

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

**CWP No.13508 of 2013
Date of decision:24.03.2017**

Ajaib Singh and others

... Petitioners

Vs.

Malkiat Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.P.Kansal, Advocate
for the petitioners.

Mr. M.S.Bedi, Advocate
for respondent No.1.

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

AMIT RAWAL J. (Oral)

The petitioners are aggrieved of the order dated 30.08.2012 rendered by the Financial Commissioner Cooperation, Punjab, Chandigarh, whereby, membership of petitioner No.1 being nominee of his father-Ujjagar Singh, has been declined.

Mr. R.P.Kansal, learned counsel appearing on behalf of the petitioners submits that Ujjagar Singh was a member of The Kheri Scheduled Caste Land Owning Society, Kheri, who unfortunately died on 19.03.2006. During his life time, he had nominated petitioner No.1 – Ajaib Singh as nominee in the aforementioned Society. The issue with regard to nomination was pending adjudication before the Additional Registrar Cooperative Societies. However, during the interregnum, civil suit was also

filed by Malkiat Singh with regard to certain other properties but the same was got compromised as per the Annexure P-14. The membership is not a part and parcel of the compromise but the fact remains that Malkiat Singh had executed an affidavit dated 25.04.2011 (Annexure P-10) to the fact that he will withdraw all the cases pending before the authorities below under the Cooperative Societies Act. He further submits that judgment and decree dated 15.06.2011 is in respect of other property and affidavit is dated 25.04.2011. All the proceedings qua raising of objections at the instance of Malkiat Singh are prior in time, in essence, the matter/appeal before the concerned authority at the instance of Malkiat Singh was filed on 11.10.2007. Vide resolution dated 10.07.2007 Annexure P-1, petitioner No.1 was inducted as a nominated member of the Society. Respondent No.1 filed the appeal before the Deputy Registrar against the aforementioned resolution which was decided in favour of the respondent on 07.07.2008. Aggrieved against the order, the petitioners filed the appeal before the Joint Registrar, Cooperative Societies who set aside the order dated 07.07.2008 and petitioner No.1 was made member of the Society. Thereafter the Financial Commissioner by holding the enquiry vide order dated 26.04.2010 decided the matter against the petitioners. It was the wish of Ujjagar Singh to give membership in favour of petitioner No.1. The stand of the authorities by relying upon bye-laws is totally erroneous, much less without jurisdiction. In this regard, he has drawn the attention of this Court to the Regulations extracted, vide Annexure R2/2 filed by the respondents along with civil miscellaneous application to contend that it would not be

disqualification for a nominee being a non-resident of village Kheri. As regulations No.4 and 7 apply to the original membership, whereas, regulation 8 for the nominee.

On the other hand, Mr. M.S.Bedi, learned counsel appearing on behalf of respondent No.1 submits that no doubt, compromise (Annexure P-14) is with regard to the property mentioned therein but as indicated in paragraph 10 of the written statement, petitioner no.1 backed out from the compromise. The suit was withdrawn as the parties at that time were ad idem to be bound by the terms and conditions of the compromise which is Ex.CX. The enquiry conducted by the Financial Commissioner found that Malkiat Singh was resident of village Kheri and was looking after his ailing mother, therefore, membership was held in his favour instead of petitioner No.1. All these factors were gone in extenso, therefore, there is no illegality and perversity in the order under challenge and the writ petition deserves to be dismissed on this ground alone.

I have heard learned counsel for the parties and appraised the paper book.

In order to appreciate the controversy raised, it would be apt to reproduce definition of the 'Member' as extracted in bye-laws no.3 to 8 at page 113-114 of the paper book which reads as under:-

“3. The members will be those schedule caste the conditions of which will be given by the government from time to time in their notification and the same will be included in the request letter fro registration and could be admitted as per the bye-

laws.

4. *Every member of the society:-*

- i) should be the ordinary resident of village Kheri;*
- ii) should be of good character;*

5. *The member will be admitted as member, while remaining under acceptance by the general body after the election by the managing committee.*

6. *On becoming member, every member will given Rs. ___/- as admission fee and every member will have at least one share in the society. Every member will writ his name and append signatures or thump mark in the register of members. Upon doing the same he will participate in the rights and liabilities of the society.*

7. *Membership:-*

- i) With the death;*
- ii) With no living in the village Kheri permanently, the membership will be cancelled.*

Iii) The member, after giving one month notice to the Secretary of the society can take back his name from the society.

