

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.23487 of 2012
Date of decision: 24.10.2016

Prem Coop. Group Housing Society Limited

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms. Priyanka Sud, Advocate
for the petitioner.

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

Mr. S.S. Dalal, Advocate
for respondent No.4.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the order dated 01.12.2010 (Annexure P-10) passed by the Financial Commissioner and Principal Secretary, Cooperation Department, Haryana, Chandigarh-respondent No.1, thereby dismissing the revision petition filed by the petitioner society under Section 115 of the Haryana Cooperative Societies Act, 1984 ('Act of 1984' for short), upholding the order dated 24.04.2009 (Annexure P-9) passed by Registrar, Cooperative Societies, Haryana-respondent No.2, setting aside the order of cancellation of membership of respondent No.4, passed by the petitioner-Society, petitioner has approached this Court, by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the

impugned orders.

Notice of motion was issued and in compliance thereof, one written statement was filed on behalf of respondents No.2 and 3. Another written statement was filed on behalf of respondent No.4. Petitioner filed its replication to the written statement filed by respondent No.4. Thereafter, the writ petition was admitted for regular hearing vide order dated 07.05.2014 passed by this Court. That is how, this Court is seized of the matter.

Learned counsel for the petitioner vehemently contended that when respondent No.4 did not deposit her remaining amount towards the cost of flat, she was duly served with appropriate notice, which was received by her, as is clear from her own letter (Annexure P-6). Due procedure was followed and only thereafter, appropriate order was passed cancelling the membership of respondent No.4. She further submits that since respondents No.1 and 2 failed to appreciate the true factual position about the unwillingness of respondent No.4 in making the payment of her share towards the cost of construction in time, impugned orders are patently illegal and the same are liable to be set aside. Learned counsel for the petitioner submits that if every member of a cooperative society does not cooperate with the management of the society in discharging his/her financial obligation in time, management of the society cannot be run smoothly nor other members of the society can be made to suffer for the fault of defaulting members of the society. She prays for setting aside the impugned orders, by allowing the present writ petition.

Per contra, learned counsel for the respondent No.4, while strongly opposing the abovesaid contentions raised by learned counsel for the petitioner, submits that neither the petitioner properly served respondent No.4 by way of

registered notice, which was mandatory to be issued to respondent No.4 under the relevant byelaws of the society, nor the mandatory approval of Registrar, Cooperative Societies, Haryana was obtained by the petitioner-Society, for cancelling the membership of respondent No.4, thereby causing manifest injustice to her. Respondent No.4 was always ready and willing to deposit the amount of her share with the petitioner-Society. In this regard, her bonafides were clear from the fact that she issued a cheque No.804414 dated 10.04.2005 of ICICI Bank Ltd., Vasant Vihar Branch, New Delhi. However, since some dispute was going on amongst the office bearers of the petitioner-Society, they did not submit the cheque of the petitioner for payment thereof.

In this regard, learned counsel for respondent No.4 also placed before this Court a photocopy of the letter dated 11.07.2005 sent by respondent No.4 to the petitioner-Society, through registered post and the same has been taken on record as Mark 'A'. He submits that for want of mandatory approval of Registrar, Cooperative Societies, Haryana, cancellation of membership of respondent No.4 at the hands of the petitioner-Society would be void ab initio and the subsequent proceedings taken or orders passed in that regard, would be of no consequence, being non-est. Learned counsel for respondent No.4 would next contend that although respondent No.4 was never at fault, yet since the petitioner-Society did not receive the amount from respondent No.4 and she has been using the same, she is ready to deposit the total outstanding amount along with interest @12% per annum, within a reasonable time granted by this Court. So far as the impugned orders are concerned, learned counsel for respondent No.4 submits that these are factually correct and legally sustainable, which have been passed in consonance with the order dated 27.07.2011 passed by this Court

in CWP No.13304 of 2011 (New Shivani Co-operative Group Housing Society Ltd. Vs. State of Haryana and others) (Annexure R-4/1) and the same has been upheld by the Division Bench of this Court vide its order dated 03.04.2014, passed in LPA No.2134 of 2011. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the totality of facts and circumstances of the case noticed hereinabove, present writ petition has been found without any merit and the same is liable to be dismissed. The impugned orders deserve to be upheld, for the following more than one reasons.

