CWP-10520-2015 and
CWP-14549-2015

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Judgment Reserved on:09.05.2016
Date of Decision: 03.06.2016

1. **CWP-10520-2015**

Halwasiya Vidya Vihar Sr. Sec. School

... Petitioner(s)

Versus

Registrar General of Societies, Haryana and others

... Respondent(s)

AND

2. **CWP-14549-2015**

Halwasiya Vidhya Vihar Management Committee

... Petitioner(s)

Versus

Registrar General of Societies, Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

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 ?

CWP-10520-2015 and
CWP-14549-2015

Argued by: Mr. Akshay Bhan, Sr. Advocate with
Mr. Alok Mittal, Advocate for
the petitioner (in both the petitions).

None for the State.

Mr. M.K.Verma, Advocate,
for respondent No.5 in CWP-10520-2015 and
for respondent No.4 in CWP-14549-2015.

Paramjeet Singh Dhaliwal, J.

This common judgment will dispose of both the above mentioned writ petitions as overlapping issues have been raised.

CWP-10520-2015 has been filed on 19.05.2015 for issuance of a writ in the nature of certiorari quashing the order dated 16.04.2015 (Annexure P-13) passed by respondent No.1 whereby respondent No.4-Additional Deputy Commissioner, Bhiwani has been appointed as Administrator to manage the affairs of the petitioner-school; further quashing the order dated 12.05.2015 (Annexure P-14) and other consequential orders issued by respondent No.4-Additional Deputy Commissioner, Bhiwani while exercising the powers as administrator of the petitioner-school and for quashing the enquiry report dated 25.03.2013 [Annexure P-8 (Colly.)] submitted by respondent No.4-Additional Deputy Commissioner, Bhiwani recommending the appointment of Administrator of the petitioner-school.

CWP-14549-2015 has been filed on 17.07.2015 for issuance of a writ in the nature of certiorari quashing the order dated 16.04.2015 (Annexure P-25) passed by respondent No.1 and the order dated 14.01.2015 (Annexure P-24) passed by respondent No.2 whereby order dated 31.03.2014 conveyed on 05.05.2015, passed by the District Registrar, Bhiwani de-registering the petitioner-Halwasiya Vidya Vihar Managing Committee (for brevity, 'the Society') has been set aside.

In brief, the facts as averred in CWP-10520-2015 are to the effect that in the year 1961, Smt. Savitri Devi Halwasiya wife of Sh. Proshotam Dass Halwasiya and Smt. Madan Mohini Halwasiya (since deceased) created Charitable Trust namely Jan Kalyan Trust (for brevity, 'the Trust') and got it registered at Kolkata in the year 1962 under the Indian Trusts Act, 1882. The Trust established the petitioner-school on the trust property which was named as Halwasiya Bal Mandir and later on the school was upgraded to the High School level and was named as Halwasiya Bal Mandir High School, Bhiwani. The Trust passed the resolution dated 05.07.1973 (Annexure P-1) for acquiring additional land adjoining the school measuring 8000 square yards and thereafter approached the Government of Haryana for providing the same through local managing committee of the school. Earlier the local managing committee of the school was not registered. The Trust decided to get it registered and the same was registered under the name of “Managing Committee, Halwasiya Bal Mandir High School, Bhiwani”, vide resolution No.6 dated 08.07.1974 [(Annexure P-2 (Colly.)], but the entire control and administration of the school under the Memorandum of Association and Bye-laws of the Society remained with the Trust. The Trust purchased more lands through different modes for the purpose of establishing the school.

In addition to above, details of properties, as mentioned in CWP-14549-2015, purchased by the Trust in the year 1973 and thereafter are as under:

(a) 0 K-12 M land purchased from Parmod Kumar s/o Sh. Ram Kumar and Savitri Devi wd/o Sh. Ram Kumar in the name of Halwasiya Bal Mandir High School, Bhiwani vide sale deed No.459 dated 06.06.1973.

(b) 6 K -13 M land purchased from Parmod Kumar S/o Sh. Ram Kumar, Savitri Devi wd/o Sh. Ram Kumar, Om Parkash S/o Sh. Nanu Ram, Shri Niwas @ Hari Chand S/o Sh. Nanu Ram, Bihari Lal S/o Sh. Gokal @ Gaganmal, Ram Kishan S/o Sh. Maheshar Lal, Surender Kumar S/o Sh. Chhanga Mal, Mahender Kumar and Virender Kumar sons of Sh. Chhanga Mal in the name of Halwasiya Bal Mandir High School, Bhiwani through Rajender Kumar Dhariwal, Manager vide sale deed No.460 dated 06.06.1973.

(c) 8 K- 7 M land purchased from Gopi Chand Goyal S/o Sh. Amar Singh in the name of Halwasiya Bal Mandir High School, Bhiwani vide sale deed No.465 dated 06.06.1973.

(d) 19 K – M land purchased from Jagdish Chand S/o Sh. Gopi Chand, Gajanand S/o Sh. Ram Swaroop and Nanak Chand S/o Sh. Dev Karan in the name of

Halwasiya Bal Mandir High School, Bhiwani through Sh. Rajender Kumar Dhariwal, Manager vide sale deed No.469 dated 06.06.1973.

(e) 1 K – 7 M land purchased from Parmod Kumar S/o Sh. Ram Kumar and Savitri Devi Wd/o Sh. Ram Kumar in the name of Halwasiya Bal Mandir High School, Bhiwani through Sh. Rajender Kumar Dhariwal, Manager vide sale deed No.458 dated 06.06.1973.

