

CWP-6329-2013

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-6329-2013 (O & M)

Reserved on:14.11.2014

Date of decision: 24.12.2014

Ashok Kumar Kukreja

....Petitioner

Versus

State of Punjab and others

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) Whether Reporters of the local papers may be allowed to see the judgment ?.

2) To be referred to the Reporters or not ?.

3) Whether the judgment should be reported in the Digest?

Argued by: Mr. V.K.Jindal, Sr. Advocate with
Mr. Abhinav Oberoi, Advocate for the petitioner.

Dr. Deepa Singh, Addl. A. G, Punjab.

Mr. Vikas Behl, Sr. Advocate
with Mr. Parvinder Singh, Advocate
for the respondents added vide CM-5668-2013.

Mr. Sapan Dhir, Advocate,
for respondents added vide CM-6114-2013.

Mr. M. S.Bedi, Advocate,
for the respondents added vide CM-5375-2013.

PARAMJEET SINGH, J.

Instant writ petition under Article 226 of the Constitution of India has been filed for issuing a writ in the nature of certiorari for quashing the impugned order dated 01.01.2013 (Annexure P-4) passed by the Deputy Registrar, Co-operative Societies, Roopnagar suspending the managing

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committee of the Society allegedly on the basis of show cause notice, and order dated 18.02. 2013 (Annexure P-5) passed by Joint Registrar Co-operative Societies, respondent No.3 acting as an Appellate Authority.

The facts relevant for the purpose of disposal of the present writ petition may be noticed as under:

The petitioner is elected President of Sartaj Co-operative House Building Society (hereinafter to be referred as 'Society'). The Society came into existence in the year 2010 and has 276 members. It was formed with a purpose to give residential plots to its members by purchasing the land in the vicinity of Chandigarh. The Society was able to purchase 44 acres of land through sale deeds and agreement to sell. But on account of minimum requirement for getting permission for a change of land use etc., the Society entered into memorandum of understanding with a renowned builder M/s Altus Space Builder Private Limited (hereinafter to be referred as 'builder') who was to get all permissions for change of land use and all members of the Society were to get the residential plots. A specific resolution was subsequently passed rectifying the said MOU and 204 members had already given written consent. The managing committee did the entire exercise in the interest of the members of the Society. This exercise even enhanced the value of the land as the adjacent land was being developed by the builder. However certain vested interest people who have influential political background, started interfering in the working of the Society. They were having an eye to take over the Society and started compelling the petitioner and other members of the managing committee to succumb to their pressure for making them members. A false report was got prepared at the back of the managing committee and its members. On the basis of said report

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respondent No. 4 issued a show cause notice in which it has also been ordered that managing committee stands suspended. Vide impugned show cause notice-cum-suspension order dated 01.01.2013 (Annexure P-4), the managing committee of Society has been suspended by the Deputy Registrar exercising the powers of Registrar and appointed Assistant Registrar of Cooperative Societies as Administrator for the purpose of running the affairs of the Society. Against the show cause notice -cum- suspension order an appeal was preferred before the Joint Registrar Co-operative Societies. The said appeal has been dismissed on the grounds that there is no stamp/court fee on appeal nor the affidavit attached with the appeal is attested by notary public, no one on behalf of the appellant appeared in appeal and there is no Vakaltanama signed by the appellant attached with the memorandum of appeal. The appeal has been dismissed on merit as well as being not maintainable.

It is averred in the writ petition that during the tenure of petitioner as President of the Society a chunk of land measuring 44 acres in village Ghandoli, Palheri and Bhagat Majra has been purchased out of which sale deed of 32 acres had already been registered. Regarding the remaining 12 acres, agreements to sell have been executed and the sale deeds are yet to be got executed in the near future . The permission for change of land use from GMADA/PUDA was required and it was one of the conditions that at least 104 acres of land is required to start Mega Project to build a private society, without having acquired the requisite land, the Society would not have been in a position to fulfil its dream project. Faced with this situation a meeting of all members of the Society was convened wherein after thorough discussion and deliberations, it was found difficult

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to purchase lands as per the requirement of GMADA/PUDA. In such circumstances it was decided that MOU be signed with another similarly situated person or some private builders to achieve the object and purpose of the Society as if it is so done it would be in the interest of the members of the Society as well as the Society. Various private builders/ societies were approached but no positive response was received from any side. The State agencies were also approached for grant of CLU in view of the peculiar facts and circumstances of the case. When all efforts failed the managing committee approached another builder M/s Altus Space Builder(P) Ltd., who had started their project on the immediately adjoining land of the Society in village Ghandauli. It is pertinent to mention that said builder had already been granted sanctions/approvals for setting up of mega projects by the various Departments of the State Government. So in the interest of the Society and its members a detailed MOU was signed on 15.12.2012 with the builder which was subsequently amended on 16.01.2013. To the MOU consent has been given in writing by 204 members. The purpose of entering in MOU was to pool the land as Society alone would not have been in a position to get CLU. It is pertinent to mention that no money transaction has taken place between the parties because of signing of MOU and the agreement was also got registered on 17.12. 2012. The impugned show cause notice –cum- suspension order Annexure P-4 has been issued with a *mala fide* intention and just to put pressure upon the members of the Society. With a predetermined mind without any enquiry the managing committee has been suspended. The show cause notice in question is without any details nor any report of Assistant Registrar was sent along with the same. It is also averred that appeal has been decided with malafide