8. *Every member will nominate a person or persons upon whom his share which has been so mentioned in Section 22 of the Act, will be transferred after his death or the amounts specified will be given and he can set aside this nomination*

from time to time or can make change in the same. But no member will nominate more than one person, till the time he has more than one share and in no condition the amount to be given to the person nominated through all the shares or by transfer the amount present through collective shares whichever may be the condition which has not been clarified, this nomination will be written in the register of members and this will be verified by the member with his signatures or thumb impression. The share or benefit will be shown through that amount which has been given by him for getting this share or has not been given in the bye-law by any calculation or any other rule. The nominated persons will only be considered as member when the committee will accept him so. No member will transfer his share without the prior approval of the managing committee. The amount of the share will be more than the amount which has been received by the society.”

On co-joint reading of the aforementioned clauses, clause nos.3 to 7 deal with the original members, whereas, clause no.8 with the nominee. Clause 8 nowhere indicates that nominee should be a resident of village Kheri, it is only with regard to original member. One of the essential pre-requisites of having become a member of the Society was to be a resident of village Kheri and membership comes to an end with death or leaving the village Kheri permanently, the membership will be cancelled, much less, the member after giving one month prior notice to the Society, can take back his

name from the Society.

In my view, there has been mis-direction by the authorities regarding interpretation of the aforementioned clause of bye-laws *ibid*. The wish of the member in appointing a nominee which is permissible in bye-laws cannot be tinkered with until and unless it has been found that the nomination has been made under any pressure or force.

As regards the compromise (Annexure P-14) and decree dated 15.06.2011, much less affidavit dated 25.04.2011 of the respondents, the decree-holder had been at liberty to seek execution. There has been a categorical averment in paragraph 10 of the writ petition with regard to conduct of Malkiat Singh, wherein, he has undertaken to withdraw the proceedings initiated against the petitioners before the authorities under the Cooperative Societies Act. However, on going through the corresponding paragraph 10 of the written statement, it has been found that there is no single averment/whisper qua its denial/rebuttal. The entire thrust is on the compromise. For the sake of brevity, paragraph 10 of the written statement reads as under:-

“10. That in reply to the contents of para no.10, it is submitted that though initially the compromise was entered into between the petitioner and respondent no.1 on 25.04.2011. As per the terms of the compromise which only dealt with the ancestral house and the land but there was no settlement with regard to the issue as to who will become the member of the society. As per the compromise respondent no.1 withdrew the case from

the civil court. But thereafter it was the petitioner who backed out of the compromise and raised the issue that he will become the member of the society even though the land can be divided as per the compromise. The respondent no.1 when asked petitioner no.1 that in that eventuality he will have no right over the land if he does not become the member of the society and what is his security, to which petitioner no.1 told that he should have faith on him. The respondent no.1 told that the compromise can only sustain if he allows respondent no.1 also to be the member of the society which petitioner no.1 openly refused. As such the intention or the malafide was writ large of petitioner no.1 and as such the compromise was not acted upon thereafter by either of the party. Further the said compromise which the petitioner knew that the same stands broken, never produced the same before the Additional Registrar (G) Cooperative Societies, Punjab and neither raised any plea in that context. The compromise which the petitioner wants to take support of has never came on record either before the Additional Registrar (G) Cooperative Societies or before the Financial Commission Cooperation and neither before this Hon'ble Court. It is absolutely wrong on the part of the petitioner to say that respondent no.1 has not disclosed of the factum of the compromise before the Additional Registrar, however, it was open for petitioner no.1 to bring into the notice

about the compromise but it is the petitioner no.1 who has failed with his duty, otherwise also the compromise as alleged by the petitioner nowhere discussed/settle the issue of the membership of the society. Once the compromise was not brought on record it could not be said that the respondent no.3 and respondent no.2 were bound to take notice of the same.”

It leaves to irresistible conclusion that the authority below, vide impugned orders have not adverted to the controversy in correct perspective. The orders under challenge are not sustainable being vitiated in law. The same are hereby set aside.

Resultantly, the writ petition stands allowed.

(AMIT RAWAL)
JUDGE

March 24, 2017
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No