(f) Halwasiya Bal Mandir High School, Bhiwani through Sh. Ram Bhajan, Manager and Sh. Narenderjeet Singh purchased 3316.19 sq. yard + 2353.89 sq. yards = 5670.08 sq. yards land from Bhiwani Sudhar Mandal, Bhiwani through Chairman at Market Rate vide agreement dated 17.08.1976 and sale deed No.1592 dated 17.05.2013.

(g) 6 K – 2 M land purchased from Maidhan Dass S/o Sh. Kunj Lal in the name of Halwasiya Bal Mandir High School, Bhiwani vide sale deed No883 dated 23.07.1977.

It is also averred that the Govt. of Haryana acquired 16 K – 5 M land for Halwasiya Bal Mandir High School, Bhiwani vide notification dated 25.06.1976 and possession of the land was later on handed over to the school. Mutation No.10479 was also sanctioned in this regard. A small piece of land underneath although was acquired for constructing a school, its entire compensation which is the market value of the land, was paid by Jan Kalyan Trust and as such, Jan Kalyan Trust is the owner of the school building. The entire land in question was purchased by the Trust vide various sale deeds. The payments were made by the Trust and all movable and immovable properties of the petitioner-school vested in the Trust which are duly reflected in the Income-Tax returns and even as per the record of the Central Board of Secondary Education it is the the Trust which is managing the school. In its meeting held on 12.08.2006, the Trust agreed to pay an honorarium of Rs.200,000/- per year to Smt. Veena Surekha as Director of the petitioner-school being Trust nominee w.e.f. Ist September, 2006. The State of Haryana enacted an Act known as Haryana Registration and Regulation of Societies Act, 2012 (for brevity, 'the 2012 Act') which came into force w.e.f. 29.03.2012. In view of the 2012 Act, registration of managing committee was applied by the Trust which was granted by the District Registrar of Societies, Bhiwani on 21.08.2013 and name of the "Managing Committee, Halwasiya Bal Mandir High School, Bhiwani' was changed to "Halwasiya Vidya Vihar Management Committee, Bhiwani". As per the record, entire control of school and managing committee remained with the Trust. The 2012 Act was amended vide notification dated 08.10.2013 and sub-section 5 was added to Section 9 of the said Act which incorporated a provision of De-Registration. Similarly sub-Rule 4 was added to Rule 8 of the Haryana

Registration and Regulation of Societies Rule, 2012, vide notification dated 25.02.2014, which provides the procedure for de-registration.

Thereafter, the Trust decided to get the Society (Halwasiya Vidya Vihar Management Committee, Bhiwani) de-registered and vide order dated 31.03.2014 {Annexure P-6 (Colly.)} passed by the District Registrar, Bhiwani, the Society was ordered to be de-registered. Against that, respondent No.5 filed appeal before respondent No.2-Registrar of Societies, Haryana which was allowed vide order dated 14.01.2015. Against that, the petitioner preferred appeal which has been dismissed vide order dated 16.04.2015. Consequent upon de-registration of the Managing Committee, the Trust authorized the Manager Sh. Shiv Shankar Kasera to discharge all functions which were earlier being discharged by the members and officer bearers of the Society and Sh. Raj Kumar Saini was authorized to look after the administration of the school and Sh. Ravinder Saini as Executive Director to look after the building, HR and recruitment of school staff etc. In the year 2012, the staff members of the petitioner-school and Bhiwani Sudhar and Vikas Samiti, Bhiwani made complaints dated 18.12.2012 to the Deputy Commissioner, Bhiwani and the same were enquired into by the Assistant Commissioner (under training) Bhiwani, on the directions of the Deputy Commissioner, Bhiwani, who submitted his report dated 25.03.2013 to the Deputy Commissioner vide order dated 26.03.2013. The said report was forwarded by the Deputy Commissioner to the District Registrar, Firms and Societies, Haryana. Thereafter, the

Registrar of Societies, while exercising the powers under Section 55 of the 2012 Act, closed the inquiry initiated on the basis of complaints of the members of the staff of the School as well as respondent No.5. Against that, respondent No.5 preferred an appeal before respondent No.1-Registrar General of Societies, Haryana which was disposed of vide order dated 21.01.2014 (Annexure P-10) with following directions to respondent No.2 to pass a fresh order:

> *"5.4. In view of the above, the appeal is disposed of with the following directions to the State Registrar, Firms and Societies:*
>
> > *1. The State Registrar should ascertain the title and status of the land in question, which has been alleged to have been sold, with respect to the revenue record and whether the same was owned by the Society and sold by the Society. It may also be ascertained whether the land alleged to have been sold by the society is the same which was allowed by the Government to the society to run the Educational Institute. If so, whether the necessary permission of the State Government to sell the said land was obtained by the Society. The State Registrar should also ascertain whether the amount of the alleged sale of land has been deposited/kept with the society, if so warranted.*
> >
> > *II. The State Registrar should inquire and report about the validity/legality appointment of Smt. Veena Surekha as Director of the School and availing of handsome salary and purchase of vehicles for*

personal use of Director and Trustees, in view of the Rules and Regulations of the Society.

III. The State Registrar is also directed to examine whether the bye-laws of the Society are in conformity with the provisions of the Haryana Registration and Regulations of Societies Act, 2012.

The State Registrar may obtain the necessary inputs from the District Registrar as required and then pass orders accordingly, within a period of 45 days."

