

Sr. No.206

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

CWP No. 4895 of 2012(O&M)

Date of decision:06.07.2017

The ALPS Co-operative Group Housing Society Ltd.

.....Petitioner

versus

**Financial Commissioner & Principal Secretary to Government of
Haryana and others**

.....Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Amandeep Talwar, Advocate
for the petitioner.

Mr. Tanisha Peshawaria, DAG, Haryana.

Mr. S.S.Dalal, Advocate
for the respondent.

Rakesh Kumar Jain, J.(Oral)

This petition is directed against the order dated 24.09.2009 (Annexure P-30) passed by the Additional Registrar, Cooperative Societies, Haryana Panchkula allowing the appeal filed under Section 114 of the Haryana Cooperative Societies Act, 1984(for short, 'the Act') by respondent No. 2 against the order of expulsion passed by the petitioner of respondent No. 2 from the primary membership of the society.

Shorn off unnecessary details, respondent No. 2 was a primary member of the society and was a defaulter, therefore, the society took a decision on 24.08.2008 to expel her. After expulsion, the society held general body meeting on the same day and decided that in place of respondent No. 2 namely, Rajan Jairath son of M.L.Jairath be made a member of the society and the amount of share of respondent No. 2 be

transferred in his name. Thereafter, on 28.08.2008 the petitioner wrote to the Asstt. Registrar, Coop Societies, Panchkula for seeking permission to enrol the new member in place of expelled member. In this regard, copy of resolution, copy of notices to the expelled member and relevant documents of the new members were also submitted. It is submitted by counsel for the petitioner that copy of resolution in respect of expulsion of respondent No.2 was also sent alongwith letter dated 27.08.2008 and on 25.05.2009, the following letter was written by the Registrar, Cooperative Societies, Haryana to the Assistant Registrar, Cooperative Societies, Naraingarh: **“Sub:Approval to enroll 5 new members in the ALPS Cooperative Group Housing Society Ltd. Panchkula(Regd. No. 3884 Dt. 08.02.2006).**

Kindly refer to your letter no. 27 dated 14.01.2009 on the subject cited above. It is to inform you that Worth Registrar Cooperative Societies, Haryana has accorded approval to enroll 5(Five) new members in the ALPS Cooperatiev Group Society Ltd. Pkl with the condition that in case the membership of Ms. Divya Raj is upheld at any stage he will be entitled for flat in the Society. The documents of the new members are also returned in original.

Counsel for the petitioner has submitted that this communication dated 25.05.2009 is an approval of the enrollment of five new members and also the approval of the order of expulsion of respondent No. 2 because it is nowhere mention by the Registrar that order of expulsion is illegal or cannot be accepted rather it is observed therein that new members may be enrolled but in case the expulsion of respondent No. 2 is set aside then she would be again have to be enrolled as a member. He has further submitted that the word '*prior approval*' is nowhere there in the bye-

laws and has referred to bye-laws 9(a) which reads as under:-

“A member may be expelled from the Society by General Body by not less than three-fourth(3/4) of the members present and voting at a general meeting of the society subject to the approval of Registrar, on a motion if in the opinion of the society such member has:-

- (i) deceived the Society by false statements.*
- (ii) been declared insolvent/applied for insolvency.*
- (iii) been convicted of an offence involving moral turpitude.*
- (iv) becomes defaulter in payment of instalments of contribution towards cost of land/building for more than 3 months.”*

It is further submitted that the observation in the impugned order based upon the decision of this Court in the case of Mrs. Raj Batra's. is totally erroneous because it was observed therein that “Society will have to seek prior approval of the Registrar, Cooperative Societies, Haryana for taking such action”. It was also observed that that *“in this case though the society has taken the action in right earnest yet, the same was never got approved by the Registrar, Cooperative Societies, Haryana under bye laws 9(a) (IV) & 9(b) as approved by the Registrar, Cooperative Societies.*

On the other hand, counsel for the respondent has submitted that there is no error in the impugned order because the decision is based upon the order passed by this Court in the case of Mrs. Raj Batra's(supra) which has been passed in CWP No.13304 of 2011 titled as New Shivani Co-operative Group Housing Society Ltd. vs. State of Haryana and others decided on 27.07.2011 and upheld the appeal bearing LPA No. 2134 of 2011 decided on 3.04.2014. it is also submitted that the communication by

the Registrar to the Assistant Registrar dated 25.05.2009 shows that it was a conditional approval of the expulsion of respondent No. 2.

