

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

CWP No.3116 of 2014

Date of Decision.11.01.2017

M.L. Narang and others

.....Petitioners

Vs

Registrar, Co-operative Societies, Punjab and others

.....Respondents

Present: Mr. Amandeep Singh, Advocate
for the petitioners.

Mr. I.S. Saggu, Advocate
for respondent Nos.4 to 14.

Mr. Vikas Singh, Advocate
for respondent Nos.15 to 78.

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

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioners, 24 in number, have sought the intervention of this Court by invoking Article 226 of the Constitution of India for the issuance of writ of certiorari for quashing of the impugned order dated 22.01.2014 (Annexure P-10).

The petitioners submit that the respondent-Society i.e. Kansal Rural Self Supporting Cooperative House building Society Ltd., Kansal had submitted an application for conversion and registration of the society under the Punjab Self Supporting Cooperative Societies Act, 2006 (hereinafter called as the "2006 Act"). Since no action was taken, they approached this Court by filing CWP No.11392 of 2011 and this Court vide order dated 17.01.2012 (Annexure P-2) directed the respondent No.1/Registrar to issue a Certificate of Registration for registering the society as a Self Supporting

the order. The aforementioned order according to the averment in the writ petition was not adhered to, resulting into filing of COCP No.670 of 2012. However, during the pendency of the contempt petition, the Certificate of Registration under 2006 Act was issued and accordingly, contempt petition was rendered infructuous.

They further submitted that complaints were received from 31 members regarding the mismanagement and misdeamner committed by the Managing Committee alleging serious irregularities like sale of the land, hijacking the functioning of the society and tampering of the record.

Mr. Amandeep Singh, learned counsel appearing for the petitioners submits that on the basis of the complaint show cause notice dated 31.01.2013 (Annexure P-4) was issued which was basically an attempt to circumvent the order passed by this court. However, the same was objected to, as the notice was addressed only to the President of the Society and not all the members and only 11 days time was given to file reply thereto and without giving any opportunity of hearing to the society or its members, respondent No.2 namely the Assistant Registrar, Cooperative Societies passed the order dated 12.02.2013(Annexure P5) cancelling the Registration Certificate.

The aforementioned order was challenged by the petitioner vide CWP No.5001 of 2013. This Court with the consensus of the parties allowed the writ petition by setting aside the aforementioned order and the matter was remitted back with a direction to the Registrar, Cooperative Societies to take action as per the 2006 Act as the previous action was taken under the erstwhile 1961 Act. The copy of the order dated 13.12.2013 passed in CWP No.5001 of 2013 is enclosed as Annexure P-6.

He further submits that the Registrar, Cooperative Societies had issued the show cause notice dated 01.01.2014 but did not issue to all the members and had drawn attention of this Court to the same i.e. Annexure P-7 which was addressed to only counsels and as well as to the Society. The show cause notice contained allegation of cancellation of the Registration Certificate. It was also submitted that some of the members who were served with the show cause notice also filed their replies and even the Society also filed the reply. Copies of the same are Annexures P-8 and P-9.

However, without waiting the service of the notice, the enquiry was held and ultimately, the Registrar, Cooperative Society passed the impugned order dated 31.01.2014 (Annexure P-10) whereby he had observed that conversion of the Society was obtained dishonestly by misrepresentation of the facts and fabrication of the record and the Assistant Registrar, Cooperative Societies, Mohali was directed to follow up the issue with the police and ensure that the police conduct a comprehensive inquiry into the findings of the Deputy Registrar (Enforcement).

He submits that the Registrar, Cooperative Societies has the jurisdiction only to act in terms of the provisions of 2006 Act. There is no compliance of the provisions of Sections 53 and 54 of the 2006 Act. The Managing Committee of the Society had only appeared before the Deputy Registrar (Enforcement) who would confer jurisdiction upon a person who otherwise has no authority to conduct the enquiry. There is no provisions under 2006 Act for cancelling registration of the Society. In fact, the remedy with the Registrar was to place a copy of the report before the General House of the Society who was to take action as per the provisions of Section 54 of the 2006 Act, thus, the order under challenge is not

sustainable in the eyes of law and is liable to be quashed.

