

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

Date of decision:25.03.2015.

The Faridabad Ex-Sainik & Karamchari Cooperative House Building
Society Limited

.....Petitioner

v.

State of Haryana and others

.....Respondent

CORAM: HON'BLE MR.JUSTICE JASWANT SINGH

Present:- Mr.AK Chopra,Senior Advocate assisted by
Mr.Sushil Jain,Advocate for the petitioner

Mr.Chetan Mittal,Senior Advocate assisted by
Mr.Mohinder Nain,Advocate for caveators-
respondent-Yatna Educational Society.

Jaswant Singh,J.(Oral)

CM 3063/2015

By way of present application, applicant petitioner seeks to
substituted corrected version of the impugned order dated 29.12.2014
(P-16).

CM allowed. Corrected version of order at P-16 is taken on
record.

Registry to place the same at the proper place in the paper
book.

CWP 2991/2015

The Faridabad Ex-Sainik & Karamchari Cooperative House

Building Society Limited (for short petitioner-Society) has filed the present writ petition under Article 226 of the Constitution assailing the order dated 29.12.2014(P-16) passed by respondent no.1-Government whereby the revision petition of respondent no.6-Yatna Educational Society was allowed while, *inter alia*, setting aside the order dated 31.12.2009(P-13) passed by Deputy Registrar,Gurgaon withdrawing the permission for establishing a Health Center by respondent no.6-Society granted vide previous orders.

In short, the dispute is between the petitioner- Cooperative Society and a non-Cooperative Society-respondent no.6 regarding issue of establishing a Health Center within the premises of the petitioner-Society. It is averred that for allotting a site for Health Center within the premises, permission was granted vide letter dated 10.4.2009(P-1) by the Deputy Registrar, Cooperative Societies,Gurgaon subject to conditions as enumerated therein. Pursuant to the same, an auction was conducted on 13.5.2009 wherein respondent no.6-Society was highest bidder and thus granted permission to establish a Health Center vide lease deed dated 30.7.2009(P-6). Before the Health Center could be established, the petitioner-Society through its Managing Committee passed another resolution dated 15.8.2009(P-7) whereby it was decided to establish the said Health Center by the members of the Society on “no profit no loss” basis while canceling the lease deed in favour of respondent no.6-Society. Pursuant to the said decision petitioner-Society also decided to refund the amounts deposited by respondent

no.6-Society. The Deputy Registrar, Cooperative Societies, Gurgaon vide letter dated 31.12.2009(P-13) passed an order withdrawing the previous order dated 10.4.2009(P-1) in the light of report submitted regarding non-fulfillment of the terms and conditions by the petitioner-Society.

Respondent no.6-Society aggrieved by the said decision/resolution dated 15.8.2009 (P-7) of petitioner-Society as also letter dated 31.12.2009(P-13) passed by Deputy Registrar, Cooperative Societies-respondent no.4, filed an appeal under Section 114 read with Section 3(3) of the Haryana Cooperative Societies Act, 1984 (for short the 1984 Act) before respondent no.3-Appellate Authority. The Appellate Authority in the light of provisions of the Act and the fact that respondent no.6-Society was not a Society registered under the 1984 Act, held the appeal to be not maintainable vide order dated 22.9.2014(P-15).

Respondent no.6-Society then filed a revision before the Government under Section 115 of the 1984 Act challenging the resolution dated 15.8.2009(P-7), order dated 31.12.2009(P-13) as well as Appellate order dated 22.9.2014(P-15).

The Revisional Authority vide impugned order dated 29.12.2014(P-16) held that the appeal filed by respondent no.6-Society was maintainable apart from holding that the decision dated 31.12.2009 (P-13) was wrong simply on the basis that certain substantial amounts had been paid by respondent no.6-Society and accepted by the

petitioner-Society and the site was allotted with prior approval. Hence the present writ petition.

Learned counsel for the petitioner has submitted that in view of the amended provisions w.e.f. 2006 of Section 115 of the 1984 Act, the revisional power of the Government is to be exercised by summoning and examining the record regarding legality and propriety of the impugned decision and in the present case no such exercise having been undertaken by the Revisional Authority as is reflected from the impugned order dated 29.12.2014(P-16) and hence the same is liable to be set aside.

On the other hand learned counsel for contesting respondent no.6-Society submits that the Revisional Authority has examined the facts of the case and rightly held that since the site was granted by executing lease deed with prior approval of the Registrar, therefore, there was no occasion for the Society to resile from previous decision to the prejudice of respondent no.6-Society. He thus contends that the impugned order dated 29.12.2014(P-16) is perfectly legal and valid.

After hearing counsel for the parties this Court is persuaded to accept the contentions raised on behalf of the petitioner-Society.

The amended provisions of Section 115 of the 1984 Act substituted by Haryana Act no.19 of 2006 read as under:-

“115.Revision.-- The Government may suo motu or

on an application of [an aggrieved party], call for

and examine the record of any proceedings ²[under this Act and the rules framed thereunder] in which no appeal lies to the Government under Section 114 for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case it shall appear to the Government that any such decision or order should be modified, annulled or revised, the Government, may, after giving the persons affected thereby an opportunity of being heard, pass such order thereon as it may deem fit.”

1. For the words 'a party to a reference under Section 102' substituted by Haryana Act No.19 of 2006.
2. Inserted by Haryana Act No.19 of 2006.

A bare reading of the above would show that by the said amendment, any party who was aggrieved i.e. who was not member of the Cooperative Society or Cooperative Society or Managing Committee of a Society could invoke revisional jurisdiction of the Government if adversely affected by any decision in the proceedings under the Act and the Rules for which no appeal would lie to the Government. The revisional authority is then enjoined to call for and examine the record for the purpose of satisfying itself as to the legality or propriety and after giving an opportunity of hearing pass an order as it may deem fit.

In the present case it cannot be disputed that contesting respondent no.6-Society not being a Cooperative Society is neither

entitled to invoke arbitration under Section 102 of 1984 Act and therefore, nor the appellate jurisdiction as well, however by virtue of the amendment being an aggrieved party could invoke the revisional jurisdiction under Section 115 of the 1984 Act. Having done so, the revisional authority keeping in view the scheme of the provisions was required to call for records and examine the same before passing any order. Concededly, in the present case the parameters laid down under Section 115 have not been followed. Therefore, this Court is left with no option except to quash the impugned order 29.12.2014(P-16) and relegate the parties to appear before the revisional authority for a fresh decision in accordance with law.

Accordingly, writ petition is allowed, impugned order dated 29.12.2014(P-16) is quashed and the parties are directed to appear before the revisional authority on 25.5.2015.

25.03.2015.
joshi

(Jaswant Singh)
Judge