

Civil Writ Petition No. 10763 of 2014

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

Civil Writ Petition No. 10763 of 2014

Date of Decision: 20.12.2016

Kamal Sarkar and others

.....Petitioners

Vs.

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sharad Aggarwal, Advocate
for the petitioners.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

Mr. J.S. Mehndiratta, Advocate
for respondent No.4.

RAMESHWAR SINGH MALIK J. (ORAL)

Present writ petition is directed against the order dated 22.4.2014 (Annexure P-23) passed by the Principal Secretary to Government of Haryana, Cooperation Department-respondent No.1, directing the Registrar Cooperative Societies, Haryana, to examine the conduct of the petitioners, ensure conducting of audit of the Society, if not already conducted and also conduct election of Managing Committee, in accordance with the provisions of the Haryana Cooperative Societies Act, 1984 ('the Act of 1984).

Notice of motion was issued and in compliance thereof, different written statements were filed on behalf of the respondents.

Civil Writ Petition No. 10763 of 2014

Petitioners also filed their replications.

The substantive prayer made by the petitioners contained in clause iv of their prayer clause, at page 33 of the paper book, is as under:-

“(iv) issue a writ in the nature of certiorari quashing the order dated 22.4.2014, Annexure P-23, passed by respondent No.1 only to the extent of holding the election conducted on 22.12.2013 as invalid.”

Shorn of detailed background, it would suffice to note basic facts, which are necessary for disposal of the present writ petition. There were serious allegations against the petitioners, which were brought to the notice of the respondent authorities by respondent No.4, by moving different complaints. It is a matter of record that when serious allegations were found having substance, against the petitioners, Assistant Registrar Cooperative Society, Faridabad-respondent No.3 passed two orders of even date, i.e. 17.12.2013 (Annexures P-18 and P-19). Vide order Annexure P-18, respondent No.3 appointed Board of Administrators for the Society of the petitioners, for conducting fresh election of the Managing Committee, as per Section 28 of the Act of 1984. The second order passed on the same day was Annexure P-19, whereby respondent No.3 restrained the petitioners from convening general body meeting of the Society on 22.12.2013 for conducting election, because he had already appointed a Board of Administrators for conducting the election of the Society.

Relevant part of order dated 17.12.2013 (Annexure P-19) passed by Assistant Registrar Cooperative Societies, Faridabad-respondent No.3, available at page 82 of the paper book, reads as under:-

“On the above noted subject you are hereby

Civil Writ Petition No. 10763 of 2014

informed that Board of Administrators has already been appointed by this office in your society vide letter no. 3212-1 dated 17.12.2013. Therefore you are not competent to call GBM in the society on 22.12.2013. It is only the board of administrator which is competent to call general meeting for election purpose. Therefore the general meeting called by you on 22.12.2013 would be deemed to be illegal.”

It seems that despite the abovesaid specific directions having been issued by the competent authority, petitioners proceeded further and convened general body meeting on 22.12.2013, for the purpose of holding election and thereafter, they filed revision petition before respondent No.1 on 28.1.2014, against the abovesaid order dated 17.12.2013 (Annexure P-18). Since the petitioners were claiming themselves to be duly elected Managing Body of the Society, by the election allegedly conducted on 22.12.2013 in the general body meeting of the Society, they did not challenge the abovesaid restraint order dated 17.12.2013 (Annexure P-19) passed by respondent No.3, whereby they were directed not to convene the general body meeting of the Society on 22.12.2013. After hearing learned counsel for the parties and going through the entire record of the case, respondent No.1 declared election of the petitioners conducted on 22.12.2013 as invalid and petitioners are feeling aggrieved, only to this limited extent, against the impugned order dated 22.4.2014 (Annexure P-23) passed by respondent No.1.

Before proceeding further to examine the correctness and validity of the impugned order, relevant part thereof deserves to be referred

Civil Writ Petition No. 10763 of 2014

Amit Kumar
2016.12.23 15:39
I attest to the accuracy and
integrity of this document

here and the same reads as under:-

“The ARCS Faridabad vide his orders dated 17.12.2013 appointed BOA of the Society as no managing committee is in existence in the Society. The ARCS Faridabad issued another order on the same date i.e. 17.12.2013 that since the BOA has already been appointed by him hence petitioners are not competent to call the Annual General Body meeting of the Society. Only the Board of Administrators is competent to call the General Body meeting for the election purpose. Therefore, meeting scheduled to be held on 22.12.2013 will be termed as invalid. Aggrieved with this order, the petitioners have preferred the present revision petition with prayer to stay the operation of impugned order.

In the present revision petition, the issue raised by the petitioner counsel is that since the election process was started in view of agenda notice dated 5.12.2013, the election cannot be postponed. He referred to the provisions of section 28 (2) of the Act. Further, ARCS Faridabad vested with no powers to appoint a Board of Administrators where the Government has not assisted the Society financially or with share capital. He submitted that in the instant case, no financial assistance in any form has been given by the State Government. He referred to the provisions of the Act after the 97th amendment in the Act. Shri Mandeep Tyagi has submitted

that on the directions of Government, an FIR was registered against the petitioners. They were arrested and are on bail at present. The petitioners are involved in criminal proceedings. They want to achieve the financial control over the funds of the Society to fulfill their ulterior motives and to defeat the purpose of Special Audit. He also prayed that his grievance pertaining to financial irregularities in the Society is pending for adjudication before this Court.

