

CWP no. 23532 of 2013(O&M)

and other connected cases

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

1. CWP no. 23532 of 2013(O&M)

Sunil Kumar

....Petitioners

Versus

State of Haryana and others

...Respondents

2. CWP no. 28337 of 2013(O&M)

Brig. S.P.S.Dhaliwal

....Petitioners

Versus

State of Haryana and others

...Respondents

3. CWP no. 28285 of 2013(O&M)

Dr. Sunita

....Petitioners

Versus

State of Haryana and others

...Respondents

Date of Decision :27.01.2016

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1)Whether reporters of local newspapers 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. Narender Singh, Advocate for the petitioners

Mr. Sandeep S Mann, Senior DAG, Haryana

Mr. Sandeep Moudgill, Advocate

Mr. Deepak Manchanda, Advocate for HUDA

MAHESH GROVER, J.

This order will dispose of three writ petitions bearing CWP nos. 23532, 28285 and 28337 of 2013.

When the case was called out for hearing today, Brig. Mohinder Singh Sohal, Mr. Sangari and Mr. Sunil Kumar, representing the petitioners in CWP nos. 23532, 28285 and 28337 of 2013, stood up in the absence of their counsels to make a plea that the matter be not heard by this Court. They have also unequivocally stated before this Court that they had approached Hon'ble the Acting Chief Justice in this regard, to apprise him of the earlier orders dated 21.8.2014 passed by this Court and an appeal preferred by the aggrieved persons against it. It was on account of the order dated 21.8.2014 passed in CWP no. 21375 of 2013 & other connected cases that the aforesaid gentlemen expressed lack of faith in the Court. Surprisingly their counsels made themselves conveniently unavailable when the case was called out for hearing but appeared when the Court specifically asked for their presence.

On previous date of hearing, Mr. Narinder Singh, Advocate had made an impassioned prayer for an adjournment on the ground that he had met with an accident injuring his arm and hence was unable to prepare the case. The plea was accepted inspite of stiff opposition from the other side although he could not be marked present inadvertently but when the matter was called out today the learned counsel did not come at all and aforesaid act was played out by

the three gentlemen named above.

Evidently it is a clear case of casting unfounded aspersions on the Court simply because the Court has expressed its opinion in the matters which in any case has been challenged in appeal as per the right available to the aggrieved persons. It would thus be no ground to accept the prayer of the three gentlemen and lend credibility to such aspersions intended ostensibly to wean away the case from this Court which had expressed an opinion adverse to them even though in related petitions on the same cause. That apart it has to be noticed that if such tendencies are encouraged it would strike at the very foundation of the roster system leading to institutional collapse. It would be absolutely easy for any litigant or member of the public to simply stand up and raise doubts about the credibility of the Court forcing it to release the case from its roster and thus playing into the hands of the individuals who are interested in bench hunting, aided and advised by their counsels. The Court thus does not wish to succumb to such pressure tactics adopted by the three gentlemen named above and would thus proceed to hear the matter regardless.

The Court would have examined the issue of proceeding against these three persons for having committed contempt in the face of the Court but keeping in view their senior status in the society and the regrets that they have expressed, it grants pardon to them but with a warning that they will not indulge in any such activity again.

from the proceedings.

Permitted to do so.

Heard on merits.

Facts are taken from CWP no. 23532 of 2013.

The petitioner has filed the instant petition for setting aside/quashing the resolutions dated 28.4.2013 and 18.7.2013 (Annexures P-20 and 21 respectively). The dispute pertains to membership of the petitioners of the Society in question. The resolutions have the effect of discarding their claims to membership. The Court had noticed in its order dated 21.8.2014 passed in CWP no. 21375 of 2013 & other connected cases that simultaneous proceedings were being initiated by some of the affected persons by filing appeal before the Registrar, Cooperative Societies which is the appropriate remedy in law and filing writ petitions as well. Interestingly one of the counsels namely Sh. Narinder Singh was prosecuting the number of appeals before the Registrar, Cooperative Societies while pursuing his remedies in writ petitions as well. He is the counsel in the present petitions as well. The Court passed a detailed order dated 21.8.2014 which may be extracted herebelow for ready reference:-

“It is not disputed that apart from the petitioners,

five other persons, who were affected by the same order, have

preferred appeals before the Additional Registrar, Cooperative

Societies, Haryana under Section 114 of the Haryana

Cooperative Societies Act.

Surprisingly Sh. Narinder Singh, one of the counsels who is prosecuting this petition is also prosecuting those appeals. Evidently, the constraint of jurisdiction for the Registrar, Cooperative Societies to proceed with the grievance of appellants before him is not an issue as the very same order has been impugned before him as well as this Court.

The Registrar, Cooperative Societies is present in Court pursuant to the order dated 14.8.2014. He has stated that in two of the appeals arising from the same order impugned herein, the arguments have been heard and judgment reserved whereas in three cases, the arguments are to be heard today. He has further assured the Court that he would take a decision in this regard positively within a period of one week from today. Let the needful be done.

