

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

CWP No.16064 of 2012

Date of Decision.24.04.2017

Daljit Singh son of Sh. Manphool Singh

.....Petitioner

Vs

The Deputy Registrar, Cooperative Societies, Rupnagar and others

.....Respondents

Present: Mr. P.K. Ganga, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

Mr. I.S. Sidhu, Advocate
for respondent No.4.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The grievance of the petitioner in the present writ petition is that in view of the agreement to sell dated 18.12.1998 with Bakshish Singh (since deceased), who was a registered member of the society and allotted a plot No.1100, the petitioner had paid the entire price and Bakshish Singh agreed for transfer of membership, in essence, to extend cooperation for doing the needful. Along with the agreement to sell, Bakshish Singh, who since died and represented by LRs, gave an affidavit in support of the fact that he had no objection to transfer his membership in the society in favour of petitioner wherein he had also requested to express his wish to transfer the share and membership of the society with all rights and liabilities.

All the aforementioned documents were deposited including the receipts bearing No.62 dated 27.12.1984, No.2764 dated 29.08.1985 and the original allotment in Form R-62 and in lieu thereof, had issued the receipt. The resolution dated 22.12.1998 was passed by the Society i.e. for

approval of the aforementioned membership. Prior approval of the Assistant Registrar was required which was received vide letter dated 03.12.1998 but neither the share was issued nor ownership.

The petitioner moved an application dated 17.10.2007 before the Assistant Registrar, Cooperative Societies, Mohali that respondent No.4-Society be directed to transfer the aforementioned plot. Another application was also moved on 11.01.2009 but instead of taking action on the aforementioned applications, an enquiry was conducted by respondent No.3 i.e. the Inspector, Cooperative Societies, Mohali, who, on erroneous interpretation of the Rules and judgment of this Court, rejected the demand of the applicant for issuing the share certificate and transferring the ownership. The petitioner preferred an appeal under Section 68 of the Punjab Cooperative Societies Act, 1961 but the same has been declined by the Deputy Registrar, Cooperative Societies, Punjab on account of non-maintainability. He submits that the enquiry can be construed to be rejecting the membership and therefore, as per provisions of Section 68(1) (c) of the Punjab Cooperative Societies Act, 1961, the appeal would lie.

He also draws attention of this Court to an order dated 07.01.2016 whereby defendant of respondent No.4 has been struck off as they were granted opportunity to file reply subject to payment of ₹10,000/- as costs. Even the costs of ₹10,000/- had not been paid and respondent No.5 to 7 were proceeded ex parte on 18.12.2013, being legal representatives of Bakshish Singh, therefore, Mr. Ganga raised serious objection with regard to rendering assistance of Mr. I.S. Sidhu, learned counsel appearing for respondent No.4.

I have heard learned counsel appearing for the petitioner,

appraised the paper book and of the view that on simple and plain construal of the language enshrined under Section 68 of the 1961 Act, an appeal would definitely lie against the decision of the society refusing to admit a person as member of the society. The same reads as under:-

68. Appeals – (1) *An appeal shall lie under this section against-*

- (a) *an order of the registrar made under sub-section (2) of section 8 refusing to register a society;*
- (b) *an order of the Registrar made under sub-section (4) of Section 10 refusing to register an amendment of the bye-laws of a co-operative society;*
- [bb] *an order of the Registrar made under Section 10-A directing amendment of bye-laws of a co-operative of a co-operative society;*
- (c) *a decision of a co-operative society, other than a producers' Society refusing to admit any person as a member of the society who is otherwise duly qualified for membership under the bye-laws of the society;*
- (d) *a decision of a co-op. Society expelling any of its members;*
- (e) *an order made by the Registrar removing or suspending a committee or a member thereof under section 27;*
- (f) *an order made by the Registrar under section 52 apportioning the costs of an inquiry held under section 50 or an inspection made under section 51;*
- (g) *any order of surcharge under section 54;*
- (h) *any decision or award made under section 56;*
- (i) *an order made by the Registrar under section 57 directing in the winding up of a co-operative society;*
- (j) *any order made by the liquidator of a co-operative society in exercise of the powers conferred on him by section 59;*
- (k) *any order made under section 65;*
- (l) *grant of a certificate under sub-section 67-A for the recovery of the amount due from a member on account of loan and interest thereon.*

2(2) *An appeal against any decision or order under sub-section (1) shall be made within sixty days from the date of decision or order:-*

- (a) *if the decision or order was made by the assistant Registrar to the Deputy registrar;*
- (b) *if the decision or order was made by the deputy registrar to the registrar or such Additional Registrar or joint Registrar as may be authorised by the Registrar in this behalf;*
- (c) *if the decision or order was made by the joint registrar or Additional registrar, to the registrar;*
- (d) *if the decision or order was made by the Registrar, to the Government;*
- (e) *if the decision or order was made by any other person, to the Registrar or such Additional Registrar or joint Registrar or Deputy Registrar or Assistant registrar as may be authorised by the Registrar in this behalf.*

(3) No appeal shall lie under this section for any decision or order made by any authority in appeal.

(4) Any appeal under sub-section (1) pending immediately before the commencement of the Punjab co-operative societies (Amendment) Act, 1969, before any authority shall stand transferred to the authority to whom such appeal lies on such commencement.

The enquiry report (Annexure P-13) cannot be considered to be an enquiry in strict sense but the pith and substance of the same, which reads as under, would reveal of rejection of the application of the petitioner regarding transfer of ownership:-

“Most of all, this society is constituted for sake of 1984 Riot Victims and in the case of death of any original member, the ownership is to be transferred only to his legal heir. In case any such case took place in past, it is in violation of rules. Hon'ble R.C.S. Punjab has issued directions in respect of the membership, which have been endorsed by Assistant Registrar, Co-operative Society, Ropar vide officer letter No.RK/SRS/1449-59 dated 9.3.2000, that Administrator of Society had got no right to enroll any member. He can enroll the members with the permission of competent authority, where it is necessary to provide appropriate facility to the member for running the operation of the society.

Keeping in view the above, the demand of applicant for issuing share certificate and transferring the ownership of plot No.1100 is hereby dismissed and the case is directed to be consigned to record.”

In my view, the findings rendered by the Deputy Registrar as well as the impugned order (Annexure P-1) regarding non-maintainability of appeal is wholly erroneous and fallacious. While deciding the appeal, the

order under challenge has to be construed in its letter and spirit and not by taking the nomenclature. Resultantly, the order dated 13.03.2012 (Annexure P-13) is hereby set aside.

It has also been brought to the notice of the Court that against the order of the Deputy Registrar, a revision also lies. The appeal before the Deputy Registrar is restored on file and the Deputy Registrar, Rupnagar is directed to decide the appeal filed by the petitioner afresh in view of the observations made here-in-above i.e. on merits and in most objective and pragmatic manner, preferably within a period of four months from the date of receipt of certified copy of this order, as the matter is pending in this Court since 2012 by affording opportunity to the petitioner, much less, in accordance with law.

Parties are directed to appear before the Deputy Registrar, Sangrur on 08.05.2017.

The writ petition stands allowed.

(AMIT RAWAL)
JUDGE

April 24, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No