In the meanwhile, civil suit No380/2013 was filed by Jai Kumar Gupta and others in connivance with respondent No.5 against the Trust under Section 92 of the Code of Civil Procedure wherein prayer for granting interim injunction restraining the Trust from alienating the suit property was declined by learned Additional Civil Judge (Jr. Divn.), Bhiwani, vide order dated 25.02.2014 (Annexure P-11). Thereafter, vide order dated 19.03.2014 (Annexure P-12), respondent No.2 decided point Nos.1 and 2, as directed by the Registrar General of Societies in order dated 21.01.2014 (Annexure P-10) in favour of the petitioner-school but on point No.3, it came to the conclusion that the Trust is having undue supremacy over the Society and thus opined that Bye-laws of the Society be revisited to bring the same in conformity with the provisions of the 2012 Act. Against that, respondent No.5 preferred appeal which was allowed by respondent No.1 vide impugned order dated 16.04.2015 (Annexure P-13) whereby respondent No.4-Additional Deputy Commissioner, Bhiwani has been appointed as Administrator to manage the affairs of the petitioner-school for one year and it was also directed that the Additional Deputy Commissioner shall take charge as Administrator of the Society with immediate effect. Thereafter, in pursuance of the impugned order dated 16.04.2015 (Annexure P-13), the Additional Deputy Commissioner passed the impugned order dated 12.05.2015 (Annexure P-14) and took over the charge as Administrator of the Society by misusing his powers, as after de-registration of the Society, there is neither any member nor any society in existence.

The sum and substance of the case of the petitioner is that the Trust is owner of the properties and controls the affairs of the school. The Deputy Commissioner under Section 54 of the 2012 Act has no power to order an inquiry into the affairs of the school and as such the resultant impugned order dated 12.05.2015 (Annexure P-14) and the enquiry report dated 25.03.2015 {Annexure P-8 (Colly.)} are not sustainable in the eyes of law. The non-furnishing of inquiry report to the petitioner-school, as provided under Section 54 (10) of the 2012 Act, has vitiated the entire process that led to passing of the impugned order dated 16.04.2015 (Annexure P-13). The impugned order dated 16.04.2015 (Annexure P-13) passed by respondent No.1 without issuing any show cause notice of the proposed action and without affording an opportunity of filing any reply is in clear breach of Section 56 (1) and (2) of the 2012 Act.

In pursuance of notice of motion, the respondents put in appearance. Respondent No.5 filed separate written statement with the averments that the impugned order dated 16.04.2015 (Annexure P-13) has been challenged on altogether new facts which were not before the competent authority. An FIR No.43/2014 has been registered against the office bearers/members of the suspended governing body of the society and trustees of Jan Kalyan Trust for misappropriation of Rs.2.90 crores and on this ground, the appointment of Administrator was made. The factum of registration of FIR has been concealed by the petitioner. The suppressed governing body of the school society and the Trust illegally paid salary and honorarium to Smt. Veena Surekha in violation of clause 5(ii) of the Bye-laws of the society and Sections 46 (3) and 90 of the 2012 Act. The recommendation for appointment of Administrator was made on the basis of inquiry report received on the complaint of school staff and answering respondent. The schools/institutions of the Society were controlled and managed by the registered school society as per its Bye-laws from 08.07.1974 and the schools were given grants and aids by the Education Department, Haryana for the period from 1962 to 1985 before changing their affiliation to CBSE, Delhi. Even the school society has been provided land by way of acquisition and allotment by Haryana Government and Bhiwani Improvement Trust, Bhiwani in public interest and for public purpose. The record and accounts of properties of the school society have been mentioned in annual audited balance sheets of the school society submitted before respondent No.3. The school society also renewed its registration under the 2012 Act. The registration certificate also mentions that old name of the society has been changed and school society has been registered under the 2012 Act.

The claim of the petitioner regarding property of the school society as trust property by the petitioner is wrong and beyond pleadings of suspended governing body. It is further averred that the petitioner has no locus standi to file the present petition. The present petition has been filed by the petitioner without authorization from the suspended governing body of the school. The school is an institution of the school society and not of Jan Kalyan Trust as claimed in the present petition. In the present case, the petitioner has not been authorized by the suspended governing body of the school society to challenge the impugned order dated 16.04.2015 and file the preset petition, and the authorization dated 01.09.2013 has been issued by the Jan Kalyan Trust. The school society is owner in possession of all the school properties under its management and the Jan Kalyan Trust has nothing to do with the properties of the school society. All the land was purchased in the name of the school society by the school society from its corpus fund and donations received from various sources. During the hearing of appeal No.19/RGSH of 2013, it was admitted by the suspended school society that new school property was purchased by the school society and the society is having ownership of the school property. An FIR No.209/2007 was registered at Police Station Civil Lines, Bhiwani, under Section 408 IPC against Sh. Om Parkash Goyal, the then school accountant, but no efforts have been made to recover the misappropriated amount. It is pertinent to mention here that the Trust was not even a party in that criminal case and only school society and principal are the parties. The actual audited balance sheet of the school society for the period 31.03.1975 to 31.03.2014 has been concealed by the petitioner. The answering respondent complained about the ill intention of suspended governing body and trustees of the Trust to sell the present school property and misappropriation of society funds via its Hostel Bank Account. The petitioner has not submitted required record to respondent No.4 till 24.07.2015. The Administrator was appointed for the proper administration of affairs of school and for making further inquiries into the acts of suspended governing body. The Administrator is working in ex-officio capacity. The impugned orders have been passed after following the due process of law. The petitioner has not been authorized by the governing body of the school, rather authorization has been given by the Trust to file the present petition. Other averments made in the petition have been denied.