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intention. Not only this, even FIR was got registered against the petitioner. In the said case petitioner has been granted anticipatory bail. The impugned orders have been challenged on the ground that suspension of managing committee of the Society is in violation of the provisions of the Punjab Co-operative Societies Act, 1961(hereinafter to be referred as 'the Act').

Upon notice respondents appeared and filed separate written statements. In the written statement filed by official respondent Nos.1 to 4 preliminary objection has been raised that petitioner has efficacious alternative remedy of revision under Section 69 of the Act. It is also pleaded that only one managing committee member has challenged the suspension order so other committee members have accepted the suspension order, therefore, the whole impugned order cannot be set aside. The appeal was also preferred by the petitioner alone, not other members of the managing committee. It had been pleaded that the memorandum of understanding and the affidavits giving consent were never produced earlier nor the same were annexed with the reply to the show cause notice. For concealment of material facts from this court the present writ petition is liable to be dismissed. On merits it has been pleaded that no resolution was passed rectifying the decision of the Society. The affidavits of 204 members who have given written consent by way of affidavits are not admissible as they are not attested and authenticated. The impugned orders passed by the authorities are based on true facts and are legal and valid.

Respondent Nos.5 to 16 filed written statement on the similar lines as was filed by the official respondents and prayed for dismissal of writ petition. Other respondents did not file any reply.

I have heard the learned counsel for the parties and perused the

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record.

The learned counsel for the petitioner vehemently contended that impugned show cause notice-cum-suspension order has been passed without giving any opportunity of hearing to the petitioner or the managing committee which is totally against the provisions of Section 27 of the Act. The impugned show cause notice- cum-suspension order is result of *malafide* and colourable exercise of power. Virtually, it is a suspension order without affording opportunity to the managing committee. The appointment of administrator is illegal and arbitrary. The provisions of section 27 of the Act have not been followed. The show cause notice-cum-suspension order is contrary to the scheme of Section 27 of the Act. Any order under Section 27, without initiating the proceeding under this section, cannot be passed. Show cause notice has only been served upon the petitioner and not upon the other members of the managing committee, order has been passed without affording opportunity of hearing, all the members of the managing committee were required to be issued show cause notice. The impugned orders have been passed under political pressure with a purpose to get plots near Chandigarh. The order of Appellate authority is illegal, arbitrary and is not sustainable in the eyes of law. If the memorandum is not properly stamped or proper court fee has not been fixed, then memorandum of appeal can be returned and opportunity to rectify the defect should be afforded. In the appellate order, it is mentioned that nobody appeared on behalf of the appellant. In such circumstances, appeal can be dismissed for non prosecution, question of deciding the same on merit does not arise.

Per contra, learned counsel for the respondents contended that

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orders passed by the authorities are legal and valid. The managing committee was indulging in activities which were not in the interest of Society. No resolution was passed before entering into MOU with the builder. In the reply, no reference to the affidavits of consenting members has been given and it is an afterthought story. The remedy of revision is available to the petitioner before the state government under Section 69 of the Act. The petition deserves to be dismissed.

I have given anxious and thoughtful consideration to the contentions raised by learned counsel for the parties.

It would be appropriate for facility of reference to reproduce Section 27 of the Act which reads as under:-

“27- Removal or suspension of committee or member there of . -(1) If, in the opinion of the Registrar, a committee or any member of a committee persistently makes default or is negligent in the performance of the duties imposed on it or him by Act or the rules or bye-laws, made thereunder or commits any act which is prejudicial to the interests of the society or its members, or makes default in the implementation of production or development programmes undertaken by the co-operative society, the Registrar may, after giving the committee or the member, as the case may be, a reasonable opportunity to state its or his objections, if any, by order in writing –

(a) remove committee, and appoint a Government servant as an administrator to manage the affairs of the society for a period not exceeding one year as may be specified in the order;

(b) remove the member and get the vacancy filled up for the remaining period of the outgoing member, according to the provisions of this Act and rules and bye-laws made thereunder.