During the course of hearing, when a pointed question was put to learned counsel for the petitioner to show any communication or order wherefrom it could be made out that Registrar, Cooperative Societies, Haryana, accorded its approval to the order of expulsion of respondent No.4 from her membership of the petitioner-Society, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. It is also not in dispute that approval of Registrar, Cooperative Societies, Haryana was mandatory for cancelling the membership of respondent No.4. This issue was specifically raised by respondent No.4 in para 17(1) of her written statement. However, said specific averment taken by respondent No.4 has gone unrebutted by the petitioner-Society in para 17(1) of its replication.

In this view of the matter, it has gone undisputed before this Court that approval of Registrar, Cooperative Societies, Haryana was mandatory in

nature, which was not granted to the petitioner-Society. In view of the undisputed fact situation obtaining on record of the present case, it can be safely concluded that the petitioner-Society acted illegally by cancelling the membership of respondent No.4, while acting without jurisdiction.

In such a situation, respondent No.4 rightly felt aggrieved and her appeal was rightly allowed by the Registrar, Cooperative Societies, Haryana vide impugned order dated 24.04.2009 (Annexure P-9), which deserves to be upheld. The relevant operative part of the order passed by Registrar, Cooperative Societies, Haryana, at page 67 of the paper book, which deserves to be noticed here, reads as under: -

“I have gone through the facts of the case and arguments advanced by the parties. The appellant had deposited 25% amount and she was trying to contacting the society but failed to contact. The respondent counsel produced a detail of notices issued under UPC to the appellant. The notice sent under UPC is not an authenticated document. There is only one notice dated 14.5.2004 sent through Regd. Post. It appears that the society was in a great hurry to rush through the procedure. So that the share of the appellant is cancelled at the earlier. If registered notice had been issued to the appellant, she might have tried to clear her dues. But no registered notice was sent to the appellant prior to 14.5.2004. In such cases where the appellant was a defaulter of a society or does some act or omission which can lead to the cancellation of his/her membership and the society thereupon restored to the course of cancelling his/her membership, there is a well laid down provision under the

Act wherein the society will have to seek prior approval of the Registrar, Cooperative Societies, Haryana for taking such action. In the instant case though the society has taken the action in right earnest yet, the same was never got approved by the Registrar, Cooperative Societies. Moreover, the appellant is ready to pay the dues against her. Therefore, the action of the society cancelling the membership of the appellant is defective due to this reason and cannot be sustained under law. In view of the above discussion, the present appeal is accepted.”

Petitioner-Society challenged the abovesaid order by way of revision petition before respondent No.1 and the said revision petition was also rightly dismissed vide impugned order dated 01.12.2010 (Annexure P-10), operative part of which, reads as under: -

“After hearing and perusing the record that in this case expulsion of member is involved. The society alleges that membership was cancelled after due notice though UPC, whereas respondent alleges that no notice has been served and approval of RCS, Haryana, Panchkula has not been obtained in regard to the expulsion of member. The petitioner society failed to prove that the respondent was served with registered notice which is mandatory under bye laws. It is clear that no approval of RCS Haryana, Panchkula has been obtained, the petition is dismissed being devoid of any merit (it is missing in the order Annexure P-10) and impugned order dated 24.4.2009 passed by RCS, Haryana, Panchkula upheld (wrongly typed as 'held' in the order Annexure P-10).”

A bare combined reading of both the impugned orders would make it crystal clear that the respondent authorities proceeded on a factually correct and legally justified approach, while passing their respective impugned orders and the same deserve to be upheld. It is so said because the impugned orders have been found based on true facts and both the respondent authorities have recorded cogent findings, duly supported by sound reasons. Having said that, this Court feels no hesitation to conclude that neither respondent No.1 nor respondent No.2 committed any error of law, while passing the impugned orders (Annexures P-9 and P-10) and the same deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the order dated 27.07.2011 passed by this Court in **New Shivani Cooperative Group Housing Society Ltd.'s** case (supra), which has been upheld by the Division Bench of this Court vide order dated 03.04.2014 passed in LPA No.2134 of 2011. The relevant part of the order passed by the Division Bench of this Court, which can be gainfully followed in the present case, reads as under: -

“Learned Single Judge when dismissing appeal, filed by the appellant has observed as under:-

“I have carefully perused the proceedings (Annexure P/8). From the perusal of Annexure P/8, I find that membership of respondent No.3 was cancelled for non-payment of outstanding amount of Rs.3,75,000/- despite notice. There is no whisper in proceedings (Annexure P/8) that the membership is being cancelled on account of any false affidavit. It seems that in order to justify the cancellation, the petitioner is setting up a new case.