It is pertinent to mention here that no reply has been filed by respondent Nos.1 to 4. However, in pursuance of the order dated 06.04.2016 passed by this Court, Mr. Ashok Kumar, Joint Registrar of Societies, Haryana filed affidavit on behalf of respondent No.1 wherein it is mentioned that the 2012 Act empowers the authorities to appoint Administrator in respect of the societies/bodies registered under the 2012 Act, on account of violations of the provisions thereof. It is further mentioned therein that a perusal of the impugned orders and proceedings would reveal that there are primarily following types of allegations against the petitioner due to which an Administrator has been appointed:

(a) Embezzlement of Funds;

(b) Illegal sale of immovable properties and embezzlement of sale proceeds thereof;

(c) Serious violations of various provisions of Act in the matter of employment of trustees/members of society and payment of salary/remuneration etc. to them contrary to the scheme of Act.

(d) Victimization of Staff.

Replication, to written statement of respondent No.5, reiterating the averments made in the petition and denying the averments made in written statement, has been filed.

None appeared on behalf of the State of Haryana (respondent Nos.1 to 4 in CWP-10520-2015/respondent No.1 to 3 in CWP-14549-2015) on 09.05.2016. The case was pending for arguments on 26.08.2015 and thereafter most of the times, dates had been taken by the State to address arguments. On 04.05.2016, adjournment was granted to the State subject to payment of costs of Rs.5,000/-. On the next date i.e. 09.05.2015, none appeared on behalf of the State and arguments of learned senior counsel for the petitioner and learned counsel for respondent No.5 in CWP-10520-2015/respondent No.4 in CWP-14549-2015 were heard and State was given liberty to file written arguments, subject to costs of Rs.1 lakh. However, the State did not file even written arguments.

I have heard learned senior counsel for the petitioner (in both the petitions), learned counsel for respondent No.5 in CWP-10520-2015/respondent No.4 in CWP-14549-2015 and perused the record.

Learned senior counsel for the petitioner (in both the petitions) vehemently contended that the Deputy Commissioner has no power to order an inquiry into the affairs of a private body. The property in question belongs to the Trust and not to the Managing Committee of the School. The Trust created school and, therefore, no registration of school/Society was compulsorily required in this regard. The de-registration application was moved which was allowed by the District Registrar of the Societies. However, in appeal preferred by respondent No.5, the same was set aside which is under challenge in CWP No.14529-2015. He further contended that the impugned order dated 16.04.2015 (Annexure P-13) passed by respondent No.1 is not sustainable in the eyes of law. The findings recorded by respondent No.1 are not sustainable as no reference to the ownership of the property has been made. Respondent No.2-Registrar of Societies has specifically dealt with the issue of the property in question vested in the Trust and no reasons have been recorded in the impugned order (Annexure P-13) to vary with the findings recorded by respondent No.2. The civil proceedings are already pending in which it has been specifically mentioned that the property is of the Trust and they can sell it. Otherwise also, respondent No.5 has no right to seek enquiry and interfere in the affairs of the Trust and the Society. The District Collector ordered inquiry under Section 54 of the 2012 Act which is not permissible in accordance with law. He has no control over the society registered under the 2012 Act. Since the property is of the Trust, respondent No.3 cannot appoint Administrator for the same. The Managing Committee is only nominated by the trustees and appointment of the Administrator is against the provisions of law. Respondent No.5 has no right and *locus standi* to file an appeal against the order passed by the competent authority merely because he had made some complaint.

Learned senior counsel for the petitioner further contended that de-registration of the Society is permissible under the provisions of the 2012 Act and de-registration was rightly allowed by the District Registrar and the order has been wrongly and illegally set aside by the State Registrar of the Societies vide impugned order dated 14.01.2015 (Annexure P-24) and appeal filed against the same has been erroneously dismissed by the Registrar General of the Societies vide impugned order dated 16.04.2015 (Annexure P-25). He further contended that a Trust can independently run a school and there is no mandatory requirement for registration of the Society under the 2012 Act. Section 9 (5) of the 2012 Act clearly states that if a Society registered under the Act, desires to register itself as a Trust under the Indian Trust Act, can make an application to the District Registrar for de-registration. The only requirement is that the Society should pass a special resolution in this regard.

Per contra, learned counsel for respondent No.5 in CWP-10520-2015/respondent No.4 in CWP-14549-2015 vehemently opposed the contentions of learned senior counsel for the petitioner and contended that respondent No.5 has a right to file appeal as he is the complainant against the petitioner-school and trustees. Since public interest is involved in the present case, therefore, respondent No.5 has a right to file appeal against the order passed by the authorities. Learned counsel for respondent No.5 cited various authorities on the locus standi to file appeal however the same are not relevant at all to the issue in question hence not being referred.

I have considered the rival contentions of learned counsel for the parties.

In the light of arguments raised by learned counsel for the parties, the following points arise for determination by this Court:

(i) *Whether the de-registration allowed by the District Registrar has been erroneously set aside by the State Registrar of the Societies vide impugned order dated 14.01.2015 and its order has been erroneously upheld by the Registrar General of the Societies vide impugned order dated 16.04.2015?*

(ii) *Whether the appointment of Administrator-respondent No.4 is against the law and facts on record?*

Before proceeding further, it would be apposite to reproduce relevant provisions. Sections 9(5), 46, 54, 57 and 79 of the 2012 Act read as under:

> *"**9. Registration.** - (1) xxxx*
>
> *(2) xxxx*
>
> *(3) xxxx*
>
> *(4) xxxx*
>
> *(5) A Society registered under this Act, may seek its de-registration, if it so desires to register itself as a Trust under the Indian Trusts Act, 1882 (Central Act 2 of 1882), by making an application to the District Registrar in this behalf. The application shall contain the grounds for de-registration duly approved by the Society through a special resolution. The District Registrar may de-register such Society, if satisfied. If the District Registrar is not satisfied, he shall pass an order in this behalf within a period of thirty days specifying the reasons thereof.*
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> ***46. Application of funds.** - (1) A Society shall have the powers to spend such sums out of its funds, as it thinks fit, for the purposes authorized under its Bye-laws or by the Act.*
>
> *(2) No payment shall be made out of the funds to the President, Vice-President, Secretary, Treasurer or any other office bearer by way of honorarium or remuneration :*
>
> *Provided that incurring of any expenditure on the Boarding/ Lodging and TA/DA of the office bearers while on tour in connection with the affairs of the Society, shall be permissible following the prudent financial norms.*
>
> *(3) Notwithstanding the restrictions prescribed above, a Society may pay such remuneration, salary or honorarium to the persons in its full-time or part-time employment, as it may determine:*
>
> *Provided that no member shall be in the employment*

of the Society.

54. Power of inquire. - *(1) Where on the information received or gathered under section 52 or on the application of a majority of the office bearers or on the application of not less than one-third of the members of the General Body or Collegium, as the case may be, or, if so moved by the District Collector or the State Government, the Registrar General, Registrar or District registrar is of opinion that there is apprehension that the affairs of a Society are being so conducted as to defeat the*

aims and objects of the Society or its Governing Body is guilty of mismanaging its affairs or of any breach of fiduciary or other like obligations or to defraud its creditors, he may, either himself or by any person authorized by him in that behalf, hold an inquiry into the affairs of the Society.

(2) An application or reference to the Registrar General, Registrar or District Registrar under sub-section (1) shall be supported by such evidence, as he may require for the purpose of showing that the applicant has good reason for applying for an inquiry.

(3) The District Registrar may require the applicants to furnish such security as he thinks fit as the cost of the proposed inquiry, before the inquiry is ordered.

(4) All expenses incidental or preliminary to the inquiry shall, where such inquiry is held,.

(a) on application, be defrayed by the applicants thereof or out of the assets of the Society or by the members of the Society, in such proportion as the District Registrar may, by order in writing direct;

(b) on a reference from the District Collector or the

Government or the District Registrar.s, own motion, be defrayed out of the assets of the Society and shall be recoverable as arrears of land revenue.

(5) A person holding an inquiry shall have, at all reasonable times, free access to all the documents and shall have power to call upon any office bearer or officer to produce any of the document, as he may direct.

(6) It shall be the duty of all office bearers or officers, who were or are holding office, to furnish the Inquiry Officer with all the information or document in their possession.

(7) A person holding an inquiry may summon and examine any person on oath who, he has reason to believe, has knowledge of any affairs of the Society and may summon any person to produce any books of accounts or documents belonging to him or in his custody, if the person holding the inquiry has reason to believe that such books of accounts or documents contain any entries relating to transactions of the Society.

(8) A person holding an inquiry may, if in his opinion it is necessary for the purpose of inquiry, seize any or all the documents:

Provided that any person from whose custody such documents are seized shall be entitled to a receipt thereof and make copies thereof.

(9) If the inquiry is held by a person other than the District Registrar then he shall send the report to the District Registrar and the District Registrar shall make a report to the Registrar alongwith his recommendations. If the inquiry is held by the District Registrar himself, he shall forward the report to the Registrar alongwith his

recommendations.

(10) The inquiry report shall be communicated to the Society and the applicants, if any.

57. Removal of defunct Society and cancellation of their registration. -- *(1) The District Registrar, in case he has reasonable cause to believe that a Society is defunct and is not carrying on business or operations, shall issue a show cause notice to such Society, at its registered office enquiring as to whether it is carrying on its business or operations and directing them to file such documents or returns, within a period of ninety days, from the date of issue of notice.*

(2) Where the defunct Society responds to such notice within specified period and submits the requisite documents or informs alongwith evidence that it is carrying on business or operations, the District Registrar shall, after due verification of records, pass an appropriate order.

(3) If the District Registrar receives a reply from the defunct Society to the effect that it is not carrying on any business or operations, he may direct the Society to convene a meeting of its General Body and pass a special resolution for its dissolution after settling all its liabilities and thereafter apply for dissolution of the Society, whereupon it shall be incumbent upon such Society to carry out such directions, within specified period.

(4) Where the District Registrar does not receive any reply within specified period, he shall cause a public notice to be issued stating that on the expiration of such period, as may be specified in such notice, the registration of such defunct Society shall be suspended.

(5) If no response is received from the defunct Society, its

member, creditor or claimant within the specified period, the District Registrar shall order suspension of registration of such Society and after passing of such order, the Society shall not be competent to carry on any business.

(6) An order under sub-section (5) suspending the registration of the Society shall be notified through a public notice for the information of general public.

(7) The Society, member, creditor or claimant aggrieved with the suspension, may, within a period of three months from the date of order of suspension, submit a representation to the District Registrar.

(8) The District Registrar, on being satisfied that the Society at the time of its suspension, was carrying on business or operations or otherwise and it is just and equitable that the name of the Society be restored to the register, may revoke the suspension.

(9) The Society whose registration is restored shall be deemed to have continued in existence as if its registration had not been suspended.

(10) No claims, whatsoever, shall be valid and entertained against a Society whose registration is suspended on expiry of a period of three months from the date of suspension of its registration.