(2) Where the Registrar, while proceeding to take action under sub-section (1) is of opinion that suspension of the committee or member during the period of proceedings is necessary in the interest of the co-operative society, he may suspend the committee or member, as the case may be, and

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where the committee is suspended, make such arrangements as he thinks proper for management of the affairs of the society till the proceedings are completed.

Provided that if the committee or member so suspended is not removed, it or he shall be reinstated and the period of suspension shall count towards its or his term.

(3) The administrator so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have powers to perform all or any of the functions of the committee or of any Officer of the society and take all such actions as may be required in the interest of the society.

(4) The Registrar may fix the remuneration payable to the person appointed as administrator and the amount of such remuneration and other costs, if any incurred in the management of the society shall be payable from its funds.

(5) The administrator shall, before the expiry of his term of office arrange for the constitution of a new committee in accordance with the provisions of this Act and rules and bye-laws framed thereunder.

(6) Before taking any action under sub-section (1) in respect of a co-operative society, the Registrar shall consult the financing bank to which the society is indebted.

(7) A member who is removed under sub-section (1) may be disqualified for being elected to any committee for such period not exceeding three years as the Registrar may fix.”

On a closure examination of Section 27(1) of the Act, it is manifest that power of removal of committee or its members vests in Registrar. It is not wholly unguided and his opinion to remove committee or its members has to be rested on the criteria mentioned in the Section i.e. firstly, persistent default in the performance of the statutory duties under the Act and the rules; secondly, persistent negligence in such performance; thirdly, commission of any act which is prejudicial to the interests of the Society or its members and fourthly, default in the implementation of production and development programmes. If in the opinion of the Registrar,

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any of the four conditions referred to above is not followed, he is entitled to invoke his powers to remove the committee or its members. It is, thus, plain that it is to be done by the Registrar only after giving reasonable opportunity to the committee or its members, as the case may be, to object thereto. After considering such objections if the Registrar is satisfied, he can order removal of the committee or any member. Thus, it is clear that the provisions envisaged under Section 27(1) of the Act confer the power and the manner of its exercise for acting against the committee or its members. Even power of suspension under Section 27(2) is relatively subservient and consequential to the exercise of power under sub-section (1). Thus, it can be safely said that the substantive and significant provision is sub-section (1) while sub-section (6) is merely subsidiary and ancillary thereto.

In **Shri S.R. Goyal and others vs. Shri Mehtab Singh, Deputy registrar, (1994) 107 PLR 290**, a Division Bench of this Court considered Section 34 of Haryana Cooperative Societies Act, 1984 which is *pari materia* to Section 27 of the Act and held as under:

“6. On merits, we find substance in the submission made by the counsel for the petitioners. A Plain reading of Sub-section (2) of Section 34 of the Act makes it clear that powers Under Section 34 (2) to suspend the Managing Committee of the Society can be exercised by the Registrar only during the pendency of the proceedings under Sub-section (1) of Section 34 Registrar can suspend the Committee during the period of proceedings only if he forms an opinion that it is necessary so to do in the interest of the cooperative society. Pendency of proceedings under Sub-section (1) of Section 34, is a condition precedent for invoking the powers to suspend the

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*committee. If no proceedings are pending for removal of the Committee under Section 34 (1) then orders suspending the committee cannot be passed because the order of suspension can be operative only during the period of proceedings. In the absence of pendency of any proceeding, the question of suspension of the committee thus cannot arise. It is an admitted case before us that no proceedings under Section 34 (1) of the Act for removal of the Committee have either been initiated or pending. Additional Advocate General appearing for the State of Haryana placed reliance on [Gurcharan Singh v. The State of Haryana](#), (1979) 81 P.L.R. 170 (F.B.) in which their Lordships were considering the question as to whether an opportunity to show cause was required to be given to a person who was being suspended during the pendency of proceedings under Section 27 of the Punjab Cooperative Societies Act, 1961 (as applicable in the State of Haryana. Section 27 (1) and 27 (2) of the Punjab Cooperative Societies Act are equivalent to Section 34 (1) and 34 (2) of the Haryana Cooperative Societies Act and are *pari materia* in terms. In Gurcharan Singh's case (Supra), the point in issue was as to whether a show cause notice was required to be given before suspending the society or a member as was the case when a committee was to be suspended. In case of supersession, it was required that a notice be given before the committee is superseded. Counsel for the petitioners had argued in the said case that a notice was required to be given even while suspending a member or a committee as was the case when the society was to be superseded. This contention was negated by their Lordships holding that an*

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opportunity to show cause was provided in the case of supersession of a committee and not while a member or a committee was to be suspended during the pendency of the proceedings for superseding the committee. The point in issue in the present case and Gurcharan Singh's case (supra) are totally different. In Gurcharan Singh's case (supra) proceedings under Section 87 (1) of the Punjab Cooperative Societies Act for superseding the Committee had been initiated and during the pendency of those proceedings a member was sought to be suspended. In the present case the admitted case of the parties is that Section 34(1) of the Act for superseding the committee has not been invoked. Petitioners in the present case are not seeking an opportunity to show cause before suspension. Their case is that in the absence of the pendency of the proceedings under Section 34 (1) the Committee cannot be suspended. As observed earlier, pendency of the proceedings under Section 34 (1) for superseding the committee is sine qua non for invoking the jurisdiction to suspend a member or a committee under Section 34 (2) of the Act. In the absence of the proceedings for superseding the committee, the committee or a member cannot be suspended.”