Bye-laws 9(A) and 9(B) of the petitioner –Society read as

under:-

“9(A) - A member may be expelled from the Society by the vote of not less than three-fourth of the members present subject to the approval of R.C.S. and voting at a general meeting of the Society on a motion that in the opinion of the meeting such member has:

i) willfully deceived the society by false statement;

ii) has been bankrupt;

iii) being criminally conducted of an offence involving moral turpitude.

9-B - The Committee shall give a member 30 days written notice of the proposal to expel him. The members explanation, if any shall be placed before the general meeting for consideration.”

Perusal of Bye-law 9(A) reveals that expulsion shall be subject to approval of Registrar, Co-operative Societies. No material is placed before me to say that Registrar, Cooperative Societies has accorded any approval to the expulsion of respondent No.3. Learned Registrar, Cooperative Societies seems to be justified in observing that any expulsion without his approval is nonest. Moreover, it would be arbitrary and unjustified and against the principle of equity to expel a member who has already deposited about Rs.15,90,000/- (as observed by respondent No.1 in the order dated 03.02.2010, annexure P-12) while as per the schedule of the price, cost of the flat is Rs.14 lacs. Record reveals that respondent

No.3 thereafter also tried to make payment of the amount demanded by the petitioner – society which was said to be refunded by the petitioner – society saying that amount tendered by respondent No.3 was after the expulsion.

In the peculiar facts and circumstances of this case, I am not inclined to exercise my writ jurisdiction to interfere with the orders passed by the Registrar, Cooperative Societies and Financial Commissioner/Principal Secretary. Petitioner – Society is duty bound to allot the flat to respondent No.3 after receiving rest of the amount if outstanding from respondent No.3.”

It seems that order passed by the learned Single Judge is perfectly justified. There is violation of Bye Laws of the society in cancelling membership of respondent No.3. Further, it appears that action was taken in a hasty manner. In response to notice asking respondent No.3 to deposit balance price, she filed an application making request to the society to explain on what basis amount has been demanded. The said letter was not replied to and rather action was taken cancelling her membership.

Contention of counsel for the appellant is that membership was cancelled also because a false affidavit was filed to get a plot allotted. We have perused resolution dated 11.12.2005. It does not support argument raised by counsel for the appellant. Furthermore, before the Appellate and the Revisional Authorities, no such issue was raised. It appears that the appellant is determined to defeat the right of respondent No.3 and may be, on

account of that a plea, which was never raised earlier, has been taken up for the first time in the writ petition.

No case is made out for interference in the impugned orders.

Accordingly, this appeal is dismissed.”

It has also gone undisputed before this Court that respondent No.4 deposited an amount of Rs.36,456/-. It was made clear by the petitioner itself in para 17 (3) of its replication, at pages 116-117 of the paper book and the same reads as under: -

“That the contents of the sub-para No.3 of the written statement is wrong and false hence denied. That the amount deposited by the respondent No.4 was merely to the tune of Rs.36456/- which was actually ascertained by the Inspector appointed by respondent No.3 and the 25% of the amount was Rs.120844/- which was not deposited as mentioned in notices sent to respondent No.4 as well as checked by the Inspector which is the Annexure P-7 (Page 53) of the petition.”

Strictly speaking, respondent No.4 does not seem to be at fault, as such, in view of the peculiar facts and circumstances of the case noticed hereinabove. However, learned counsel for respondent No.4 has made a very fair statement in this regard that respondent No.4 is ready and willing to deposit all the outstanding amount along with interest @12% per annum. This stand taken on behalf of respondent No.4 has been found very genuine and fair by this Court as well and the same deserves to be accepted.

So far as the impugned orders are concerned, none of them has been

found suffering from any patent illegality or perversity. Further, no prejudice, of any kind whatsoever, has been shown, which might have been caused to the petitioner by passing the impugned orders, 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 has been made out.

Respondent No.4 is directed to deposit all the outstanding amount along with interest @12% per annum, as per her abovesaid undertaking, at an early date and in any case within a period of three months from the date of receipt of certified copy of this order. Consequences shall follow.

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

24.10.2016
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No