I have read the order dated 29.1.2013 of my predecessor but no direction with regard to lodging the FIR was issued, hence, the submission of applicant is not correct. The Society is a group housing Society and the ARCS Faridabd has not mentioned any fact with regard to any financial assistance of Government to the Society. The report called from the RCS Haryana is also silent in this regard. It is also relevant to mention here that in para no.14 of the revision petition, the petitioners have mentioned that the members in GBM held on 22.12.2013 (page 42) elected the petitioners as members of the new Managing Committee of the society for managing the day to day affairs of the society by passing resolution unanimously duly signed by 29 members out of 56 members who attended the meeting.

Therefore, in view of afore-mentioned discussion and 97th amendment in the Act, I set aside the impugned

order dated 17.12.2013 passed by the ARCS Faridabad appointing the Board of Administrators. The Registrar is directed to examine the conduct of the petitioners as alleged by Shri Mandeep Tyagi and take appropriate decision as per law after hearing the parties concerned. That status of audit be verified and if no audit has been conducted as yet, the same be got conducted immediately. The election conducted by the Society on 22.12.2013 has been declared invalid. The Registrar is further directed that the election of managing committee of the Society be conducted within 60 days today as per relevant provisions of the Act. The revision petition is disposed off accordingly.”

A bare combined reading of the abovesaid orders dated 17.12.2013 (Annexures P-18 and P-19) and the impugned order (Annexure P-23) would make it crystal clear that petitioners illegally convened the general body meeting of the Society on 22.12.2013, for which they had no authority in law, unless the abovesaid order dated 22.12.2013 (Annexure P-19) passed by respondent No.3, was set aside by the competent authority. It is also not in dispute that petitioners did not challenge the validity of the order dated 17.12.2013 (Annexure P-19). As the order Annexure P-19 was not challenged, it could not be set aside by any competent authority of the respondent department. In such a situation, respondent No.1 was well within his jurisdiction to declare the election conducted by the Society on 22.12.2013 as invalid, having found the same as violative of the abovesaid order dated 17.12.2013 (Annexure P-19) passed by the Assistant Registrar

Civil Writ Petition No. 10763 of 2014

Cooperative Society-respondent No.3. Having said that, this Court feels no hesitation to conclude that since the impugned order has not been found suffering from any patent illegality or perversity, the same deserves to be upheld.

Another issue was sought to be raised on behalf of the respondents, contending that election of petitioners was, as a matter of fact, set aside, vide order dated 30.1.2014 passed by Assistant Registrar, Cooperative Society, Faridabad-respondent No.3. However, this fact has been strongly disputed by learned counsel for the petitioners. Learned counsel for the respondents tried to substantiate their contention that respondent No.3 was well justified to pass the order dated 30.1.2014, declaring election of the petitioners held on 22.12.2013 as invalid, because the petitioners violated abovesaid order dated 17.12.2013 (Annexure P-19), while convening general body meeting on 22.12.2013. Since the action of the petitioners was illegal and they were not competent to convene the general body meeting on 22.12.2013, said election was nonest in the eyes of law.

Learned counsel for the petitioners controverted the contentions raised by learned counsel for the respondents, contending that had the Assistant Registrar, Cooperative Society, passed the order dated 30.1.2014, it would have been certainly reported by the Registrar before respondent No.1 at the time of passing the impugned order dated 22.4.2014.

Be that as it may and without entering into the controversy of order dated 30.1.2014, this Court is of the considered opinion that unless the petitioners would have successfully challenged the order dated 17.12.2013 (Annexure P-19) passed by respondent No.3, they had no authority to

Civil Writ Petition No. 10763 of 2014

convene the general body meeting on 22.12.2013. Once they were not competent to do so, the election, if any, conducted in the said general body meeting of the Society on 22.12.2013, would be hardly of any consequence and the same has been rightly declared as invalid by respondent No.1, while passing the impugned order, therefore, the impugned order deserves to be upheld, for this reason also.

It seems that petitioners are trying to cover up their misdeeds, proceeding on one or the other technicality. There had been serious allegations against the petitioners. It does not appeal to reason as to why the petitioners have objection in conducting audit of accounts of the Society and why a fair election should not be conducted amongst members of Society. Under the circumstances of the case noticed hereinabove, it can be safely concluded that respondent No.1 committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason as well.

During the course of hearing, learned counsel for the petitioners could not point out any patent illegality or perversity in the impugned order passed by respondent No.1. Further, no prejudice of any kind, whatsoever, has been shown which might have been caused to the petitioners by passing of the impugned order (Annexure P-23), warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference

Civil Writ Petition No. 10763 of 2014

has been made out.

Consequently, Assistant Registrar, Cooperative Societies, Faridabad-respondent No.3 is directed to take immediate necessary steps to ensure conduct of free and fair election of the Managing Committee of the Society, at an early date and in any case, within a period of two months from the date of receipt of certified copy of this order. It goes without saying that election shall be conducted under the direct supervision of the Assistant Registrar, Cooperative Societies, Faridabad-respondent No.3, however, strictly in compliance with the relevant provisions of the Act of 1984 and statutory rules made thereunder

Resultantly, with the abovesaid observations made and directions issued, present writ petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

20.12.2016
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No