Mr. I.S. Saggu, learned counsel appearing for respondents No.4 to 14 has drawn of this Court to the provisions of Section 5(6) of the 2006 Act to contend that the Registrar has power to cancel the registration, much less, to refuse the registration. He also submitted that enquiry held actually revealed the commission of illegality and fabrication. In fact, the resolution dated 09.01.2011 allegedly passed by the Managing Committee of the Society for conversion of the society was illegal because during the enquiry of the complaint, record produced revealed that notice along with agenda under Section 80 of the Punjab Co-operative Societies Rules, 1963 had not been issued to the members for information qua general body meeting, much less, to attend. The agenda was sent through UPC and on phone on 08.01.2011 and the meeting was allegedly convened on 09.01.2011 which was not in accordance with law. In fact, no separate letter was issued. In fact, the members of the society have not been served with notice of 30 days as stipulated under Section 5(2) of the 2006 Act. Office bearers of the society had produced the fake and fabricated record, thus, urges this Court for dismissal of the writ petition.

As per the reply of respondent Nos.1 and 2, it has been stated that hearing of the complaint was held by Deputy Registrar, Cooperative Societies (Enforcement) under Section 53 of the Punjab Self Supporting Act, 2006 and the enquiry report was issued vide Head Office letter No.636 dated 31.01.2013. It has been found that the document enclosed with the case by the administrators of the Kansal Rural Cooperative House Building Society Ltd. at the time of registration under 2006 Act were bogus. The notice under Section 5(2) was not given. The society submitted the list

regarding the attendance of 115 members in the general body meeting in which 24 members did not put their signature in the general body meeting.

It was also stated that the members who were likely to go along with Managing Committee unquestionably were called on phone whereas no proper notice was given to others, thus, meeting held on 09.01.2011 was not held to be validly convened meeting.

Similar arguments have been accepted by Mr. Vikas Singh, learned counsel appearing for respondent Nos.15 to 78.

I have heard learned counsel for the parties, appraised the paper book. For appreciating the controversy/rival contentions of the parties, it would be apt to reproduce provisions of Section 5, 53 and 54 of the 2006 Act:-

“5.(1) Notwithstanding anything contained in the Punjab Co-operative Societies act, 1961(hereinafter in short referred to as the Act of 1961), a primary co-operative society which intends to convert itself into a self supporting co-operative society, may apply to the Registrar for conversion into a self-supporting cooperative society under this Act:

Provided that where the Central Government or State Government has given Government aid to such a co-operative society, it shall, before applying for such conversion, return such Government aid;

Explanation:- For the purpose of this sub-section, the expression” primary co-operative society” shall mean a co-operative society whose membership consists exclusively of individuals.

(2) An application for conversion shall be submitted to the Registrar by hand or by registered post, by the duly authorized person of such primary Co-operative society, along with the special resolution passed in this regard by giving thirty days notice.

(3) The duly authorized person shall furnish such information with regard to the primary co-operative society applying under sub-section (1), as the Registrar may require.

(4) Every such application shall be accompanied by—

(a) a true copy of the special resolution passed by the general body certifying the fact that such primary cooperative society shall follow the co-operative principles and guidelines, mentioned in the Schedule;

- (b) two copies of the bye-laws adopted by the general body of such primary co-operative society through a special resolution;*
- (c) evidence to show that the primary co-operative society is not in possession of any Government aid from the Central Government or the State Government;*
- (d) a true copy of the latest annual report and audited statement of accounts of such primary co-operative society;*
- (e) a list of members, who attended the meeting of general body or delegate general body of such primary cooperative society; and*
- (f) receipt of deposit of registration fee as may be specified from time to time by the Registrar.*

(5) If the Registrar is satisfied that the application and the proposed bye-laws are in consonance with the provisions of this Act, he shall convert the primary co-operative society into a self-supporting co-operative society and register the same as such and its bye-laws and issue a certificate of registration and return the copy of the registered bye-laws duly signed and sealed by him within a period of sixty days from the date of receipt of application to such society through its duly authorized person.

(6) If the application for registration is not in conformity with the provisions of sub-sections (4) and (5), the Registrar, after giving an opportunity of being heard to such a society, shall communicate by registered post, the order of refusal for registration along with the reasons therefore within a period of sixty days from the date of receipt of application for registration to the said society.

(7) Where an order of refusal is received under subsection (6) by the duly authorized person within the period, specified in that sub-section, he may-

(a) submit an application to the Registrar against the refusal and seek registration afresh; or

(b) make an appeal against the order of refusal or delay in issuing the certificate or deemed registration to the Cooperative Tribunal within a period of sixty days from the date of communication of such an order.

(8) The certificate of registration signed by the Registrar with the seal of his office, shall be the conclusive evidence that the self-supporting co-operative society mentioned therein is duly registered under this Act.

