

CWP No.24106 of 2017

[1]

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

**CWP No.24106 of 2017
Date of decision:26.10.2017**

Darshan Kumar Jain

...Petitioner

Versus

Registrar General of Societies, Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Gurminder Singh, Senior Advocate, with
Ms. Harpriya Khaneka, Advocate, for the petitioner.

Mr. S.K.Jain, Advocate,
for respondent no.4-Caveator.

Rakesh Kumar Jain, J. (Oral)

The petitioner was earlier a member of the Executive Committee of respondent no.2-society (hereinafter referred to as the "society"). He is aggrieved against the order dated 22.09.2017 passed by the Registrar General of Societies, Haryana (hereinafter referred to as the "Registrar General").

In brief, the society passed a resolution on 07.12.2014 for holding the elections of its Executive Committee. The election schedule was issued on 25.02.2016. The process of filing nominations, scrutiny and withdrawal was over by 15.03.2016. There were 44 persons in the fray to fill up 21 posts of the members of the Executive Committee. The elections were to be held on 20.03.2016 but before that, it was stayed on 17.03.2016 by the Registrar General. Thereafter, an Administrator was appointed to manage the affairs of the society on 26.04.2016. Both the orders dated 17.03.2016 and 26.04.2016 were challenged by way of two separate writ petitions before this Court. Both the writ petitions were clubbed but the order was passed in the lead case

bearing CWP No.8260 of 2016 on 20.12.2016, vide which both the orders dated 17.03.2016 and 26.04.2016 were set aside while observing that the intervention of the Registrar General at that crucial stage of the election was bad in law. However, the society was directed to conduct the elections without any further loss of time and in any case within a period of two months from that day. Thereafter, according to the petitioner, the society passed a resolution on 25.12.2016 to hold the elections on 29.01.2017 and 03.02.2017 on the basis of the nominations already filed and an advertisement in that regard was issued on 10.01.2017 for information to the general public. However, on 12.01.2017, the society passed another resolution to hold *de-novo* elections by inviting nominations from the other persons besides the nominations already filed, meaning thereby opportunity was given also to the persons to file nominations who had not earlier filed their nominations but now wanted to contest the election. Thereafter, election of the members of the Executive Committee was held on 12.02.2017 and election of the office bearers of the society was held on 16.02.2017.

The petitioner challenged the constitution of the Executive Committee much-less the process of *de-novo* election and also made a prayer in his petition filed before the District Registrar of Societies, Panchkula (hereinafter referred to as the "District Registrar") that he should invoke Section 40 of the Haryana Registration and Regulation of Societies Act, 2012 (hereinafter referred to as the "Act") for referring the matter to the Registrar in view of certain mal-practices, irregularities and illegalities committed during the election. The District Registrar, vide his order dated 16.03.2017, while allegedly assuming the powers of the Registrar, decided both the issues against

the petitioner. The said order was challenged by the petitioner by way of CWP No.5829 of 2017. However, the said petition was disposed of by this Court on 20.03.2017 in view of the availability of remedy of appeal to the petitioner under Section 79 of the Act. Consequently, the petitioner filed appeal before the State Registrar of Societies, Haryana (hereinafter referred to as the “State Registrar”) within three days as the interim stay granted by this Court on 20.03.2017 was only for three days. Finally, on 18.04.2017, the appeal filed by the petitioner was allowed and the *de-novo* process of election was held to be bad by the State Registrar.

Against the order of the State Registrar, respondents no.4 to 14, who are the elected members of the Executive Committee, filed appeal under Section 79 of the Act before the Registrar General. The said appeal has been allowed on 22.09.2017 and hence, the present petition has been filed.

Learned senior counsel appearing on behalf of the petitioner has basically raised two issues in this petition. Firstly, there was no occasion for the society to hold *de-novo* elections in view of the order dated 20.12.2016 passed by this Court in CWP No.8260 of 2016 because the order dated 17.03.2016, by which the Registrar General had stayed the election which was to be held on the basis of the nominations filed upto 15.03.2016, and the order dated 26.04.2016, by which he had appointed the Administrator, were set aside. Thus, it is further submitted that there is a complete violation of the order passed by this Court by the society as it had illegally held the elections *de-novo* by passing resolution dated 12.01.2017.

