

CWP No.18144 of 2012

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

CWP No.18144 of 2012
Date of decision: 19.11.2015

Gurtej Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

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 ?

Present: - Mr. Vishal Sharma, Advocate, for the petitioner.
Mr. B.S. Cheema, DAG, Punjab.
Mr. Sushil Saini, Advocate, for respondent No.8.
Mr. Amit Saini, Advocate, for respondent No.10.

PARAMJEET SINGH, J.

Instant writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 30.04.2012 (Annexure P-8) and order dated 27.04.2012 (Annexure P-9) issued by Assistant Registrar, Co-operative Societies, Samrala to Tehsildar, Samrala.

Brief facts of the case are that Avtar Singh son of Sampuran Singh resident of Village Rohla, Tehsil Samrala, District Ludhiana, was serving as Secretary of the Neelo Kalan Co-operative Agricultural Service Society Ltd. During his service, Avtar Singh allegedly embezzled the amount of the Society to the extent of ₹ 5,96,720.50. One

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Gurtej Singh son of Sadhu Singh resident of Village Rohle, Tehsil Samrala, District Ludhiana became guarantor of Avtar Singh. Ultimately, award dated 12.09.2002 (Annexure P-2) was passed against Avtar Singh, Secretary by Assistant Registrar, Co-operative Societies, Samrala, and property of the guarantor Gurtej Singh son of Sadhu Singh resident of Village Rohle was ordered to be attached in favour of the Society under Section 65 of the Co-operative Societies Act, 1961 (hereinafter referred to as 'the Act'). Instead of attaching the property of Gurtej Singh son of Sadhu Singh, property of the petitioner – Gurtej Singh son of Rajinder Singh was attached. Against attachment of his property, petitioner preferred appeal before the Deputy Registrar, Co-operative Societies, Ludhiana.

Deputy Registrar, Co-operative Societies, Ludhiana, passed the order dated 02.05.2003 (Annexure P-4) and directed as under: -

“After hearing and scrutinizing the arguments submitted by the counsel for the appellant, I reached at the conclusion that before attaching the land of appellant, Assistant Registrar, Co-operative Societies, Samrala has not given any opportunity to him to submit his version nor he was called to submit the jamabandi of his land so that he may submit his version. In his orders Assistant Registrar Co-operative Societies, Samrala has written that land of Sh.Gurtej Singh son of Sadhu Singh Guarantor of Sh.Avtar Singh Secretary The Neelon Kalan C.A.S.S. is being attached when the father name of appellant Gurtej Singh is Rajinder Singh. So, the father names of guarantor of Sh.Avtar Singh and appellant are different. Appellant has given an affidavit that he has

never given guarantee for Sh.Avtar . Singh Secretary or any other person. Sh.Avtar Singh Secretary has also given affidavit, in which he has stated that appellant is not his guarantor, from which it seems that fraud/cheating has been committed with appellant and the Secretary of Society or any other person by forging the documents on behalf of appellant submitted the same in the Society, according to which the attachment orders regarding the land of appellant Sh. Gurtej Singh son of Rajinder Singh has been passed by Assistant Registrar, Co-operative Societies, Samrala. So, this appeal is disposed of with the orders that by reconsidering the orders dated 12.9.2002 whereby the land of appellant was attached by Assistant Registrar, Co-operative Societies, Samrala, giving an opportunity to all the parties to submit their version, after inspecting and scrutinizing the guarantee documents and all concerned record (Jamabandi etc.) attachment order of the land of guarantor of Sh.Avtar Singh Secretary be passed within three months and until and unless Assistant Registrar Co-operative Societies Samrala passes new orders till then orders endorsement no.1117 -18 dated 12.9.2002 passed by Assistant Registrar, Co-operative Societies, Samrala be kept intact.”

The Deputy Registrar directed the authorities to enquire into the issue as to who stood guarantor for Avtar Singh and thereafter act in accordance with law. After enquiry, Assistant Registrar, Co-operative Societies, Samrala, issued letter dated 18.07.2003 (Annexure P-6) to Tehsildar, Samrala, to attach the property of Gurtej Singh son of Sadhu Singh instead of petitioner – Gurtej Singh son of Rajinder Singh. Vide order dated 22.06.2011 (Annexure P-7) Assistant Registrar released the

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property of the petitioner. However, again impugned letter dated 30.04.2012 (Annexure P-8) was written by Assistant Registrar, Co-operative Societies, Samrala, to Tehsildar, Samrala, whereby property of the petitioner was ordered to be kept attached. Reminder dated 27.04.2012 (Annexure P-9) was also written by the Assistant Registrar to the Tehsildar. Failing to get relief from the authorities, petitioner has knocked the door of this Court through this petition.

