

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

CWP-410-2016 (O&M)

Date of decision:- 06.07.2017

Trade Tower Owners Welfare Association and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present:- Mr. Dharminder Singh Sidhu, Advocate,
for the petitioners.

Mr. Deepak Balyan, Additional Advocate General, Haryana.

Mr. Aashish Chopra, Advocate,
for respondents No. 3 and 4.

Mr. Anurag Jain, Advocate,
Ms. Neesh Garg, Advocate,
for the applicants in CM-10126-2016.

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S.J. VAZIFDAR, C.J. (ORAL)

CM-10126-2016

The application for impleadment is allowed as prayed
for.

2. The applicants mentioned in the application are
impleaded as respondents No. 5 to 14.

CWP-410-2016

The controversy as recorded in an interim order
dated 17.04.2017 pertains to the handing over of maintenance of
common area facilities to a duly elected Residents' Welfare
Association in terms of the Haryana Apartment Ownership Act,
1983. The order noted that there was rivalry between the two

groups i.e. the petitioners and the applicants

(who seek their impleadment). It was directed that elections be held under the supervision of this Court and a duly elected Residents' Welfare Association was permitted to take over the responsibility of maintenance. Respondent No. 4 i.e. the developer was directed to publish a list of apartment/unit owners/authorized occupiers and the other interested persons who are entitled to cast their votes in the election within one week. The objections, if any, were to be entertained one week thereafter.

2. Further interim orders dated 09.05.2017 and 30.05.2017 were passed which read as under:-

09.05.2017

"Learned counsel for the builder explains that there are 125 office spaces/units in the Trade Tower Complex out of which 122 have been sold but conveyance deeds have been executed in respect of 77 only. However, the builder has today handed over a list of 71 unit-holders only who have executed the Deeds of Apartment as on 21.04.2017 and are entitled to participate in the election of their Association. We thus direct the builder to issue public notice and give opportunity to the remaining office spaces/unit-holders to execute the Deeds of Apartments so that their names can be included in the list of voters. It is made clear that the election shall be held under the supervision of the Observer to be appointed by this Court and the existing association or to any individual member shall have no right to hold the election. One of the applicant/unit-holder (Ranbir Sharma) is said to have executed the Deed of Apartment but his name does not figure in the list. The builder is directed to verify the same and if found correct, to include his name in the list.

List on 30.5.2017."

30.05.2017

"Reply filed by the petitioner to the application filed by Ranbir Sharma is taken on record. CM-7956-CWP-2017 stands disposed of.

Pursuant to the order dated 09.05.2017, Mr. Aashish Chopra, counsel for the builder informs that individual notices as well as public notices were issued to the office spaces/unit holders and pursuant thereto, some of them have executed the Deeds of Apartments and in this manner there are 75 owners who have got themselves registered. It is further informed that out of left out 45, 10 more owners have expressed their willingness to register themselves.

Similarly Mr. Ranbir Sharma has also been included in the list of registered owners.

Since the petitioner-Association is keen for conducting the election, we have impressed upon Sh. Chopra to provide list of all the office spaces/unit holders who have not executed the Deeds of Apartments so far to the petitioner-association so as to enable it to contact such office spaces/unit holders and persuade them to execute the Deeds of Apartments.

Let the list of left out owners be supplied to the petitioner-Association within one week. The petitioner-Association shall make efforts to convince them to execute Deeds of Apartments, within three weeks thereafter.

List for further consideration on 05.07.2017."

3. All that remains now to be done in this writ petition is to appoint an observer to supervise the elections as directed by the aforesaid orders. The parties, however, have requested that the observer appointed by this Court pursuant to the aforesaid orders may also be appointed as the Returning Officer. This they say would obviate their having to make an application under Section 39(ii) of the Haryana Registration and Regulation of Societies Act, 2012 to the District Registrar for appointment of the Returning Officer.

4. At the request and with the consent of the parties, the writ petition is disposed of by the following order:-

(i) Shri B.M. Bedi, former District Judge, Haryana, is appointed as the Returning Officer and observer for conducting the elections of the governing body of the Trade Tower Owners Welfare Association, Gurgaon.

(ii) The Returning Officer shall do so in accordance with law. The Returning Officer shall, however, before holding the elections send individual notices to all the parties who have executed the deed of apartment as well as to those who have not executed the deed of apartment. The parties who have not executed the deed of apartment shall be intimated by the Returning Officer that they would be at liberty to do so within two weeks of the receipt of the notice from the Returning Officer. If they do so, they shall also form part of the electorate.

(iii) The Returning Officer is requested to complete the process latest by 15.09.2017.

(iv) The remuneration of the Returning Officer is fixed at ₹ 1,00,000/-. The remuneration shall be paid from the funds of the society within two weeks from today. This, however, shall not include the out of pocket expenses which shall be paid by

the society within two weeks of the Returning Officer's demand for the same.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

06.07.2017
Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No