(11) If no representation against the suspension order is received within a period of three months from the date of suspension of registration, the District Registrar may, unless contrary is shown, strike off the name of the Society from the register and cancel its registration.

79. Appeals and review: - *(1) An appeal against any orders passed by the District Registrar shall lie with the Registrar and the appeal against the orders passed by the*

Registrar shall lie with the Registrar General. The orders passed by the Registrar General in any such appeal shall be final and no further appeal shall be competent against his orders.

(2) Where an order originates from the Registrar General, an appeal against such order shall lie before the Government.

(3) Any appeal shall be filed within a period of sixty days of the date of issue of the impugned orders. The appellate authority may entertain an appeal beyond this period up to a maximum of another sixty days on sufficient grounds for condonation of delay being shown.

(4) Every appeal shall be accompanied with the fee as prescribed.

(5) The District Registrar, Registrar or the Registrar General may suo motu or on an application received in this behalf from any party that any order has been passed which is based on some erroneous facts or carries some patent error or suffers from some inadvertent mistakes, may review its order within ninety days of its passing with the prior permission of the next higher authority.

In Re: Point No.(i)

Admittedly, the Trust was created on 22.03.1961 by Smt. Savitri Devi Halwasiya and Madan Mohini Halwasiya and it was registered in 1962 at Kolkata. The Trust set up a school on a land donated by Smt. Savitri Devi Halwasiya at Dinod Gate, Bhiwani known as Halwasiya Bal Mandir School. The Managing Committee of the School was appointed by the trustees. The major part of the land as mentioned in earlier paragraph was purchased by the Trust. Only 16 kanals 5 marlas were acquired through the govt. by the Trust and the compensation was paid by the Trust for the same. The Trust was performing its duties through trustees and their nominees. The old school was upgraded to a high school level and its managing committee known as Halwasiya Bal Mandir High School Society was registered on 08.07.1974 vide registration No.6/74-75. After the coming of the 2012 Act into operation, fresh registration was got done on 21.08.2013.

The trustees of the Trust realized that a Trust can independently continue with the activities of school and the society has been got registered under a mistaken belief. Accordingly the Society passed resolution dated 16.02.2014 (Annexure P-14 in CWP-14549-2015) that the Halwasiya Vidya Vihar Management Committee, Bhiwani be authorized to sign all the papers regarding de-registration process and special resolution was passed on 18.03.2014 (Annexure P-15 in CWP-14549-2015) for de-registration of the Society on the basis of which an application in Form-VII-A (a part of Annexure P-16 in CWP-14549-2015) was moved. The ground mentioned for de-registration was that there is no reason to have a separate society under it as the Trust is the real owner and it controls all the affairs run by the Society. The existence of two legal entities involved double paper work and other formalities resulting into loss of time and money and consequently, it was decided to move application for de-registration before the competent authority. The District Registrar after considering the request ordered de-registration vide order conveyed on 31.03.2014/05.05.2014 (Annexure

P-23 in CWP-14549-2015). Against that, respondent No.5 preferred an appeal to the State Registrar of the Societies who allowed the appeal vide order dated 14.01.2015 (Annexure P-24 in CWP-14549-2015) and set aside the order conveyed on 31.03.2014/05.05.2014 (Annexure P-23 in CWP-14549-2015). There is a categoric finding that Sh. Ghana Nand Sharma and Smt. Sarla Sharma moved application and the de-registration was opposed. Earlier the Registrar General of the Societies had remanded the case vide order dated 21.01.2014 (Annexure P-10 in CWP-10520-2015) directing the State Registrar to decide the matter afresh on the points as reproduced in the earlier part of the judgment.

The fact remains that as per Section 9 (5) of the 2012 Act, if a Society wants to be registered as a Trust under the Indian Trust Act, 1882, then application for de-registration can be moved if the Society passes a special resolution. In the present case, special resolution (Annexure P-15) and authorization (Annexure P-14) have been passed. The requirement of Section 9(5) has been fulfilled. Besides this, an undertaking to submit indemnity bonds in terms of Rule 8 of the Haryana Registration and Regulation of Societies Act read with Section 9(5) of the 2012 Act, has been given. As such, de-registration of the Managing Committee of the Society has been rightly allowed.

Admittedly, the State was never aggrieved against the de-registration, it is the third party which has filed an appeal to the State Registrar of the Societies. Now the question which goes to the root of the case is as to whether a private person i.e. Respondent No.5 could have filed any appeal against the order of District Registrar or State Registrar, when he is not at all a party and is only a complainant. This Court is of the opinion that Section 79 of the 2012 Act which deals with appeals and review, provides that appeal against any order passed by the District Registrar shall lie with the Registrar and the appeal against the orders passed by the Registrar shall lie with the Registrar General. The orders passed by the Registrar General in any such appeal shall be final and no further appeal shall be competent against his orders. It also provides that an appeal shall be filed within a period of sixty days of the date of issuance of the impugned orders. Section 79(5) of the 2012 Act specifies that District Registrar, Registrar or the Registrar General may *suo motu* or on an application received in this behalf from any party that any order has been passed which is based on some erroneous facts or carries some patent error or suffers from some inadvertent mistakes, may review its order within ninety days of its passing with the prior permission of the next higher authority. The aforesaid part of section is with regard to the review of the order passed, but the third party has not been given any right to file appeal under this section. Respondent No.5 being mere complainant has no right to challenge the order passed by the competent authority, as such respondent No.5 was not having any locus standi to file appeal as he is neither a member of the Society/Managing Committee nor he is a trustee.