The Court is of the view that parallel proceedings ordinarily should be discouraged and if few persons have already filed appeals against the same order, the matter should be left to the Appellate Authority to decide the issues unless there is a constraint of jurisdiction which apparently is not there for reasons already explained.

The decisions arrived at by the Competent Authority under the Statute where the same order has been impugned would evidently become the leading source of settlement of the issues *inter se* between the parties and subject of course to the statutory remedies available to the disgruntled and affected persons.

The Court also notices the contentions strenuously raised by the learned counsel for the Society that the construction of the project has been stalled even though the contract has been awarded in this regard.

The Court is of the opinion that projects of this magnitude should not ordinarily be left to such vagaries considering the enormity of the costs involved. It is also to be noticed that as against 80 persons claimed by the respondents to be the legitimate members of the Society, the petitioners put the figure to 100. This would mean that 20 persons are the ones who are outside the established members of the Society. Evidently, the dispute would center around the claim of these 20 persons. In the further view of this Court, a miniscule number of the members cannot hold the entire project to ransom unless equities are balanced. This Court granted them

time to seek instructions as to whether they would furnish an undertaking that the escalated component of the costs which has been stalled would be borne exclusively by them. It would be just and fair to bind them to this proposition as the respondents are not bound to share the escalation of the costs unless of course it is established in due course that these 20 members had legitimate claims. The learned counsel for the petitioners failed to respond to this suggestion.

As juxtaposed against this proposition, it would be appropriate hence to direct that the respondent-Society be permitted to carry on with the construction at their own risk and responsibility and subject to a quick redressal of the issue. Since the Registrar, Cooperative Societies is already seized of the matter where the appeals have been filed by few of the disgruntled persons against the very same order and in view of the assurance given by the Registrar, Cooperative Societies that he would decide the issue before him within a period of one week, I deem it appropriate at this stage to bind him to a time frame of expeditious disposal within a period of one week from today. The Society in the meantime shall be permitted to continue with the construction at their own risk

and responsibility. The petitioners may, in the meantime, seek instructions as to whether they are willing to furnish an undertaking about the escalation of costs being restricted to them alone.

With the aforesaid observations, the matter is adjourned to 29.8.2014.”

It is not disputed that the Additional Registrar Cooperative Societies has passed a detailed order dated 27.8.2014 commenting on the claims of several claimants including the petitioners. Some of the appeals were also withdrawn on the premise that the writ petitions have been filed in this Court. The Court would not like to comment on this aspect as it was entirely upto those appellants aided by legal advise to take recourse to such an action. Suffice it to say that the Additional Registrar, Cooperative Societies as an authority competent in law had the occasion to comment on the substantive issue raised in the petition.

Learned counsel for the petitioner would make an attempt to say that it is only the resolution dated 17.3.2013 which was the subject matter of appeal before the Addl. Registrar, Cooperative Societies and not resolution dated 28.4.2013 which is questioned herein.

A perusal of the resolution dated 28.4.2013 which has been appended to the petition as Annexure P-20 would indicate that apart from other issues that were discussed in the resolution it was also a ratification of the earlier

resolution dated 17.3.2013. Since the grievance of the petitioners centres around membership which stands cancelled in the resolution dated 28.4.2013 (in CWP no. 23532 and 28285 of 2013) and dated 17.3.2013 (in CWP no. 28337 of 2013) and tested before the Registrar, Cooperative Societies, the subsequent resolution dated 28.4.2013 seeking ratification of the earlier resolution would naturally be convergent in content to earlier resolution stated above.

In the considered view of this Court once the Additional Registrar, Cooperative Societies has taken a view on the substantive issue which is also based largely on disputed question of facts which this Court would be unable to answer in the exercise of its jurisdiction under Article 226 of the Constitution of India, it would be just and apposite to relegate the petitioners to a similar remedy of appeal before the Registrar, Cooperative Societies/Financial Commissioner. Ordered accordingly. If such an exercise is taken up by the petitioners the question of limitation would not stand in their way.

Needless to say that since the Additional Registrar, Cooperative Societies has already opined on the issue the petitioners would also have the cause of joining the proceedings before the Financial Commissioner directly as it has been stated before this Court that such an exercise is already underway upon dis-satisfied members having filed revision before him.

It is also stated by the learned counsel for the petitioners that the

order of this Court dated 21.8.2014 has been challenged by way of Letters Patent

Appeal. However, there is no order varying the directions of the Court dated 21.8.2014. I am as on today bound by my earlier view. The petitioners would be at liberty to take recourse to their remedies in law apart from the one before the Registrar, Cooperative Societies/Financial Commissioner, if any is available to them.

Hence, instant petitions are hereby dismissed.

January 27, 2016
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(MAHESH GROVER)
JUDGE