Counsel for the State has submitted that the Model Bye-Laws of Cooperative Group Housing Societies, Haryana 4(e) shows that “*every change in the membership shall be made with the prior approval of Registrar*” and has also submitted that the expulsion of respondent No. 2 would be a change in the membership for which prior approval was required.

I have heard learned counsel for the parties and perused the available record with their able assistance.

In this case, there are two issues involved:-

- (i) *whether prior approval of Registrar is required in terms of bye-laws 9(a) of the Model bye-laws for the purpose of seeking expulsion of a member of the society?*
- (ii) *whether in the facts and circumstances, the expulsion of the petitioner has been approved by the Registrar?*

In so far as, the first question is concerned, the bye-law 9(a) is silent about the prior approval. It only talks of expulsion of a member of the society with 3/4th members present voting in this regard but subject to the approval of the Registrar. Meaning thereby the decision taken by way of resolution, passed by the society in which 3/4th of the members, present and voting in favour of the resolution of expelling, has to be placed before the Registrar for its perusal and for necessary action. It is turn of the Registrar thereafter, either to approve or to reject the said resolution by giving reasons. In the case of New Shivani Co-operative Group Housing Society Ltd.(Supra) relied upon by learned counsel for respondent No. 2 there is no

such issue involved of the prior approval of the Registrar for the purpose of expulsion of a member from the Society as the same bye-laws 9(a) has been interpreted. The division bench however, in LPA No. 2134 of 2011 has observed that *as per Bye Laws 9A and 9B, it is mandatory to get approval of the Registrar before cancelling membership of any person*. There is no dispute that the approval of an action of the society is necessary by the Registrar regarding the expulsion of a member. Meaning thereby the decision of the society by itself is not final as it depends upon the approval of the Registrar. Once the approval is granted then the decision of the society in the matter of expulsion attains finality. The first question is thus, decided accordingly holding that there is no such word used by the legislature in bye laws 9(a) that *prior approval* has to be obtained rather the word is *subject to the approval of the Registrar* which means that after the resolution passed by the society in respect of expulsion of a member then the said resolution has to be placed before the Registrar for its perusal and necessary action and once the said resolution is approved then the order of expulsion of member comes into effect.

In sofaras the second question is concerned, the facts and circumstances of the case indicates that after expulsion order was passed, though it appears to be under challenge at the instance of respondent No. 2, the society which was facing financial crunch, decided to induct new members and in that process decided to transfer the share of respondent No. 2 to the new member Rajan Jairath son of M.L.Jairath. It is also decided in the same resolution to increase the strength of the members and for that matter, not only submitted the resolution of expelled member to the Registrar but also submitted documents of the new members to be

nominated. On 25.05.2009 the Registrar conveyed to the Asstt. Registrar that he has approved the enrolment of 5 new members for the society and also made it clear that their inductment is subject to the final decision in the matter of expulsion of respondent No.2. To my mind, this was so held because respondent No. 2 was litigating against the order of expulsion at that time.

Accordingly, I am of the considered opinion that the facts and circumstances emerging in this case indicates that necessary approval was granted by Registrar in respect of expulsion of respondent No. 2 though subject to condition that if she succeed in the pending litigation then the addition of members would be reconsidered. No other question is raised. In view of the aforesaid facts and circumstances of the case, the present petition is hereby allowed and the impugned order dated 24.0.2009 (Annexure P-30) and 17.01.2012(Annexure P-31) are hereby set aside.

6th July, 2017

Shivani Kaushik

[Rakesh Kumar Jain]
Judge

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No