In pursuance of notice of motion, written statements have been filed by respondents No.1 to 8 and 10. In his written statement, filed on behalf of respondents No.1 to 3, Tehsildar, Samrala, has admitted the fact that Gurtej Singh son of Sadhu Singh does not own any property in Village Rohla, Tehsil Samrala, District Ludhiana, and no order for release of the property of petitioner – Gurtej Singh son of Rajinder Singh was received by him, thus, property of the petitioner continued to be attached.

Vide order dated 31.10.2015, Assistant Registrar, Co-operative Societies, Samrala, was directed to be present in Court along with record. Mr. Surjeet Singh, Assistant Registrar (Retd.), Co-operative Societies and Mr. Karnail Singh, Assistant Registrar, Co-operative Societies, Samrala, who issued letters Annexures P-8 and P-9 are present in Court. Mr. Karnail Singh, Assistant Registrar, has filed his affidavit dated 17.11.2015 stating that he has not passed any order of attachment of the property of the petitioner and this was done by his predecessor. It is further submitted in the affidavit that vide order dated 13.11.2015

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(Annexure R-7/1), letters/orders dated 27.04.2012 and 30.04.2012 have been withdrawn and property of the petitioner has been redeemed. In the order dated 13.11.2015 (Annexure R-7/1) it is mentioned that even Avtar Singh Ex-Secretary had filed an affidavit that petitioner has not given his guarantee rather Gurtej Singh son of Sadhu Singh was his guarantor. In the record of the Society also name of Gurtej Singh son of Sadhu Singh appears as guarantor.

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

Admitted facts are to the effect that Avtar Singh was the Secretary of the Neelo Kalan Co-operative Agricultural Service Society Ltd. and one Gurtej Singh son of Sadhu Singh stood his guarantor. Appellate authority has come to the conclusion that fact should be verified from the record as to who was the guarantor for Avtar Singh and in case petitioner was not the guarantor his property be released. Consequently, enquiry was conducted and letter dated 22.06.2011 (Annexure P-7) was issued whereby property of the petitioner was released. However, again impugned letters dated 30.04.2012 (Annexure P-8) and 27.04.2012 (Annexure P-9) were written by the Assistant Registrar to attach the property of the petitioner. No document has been placed on record that petitioner ever stood guarantor to Avtar Singh or he was at all liable for the same. Once the petitioner was not guarantor, question of attachment of his property does not arise.

Section 65 of the Act reads as under: -

“Attachment before award. - Where the Registrar is satisfied that a party to any reference made to him under Section 55 with intent to defeat or delay of the execution of any decision that may be passed thereon is about to -

- (a) dispose of the whole or any part of the property; or*
- (b) remove the whole or any part of the property from the local limits of the jurisdiction of the Registrar, the Registrar may unless adequate security is furnished, direct the conditional attachment of the said property or such part thereof as he thinks necessary. Such attachment shall be executed by a civil Court having jurisdiction in the same way as on attachment order passed by itself and shall have the same effect as such an order:*

Provided that the powers of the Registrar under this section shall not be delegated to any officer below such rank as may be prescribed.”

Registrar can dispose of the property in whole or in parts or remove the whole or any part of the property and attachment shall be executed by the civil Court. The authorities have not proceeded in accordance with law rather property remained continued to be attached resulting in harassment to the petitioner. The property of the petitioner remained attached for almost 13 years and he had to approach various authorities and unnecessarily pursue his remedy before this Court. Once the authorities had come to the conclusion that petitioner was not the guarantor, his property should have been released. Property of the petitioner was even released but again attached. This is arbitrary use of the power, which is not derived from the Act.

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In view of admission of Avtar Singh that petitioner never stood guarantor for him and non-availability of any document regarding petitioner as guarantor, this writ is required to be allowed with exemplary costs. Ordered accordingly.

Allowed with costs of ₹ 5,00,000/- to be paid to the petitioner within a period of one month from the date of receipt of certified copy of this order. The costs shall be paid by the State, however, State will be at liberty to recover the amount from the officers/officials at fault, in accordance with law. Entire process shall be completed within a period of six months and thereafter compliance report shall be submitted to this Court.

November 19, 2015
R.S.

(Paramjeet Singh)
Judge