Section 57 of the 2012 provides cancellation of registration of Society upon an inquiry. Once the Trust is already existing and subsequently Managing Committee was formed for running the school and other arrangements. The de-registration has been applied as already the Trust was in existence and the requirement of Section 9(5) of the 2012 Act stands fulfilled. The Trust can independently run the school. The application was rightly allowed by the District Registrar vide order dated 05.05.2014 (Annexure P-23 in CWP-14549-2015) and, therefore, the same is upheld and the impugned orders dated 14.01.2015 (Annexure 24 in CWP-14549-2015) and 16.04.2015 (Annexure P-25 in CWP-14549-2015) are set aside and the point No.(i) is answering accordingly.

In Re: Point No.(ii)

Admittedly, the Trust was created in the year 1961 and it was got registered in the year 1962 at Kolkata. The Trust established the school known as Halwasiya Bal Mandir and thereafter in July, 1979, the school was upgraded and name of managing committee was changed as local managing committee of the Halwasia Bal Mandir High School, Bhiwani. Initially, the managing committee of the school was not registered and it was got registered on 08.07.1974 (Annexure P-2). Earlier the matter came up before respondent No.1-Registrar General of Societies, Haryana who vide order dated 21.01.2014 remanded the matter to respondent No.2-Registrar of Societies, Haryana. A relevant extract of the said order dated 21.01.2014 has been reproduced in the earlier part of the judgment

In pursuance of the order dated 21.01.2014 (Annexure P-10), respondent No.2-Registrar of Societies proceeded with the matter and it has been recorded with regard to sale of land (nohra) bearing MC No-782 that Smt. Savitri Devi was its owner who had formed the Trust by placing this land in that Trust. It has also been recorded that respondent No.5 did not produce any proof that ownership of this particular land lies in the name of the society and not in the name of the Trust and also any evidence that the land was sold by the Society and not by the Trust. As such, it is proved that the land was sold by the Trust being its property and no land of Society was sold.

Even in the affidavit dated 09.05.2016 filed by Sh. Ashok Kumar, Joint Registrar of Societies, Haryana on behalf of Registrar General of Societies, Haryana, it is specifically mentioned that the property of the Managing Committee of the School has been sold and there is no reference as to who was the owner of the property, rather it is mentioned that sale deeds were executed in the name of the Trust and land has been acquired for the Trust. In civil suit No.380 of 2013, titled as 'Jai Kumar Gupta and others vs. Jan Kalyan Trust and others', filed under Section 92 of the Code of Civil Procedure, pending in the Court of learned Civil Judge (Sr. Divn.), Bhiwani, the prayer for granting ad interim injunction was declined vide order dated 25.02.2014 (Annexure P-11). A relevant extract of the order dated 25.02.2014 reads as under:

> *"5. After hearing learned counsel for the parties and going through the case file very carefully, this Court is of the view that no case is made out for issuing blanket injunction against the defendants. Annexure P-II is the trust deed dated 22.03.1961 vide which defendants-trust came*

into existence. Meaning thereby, trust deed dated 22.03.1961 i.e. Annexure P-II upon the case file is the solemn document of this case. Neither plaintiffs, nor defendants and no even the Court can go beyond the letter and sprit of Annexure PII. As per para No.5 of the Annexure P-II, trustees shall have the entire control and management and supervision of the trust and all the income, funds and properties thereof and may exercise any of the power under the trust. More specially, in sub para No.4 of para no.5 of Annexure P-II, it is clearly mentioned that trustees are having full power and liberty to sell and otherwise deal with the corpus of the trust fund. So, in these circumstances, it is clear that trustees of the defendants trust are having clear cut power to deal with the property of the trust. Defendants have admitted that they had shifted the school from the oil building to new building. Accordingly (sic. According) to defendants, they deposited the income from that transaction in the account of the trust. Prima facie, the plaintiffs have failed to prove that trustees of the defendant trust are in any manner misusing or embezzling the funds of the trust. Only, on the basis of vague apprehension, injunction cannot be passed. Moreover, if such type of injunction is granted, then definitely the work of the defendants trust may be adversely affected because in case of genuine legal necessity trustees will be prevented from alienating the property of the trust regarding which they have valid power as per trust deed dated 22.03.1961. The question as to whether any alienation or change of user made by the defendants is a violation of the trust deed dated 22.3.1961 can only be decided after such transaction but on the basis of apprehension blanket injunction cannot be *passed against trustees of the defendant trust. Plaintiffs allegation that in the earlier sale transaction less amount has been shown in the agreement to sell than the actually received by the trust is not prima facie proved. No doubt, if any transaction would be made by the trustees of the defendants-trust in violation of trust deed dated 22.03.1961 then definitely that transaction can be challenged by the aggrieved person, but at this stage no ground is made out for restraining the trustees of the defendant trust from alienating or otherwise dealing with the property of the defendant trust and accordingly, injunction application is disposed of."*

Perusal of the order dated 25.02.2014 (Annexure P-11) reveals that liberty has been given to the trustees to sell the Trust property. The findings recorded by respondent No.2-Registrar of Societies, Haryana have not been dealt with by respondent No.1. In fact, no evidence has been bought on record to show that the property does not belong to the Trust. It is well settled that he who alleges must prove the fact. There is a categorical finding recorded by respondent No.2 that land was donated by Smt. Savitri to the Trust and the Trust sold this land and the proceeds were deposited in the account of the Trust only. Otherwise also, there is no complete prohibition from transferring or alienating its movable property but it is subject to certain conditions.