The second question is that once the petitioner had requested the District Registrar to refer the matter of mal-practice, irregularities and

illegalities committed in the conduct of election by the society to the Registrar, in terms of Section 40 of the Act, then it was incumbent upon the District Registrar to refer the matter to the Registrar and he could not have rejected the prayer of the petitioner by assuming the powers of the State Registrar that too by a cryptic order.

Learned counsel appearing on behalf of respondent/caveator, has argued that the petitioner has no *locus standi* to file the present petition because he himself had contested the election but lost and that the petitioner had given a consent letter to the society that he is satisfied with the *de-novo* election process and that the petitioner was a part of the Committee who had passed the resolution for holding *de-novo* election.

He has further submitted that the petitioner had though made a request, as alleged, to invoke the provisions of Section 40 of the Act but the said request was turned down by the District Registrar, against which he even filed the appeal before the State Registrar. The State Registrar, however, specifically noticed the objection raised by the petitioner but did not return any finding on it and the petitioner had a right to file appeal before the Registrar General to assail the said part of the order. Since the petitioner did not avail the remedy of appeal in terms of Section 79 of the Act before the Registrar General, therefore, he has no *locus standi* to challenge the finding of the State Registrar before this Court in the writ jurisdiction at this stage as it has attained finality.

It is also submitted by counsel for respondent(s) that the decision to hold *de-novo* election was taken by the society because in the interregnum, three persons, who had filed their nominations, had expired and nine months'

period had also elapsed, therefore, it was resolved by the society to accept nominations of all those members/persons who had earlier not filed their nominations but now wanted to contest the election. It is submitted that in this process, no loss has been caused to the petitioner as he himself contested the election but lost.

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

Insofar as the first argument raised by learned counsel for the petitioner is concerned, the question would be as to whether the petitioner has a right to invoke the extraordinary writ jurisdiction of this court to assail the validity of the impugned order on the ground that the election could not have been held *de-novo*?

Admittedly, the petitioner was a member of the erstwhile Executive Committee of the society. Earlier, on 07.12.2014, the election was decided to be held and, thereafter, process of filing nominations, scrutiny and withdrawal thereof etc. was completed by 15.03.2016. There is no doubt that there was an order of stay dated 17.03.2016 issued by the Registrar General on the elections and an Administrator was appointed vide order dated 26.04.2016 but both the orders were set aside by this Court in CWP No.8260 of 2016. Thereafter, the fresh elections have been held. According to the petitioner, the fresh elections could not have been held as the election procedure had already commenced or undertaken before 17.03.2016 when the stay was granted.

The main issue involved in this case is as to whether the petitioner has a right to challenge the election especially when he was a part of the Executive Committee who had passed the resolution dated 12.01.2017 for the

purpose of holding the elections *de-novo*. He himself contested the election by filing his nomination but lost. The petitioner had also given a consent letter to the society that he would have no objection if the election is held *de-novo*.

In this background, the petitioner is estopped by his own act and conduct and cannot make a hue and cry before this Court against the *de-novo* elections. Accordingly, the first argument of the petitioner is rejected.

Insofar the second argument is concerned, no doubt that the District Registrar has the power to refer the matter to the State Registrar in case of any malpractice much-less irregularities or illegalities are committed during the election. The District Registrar has passed the order that the matter is not worthwhile to refer to the State Registrar in terms of Section 40 of the Act. The said order was challenged by the petitioner in an appeal before the State Registrar, who had specifically mentioned his objections in the order dated 18.04.2017 but according to the petitioner, he did not comment upon thereafter for the purpose of referring the matter in terms of Section 40 of the Act. The said order was not challenged by the petitioner further by way of an appeal though the remedy of appeal was available to him before the Registrar General in terms of Section 79 of the Act. However, the appeal was only filed by the other side, being aggrieved against the order dated 18.04.2017 passed by the State Registrar and, therefore, the order passed by the State Registrar against the petitioner in respect of Section 40 of the Act came to an end on 18.04.2017 as it had attained finality.

If the petitioner was keen that the proceedings under Section 40 of the Act should have been initiated, then he had an opportunity to file an appeal against that part of the order of the State Registrar, which was adverse to his

interest, before the Registrar General but he has not availed that remedy. Once the said procedure has not been adopted by the petitioner, which though was available to him, then he cannot be allowed to raise this issue before this Court in the writ jurisdiction.

Accordingly, the second argument raised by the counsel for the petitioner is also rejected.

No other point has been raised.

In view of the above, the present writ petition is hereby dismissed being denuded of any merit, though without any order as to costs.

October 26, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No