In *Gurcharan Singh vs. State of Haryana 1979 PLR 170 (FB)*,
proceedings for superseding the committee had been initiated and during the pendency of those proceedings, a member was sought to be suspended. The suspension of committee or member under Section 27 of the Act is an urgent or emergent action but interim in nature. Interim suspension cannot be treated as punishment. The question of issuing a show cause notice to the affected party before exercising power under Section 27(1-A) of the Act

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thereof does not arise. In ***Gurcharan Singh's case(supra)***, it was held:

“If in the context of such an urgent or emergent action, the relatively tardy requirements of principle of natural Justice requiring the necessity to issue a show cause notice, affording time for the filing of a reply, the consideration of the same and perhaps to afford the opportunity to lead evidence and thereafter to decide the same were to be imported it may well in effect lead to defeating the very purpose of an emergent provision of this nature. If that be so, it is equally well settled that a construction which would tend to defeat rather than advance the intent of the Legislature has inevitably to be avoided.”

I have considered the law laid down in the above referred authorities. Admittedly, in the present case, no proceedings for removal of the committee or its member under Section 27 (1) of the Act are pending. In ***Gurcharan Singh's case (supra)***, proceedings for removal were pending and in those circumstances issuance of notice had been dispensed with. In the present case, neither any proceedings is pending nor any thing material has been mentioned in the show cause notice- cum- suspension order. It is only mentioned that the President and the managing committee have prepared a deed to sell the land measuring 46 acres in village Ghandauli in an illegal manner without taking the members of the Society in confidence and without taking due approval from the office of Registrar and they have committed fraud with the members of the Society by selling the land and have tried to cause financial loss to the members of the Society. It is further mentioned that the petitioner had constructed an office wherein a board in the name and style of BTM Real Estate has been put. The said act is clear

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violation of aims and objects of the Society. With the written statement, official respondents have not annexed any document including the report of Assistant Registrar Cooperative Societies as sent by him vide letter dated 01.01. 2013. No other material has been brought on record of this case to show that petitioner is indulging in any of the activities mentioned in the impugned show cause notice cum suspension order (Annexure P-4). Even no sale deed which is alleged to have been executed by managing committee has been brought on record. It is also not pleaded in the written statement that any proceedings are pending from which Registrar could have made opinion as is required under the provisions of the Act specifically Section 27 of the Act. Nor any rules and bye laws have been shown to this court to show that the petitioner has proceeded in violation of the provisions of law.

For the reasons mentioned above, the impugned show cause notice-cum-suspension order (Annexure P-4) is not sustainable in the eyes of law. Ordered accordingly.

So far decision of appeal is concerned, neither copy of memorandum of appeal has been placed on record nor shown to the court during the course of arguments to show that it suffers from the deficiencies mentioned in the impugned order (Annexure P-5). It is the bounden duty of the official respondents that they should produce before the court all the relevant records and annex true copies of the material documents with the written statement. The material documents are totally lacking, no iota of evidence has been brought on record by the respondents or private respondents.

The Registrar while by invoking powers conferred under

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Section 27 of the Act suspended the managing committee, did not issue any directions calling for special general meeting of the members of the Society for the purpose of ascertaining their views under Section 25 of the Act. The Registrar has been empowered to call a special meeting of the general body i.e. all the members of the Society and thereafter he can exercise the powers. It appears that the Registrar did not follow the provisions of chapter IV- Management of Cooperative Societies of the Act.

For the reasons stated above, this writ petition is allowed, impugned orders are set aside. The managing committee of the Society is restored and Administrator appointed for running affairs of the Society is directed to hand over the charge of the Society to the managing committee for its day to day running. The Registrar of the Cooperative Societies is directed to convene a special meeting of the general body of members of the Society within a period of one month from the date of receipt of certified copy of this order. General body of the Society may take a decision as to how the Society in question shall be managed. It is the general body which is supreme authority and it can do what is not prohibited by the Act, Rules and bye-laws.

Keeping in view the facts and circumstances of the case, there would be no order as to costs.

All the civil miscellaneous applications shall stand disposed of.

24.12.2014
parveen kumar

(PARAMJEET SINGH)
JUDGE