalf.

19. At this stage, it is apt to take note of paragraph 6 of the writ petition, which reads as under:-

“6. That as now vide impugned orders although illegally, orders having been passed without jurisdiction, registration of the society of the petitioner and proforma respondents No. 7

to 13 has been set aside and thus the writ petition is being filed by the petitioner singly and other persons of the managing committee of the said society have been added as proforma respondents as right now being not available to put their signatures on the Vakalatnama. However, as and when available, in case so advised, application will be filed for transposing them as petitioners.”

20. Careful perusal of aforesaid pleadings reveals that writ petition has been filed singly by the petitioner and other persons of managing committee, i.e. applicants- proforma respondents, were arrayed as proforma respondents No. 7 to 13, as at the relevant time they were not available to put their signatures on the vakalatnama. It is clearly apparent from the aforesaid pleadings that interest of petitioner and applicants- proforma respondents is/was common.

21. Though, bare perusal of aforesaid pleadings suggests that managing committee was aggrieved of order passed by Registrar, thereby dismissing the appeals filed against the order passed by Sub Divisional Magistrate, but as has been noticed hereinabove, writ petition was filed by Narinder Kumar in his individual capacity. There is nothing on record to suggest that managing committee or applicants- proforma respondents had ever authorized him to file writ petition which is now sought to be revived.

22. Since it is apparent from the record that petitioner had filed writ petition in his individual capacity and applicants- proforma respondents were impleaded as proforma respondents on account of

their having common interest with the petitioner, coupled with the fact that no relief was prayed against them, this Court is persuaded to conclude that present application is not maintainable, rather applicants- proforma respondents, if aggrieved and dissatisfied, ought to have filed an independent writ petition, laying challenge therein to order dated 25.09.2024 passed by the Registrar, thereby dismissing the appeals filed against the order passed by Sub Divisional Magistrate, ordering registration of Gugga Jahir Peer Mandir (Chela) Sewa Samiti Alsahan.

23. Since for the discussion made hereinabove, this Court has arrived at a definite conclusion that present application is not maintainable, it does not find it necessary to deal with other questions with regard to involvement of question of law/substantial question required to be decided against other contesting respondents, rather same are left to be decided in appropriate proceedings in the appropriate Court of law.

In view of the above, the present application is dismissed being devoid of any merit.

**(Sandeep Sharma),
Judge**

September 28, 2026
(shankar)