(9) If the application for registration is not disposed of within a period of sixty days or the Registrar fails to communicate the order of refusal within that period, the application shall be deemed to have been accepted for registration in accordance with the provisions of this Act after the expiration of a period of thirty days from the said period of sixty days.

(10) Where a primary co-operative society is converted and registered under sub-section (5), it shall send to the Registrar, Co-operative Societies, a copy of registration certificate issued under the Punjab Co-operative Societies Act, 1961, and the Registrar shall, within a period of thirty days from the receipt of such copy, cancel registration of such primary co-operative society and delete the name of such society from the register maintained by him.

(11) Consequent upon the conversion of a primary cooperative society into a self-supporting co-operative society, the assets, liabilities, rights, obligations and transactions of such primary co-operative society shall be deemed to be the assets, liabilities, rights, obligations and transactions of the self-supporting co-operative society. Like-wise, the members of the primary co-operative society shall be deemed to be the members of the self supporting co-operative society.

(12) At the time of conversion of primary co-operative society into a self-supporting co-operative society, if the term of elected Board of Directors of primary co-operative society has not expired, the same Board of Directors shall continue to hold office for the remaining term or for one year, whichever is less.”

53. (1) The Registrar shall have the right to seek all such information, as he may consider necessary to satisfy himself whether a self-supporting co-operative society has conducted its affairs in accordance with the provisions of this Act, rules or bye laws. The said society shall furnish all such information to the Registrar.

(2) The Registrar may on the application of a federal self-supporting co-operative society of which the concerned self-supporting co-operative society is a member or of a creditor or of not less than one-third of the Directors or of not less than one-tenth of the members, hold an enquiry or cause an inquiry to be held into any specific matter or matters relating to any gross violation of any of the provisions of this Act, rules or bye-laws.

(3) The inquiry shall be completed within a period of six months from the date of ordering of the inquiry:

Provided that where the inquiry cannot be completed within the aforesaid period, the reasons thereof shall be recorded in writing and inquiry shall be completed within a period of next two months.

(4) The Registrar, shall, within a period of sixty days from the date of the completion of the inquiry as mentioned in sub-section (3) communicate the report of inquiry to the -

(a) concerned self-supporting co-operative society

(b) applicant, federal self-supporting co-operative society or office

bearer;

(c) the creditor;

(d) person authorized by the Directors and

(e) person authorized by the members.

(5) The inquiry officer conducting of the inquiry under this section, shall, among other things, specifically state the amount of deficiency, or loss, which has been caused by negligence or misconduct of any person in the performance of his duties.

54. On communication of an inquiry report under sub-section (4) of section 53, to the concerned quarters, the Registrar, may, where an inquiry report reveals mismanagement on the part of any or all of the officers or office bearers, without prejudice to any civil or criminal proceedings to which they may be liable, direct the Board to convene general meeting within such time, as he may deem appropriate to bring to the notice of the general body, either, directly or through his nominee, the findings of the inquiry report for taking necessary action.”

On conjoint reading of the aforementioned provisions, the argument of Mr. Amandeep Singh, learned counsel appearing for the petitioner in the first blush looked to be attractive that the Registrar had not within a period of sixty days as per the provisions of sub-section 4 of Section 53 communicated the report of inquiry to the concerned self-supporting co-operative society, applicant, creditors and persons prescribed therein, much less, alleged to have not complied with the provisions of Section 54 but intriguingly cannot remain oblivious of provisions of Section 5 particular sub-section 6 whereby the Registrar has been given power to hold an inquiry and the Section 5 starts with a non obstante clause which deals with the entertainment of the application for conversion and sub-section 6 dealt for refusal of the registration. The enquiry report has not been challenged. Only the impugned order dated 22.01.2014 (Annexure P-10) passed by the Registrar has been challenged.

In the absence of challenge to the enquiry report, I am of the

has power to grant registration or conversion, can also exercise the power of cancellation particular when material discrepancy, misfeasance and mismanagement had been found. No clear-cut 30 days notice had been issued. Only UPC and phone calls to the few favourable members had been made prior to holding of the meeting on 08.10.2011 for 09.01.2011, thus, there is categoric finding qua the same in the enquiry report.

In the absence of the challenge to the enquiry report, the order of Registrar ordering for cancellation of registration is perfectly legal and justified. The aforementioned order has been passed while exercising the power under sub-section 6 of Section 5 *ibid*.

For the reasons aforementioned, I am of the view that the arguments made by Mr. Amandeep Singh are wholly untenable and misplaced and do not call for interference, much less, any scope of judicial review. The writ petition is resultantly dismissed.

(AMIT RAWAL)
JUDGE

January 11, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable Yes