So far as the legality and validity of appointment of Smt. Veena Surekha as Director of the school and availing of handsome salary and purchase of vehicles for personal use of the Director and trustees is concerned, Section 46 (3) of the Haryana Registration and Regulations of Societies Act, 2012 provides that no member shall be in the employment of the Society and on this basis, respondent No.5 challenged the appointment of Smt. Veena Surekha as Director of the School appointed by the Society. Respondent No.2-State Registrar of the Societies has specifically dealt with this point and observed as under:

> *"(i) The second issue for determination was the appointment of Smt. Veena Surekha as Director of the school. It is correct that Section 46 (3) provides that no member shall be in the employment of the Society and on this basis the appellant has challenged the appointment of Smt. Veena Surekha appointed as a Director of the School. On this point the matter is examined and it is observed that Smt. Surekha is not in the employment of society but she is employed in the institution run by the Society. This point has been clearly examined, discussed and decided in the meeting held on 4.7.2013 with the following observations:*
>
> > *"Section 46(3) is clear in this behalf. Hence, no member shall be in the employment of a society. However, a head of the institution run by the Society, even though he is getting salary for his work, could be a nominated member of the society over and above the total membership strength but he shall not be entitled to vote in such a case.*
>
> *In view of above a Director of a School appointed by a Society, though is also a member of the Society without voting right is not in contravention with the*

provisions of the Act."

It is, thus, clear that the Director of a school, appointed by the Society, though is also a member of the Society but without voting right, is not in contravention with the provisions of the 2012 Act. Merely paying some remuneration to the Director does not mean that he is a full-time employee. Even an Administrator is paid remuneration as per Section 56 (4) of the 2012 Act, then it is also identically placed as Director. Otherwise also, control of the school vests in the Trust.

Respondent No.2 has recorded a finding of fact on the point as to whether the bye-laws of the Society are in conformity with the provisions of the Haryana Registration and Regulation of Societies Act, 2012. It has been recorded that the Trust has been given an undue supremacy over the Society and recommendation has been made for revisiting the bye-laws of the Society in conformity with the provisions of the 2012 Act. These findings are advisory in nature. The Trust is owner of the movable and immovable property and has persuasive control over the school and the managing committee of the Society. The Managing Committee is not elected by way of elections, rather it is nominated by the Trust. All these points have not been dealt with properly by respondent No.1. Respondent No.1 has not discussed as to whether this property belongs to the Trust, rather there is a categoric finding recorded by respondent No.2 that Smt. Savitri Devi, who had created the Trust, had donated the property. Otherwise also, the Trust has been created much earlier and no reference has been made in the order about the properties acquired subsequently and are not the trust properties. The details of the same are already given in the earlier part of this judgment. So far as the appointment of Smt. Veena Surekha is concerned, this has also not been dealt with properly by respondent No.1, rather dealt with in a casual manner. Section 46 (3) of the 2012 Act specifies that notwithstanding the restrictions prescribed in that Section, a Society may pay such remuneration, salary or honorarium to the persons in its full-time or part-time employment as it may determine.

Section 54 of the 2012 Act provides that where on the information received or gathered under section 52 or on the application of a majority of the office bearers or on the application of not less than one-third of the members of the general body or Collegium, as the case may be, or, if so moved by the District Collector or the 'State Government, the Registrar General, Registrar or District Registrar is of opinion that there is apprehension that the affairs of a Society are being so conducted as to defeat the aims and objects of the Society or its Governing Body is guilty of mismanaging its affairs or of any breach of fiduciary or other like obligations or to defraud its creditors, he may, either himself or by any person authorized by him in that behalf, hold an inquiry into the affairs of the Society. The property belonged to the Trust, which started the school and thereafter the Society was registered and subsequently application for de-registration was moved which was allowed by the District Registrar.

The power appointing and enabling the Administrator to perform the duties and to supersede erring Managing Committee are to be exercised only sparingly to bring the Society and the Managing Committee to books. That power can only be exercised after giving opportunity of being heard to the concerned Committee and all the powers are to be exercised objectively and reasonably. Here is a case where the Trust is owner and for limited purpose of managing the school, the managing committee has been created. There is no issue of election of the Society. The basic purpose of the Administrator under the provisions is where there are number of members of the Society and no elections are held or there is a dispute among the members of the Managing Committee, then the administrator is appointed to hold elections. The spirit of law is that an Administrator should set the things right and hold the elections and his status is like a guest to manage the affairs of the society till committee is constituted. Administrator being *ad hoc* appointee, has restricted powers, he can only look after the functions of the Society and cannot implement major decisions. Administrator replaces the committee but the supremacy of the Trust still continues. There is no provision in the 2012 Act and rules and Bye-laws framed thereunder that on appointment of the administrator meeting cannot be held by the nominees of the Trust.

In view of the above, appointment of the Administrator is set aside being not in consonance with the provisions of the 2012 Act. Otherwise also, when the findings allowing de-registration has been allowed, appointment of the Administrator cannot survive as the

Managing Committee/Society has come to an end and the provisions of the 2012 Act will not apply. Point No.(ii) is decided accordingly.

In view of the above, both the writ petitions are allowed. The impugned orders dated 16.04.2015 (Annexure P-13 in CWP-10520-2015), 12.05.2015 (Annexure P-14 in CWP-10520-2015) and other consequential orders and enquiry report dated 25.03.2013 [Annexure P-8 (Colly.) in CWP-10520-2015] are set aside. The impugned order dated 16.04.2015 (Annexure P-25 in CWP-14549-2015) and 14.01.2015 (Annexure P-24 in CWP-14549-2015) are set aside.

No order as to costs.

03 .06.2016 **(Paramjeet Singh Dhaliwal)**
parveen kumar **Judge**