

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

(1)

CWP No.8482 of 2013

Vijay Parkash and others

.....Petitioners

Versus

State of Haryana and others

...Respondents

(2)

CWP No.8801 of 2013

Baljit Singh and others

.....Petitioners

Versus

State of Haryana and others

...Respondents

Date of decision : 22.12.2017

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Narender Singh, Advocate for petitioners No.2,4 and 5
in CWP No.8482 of 2013.

Mr. K.D.S. Hooda, Advocate for petitioners
in CWP No.8801 of 2013.

Mr. S. S. Mann, Senior DAG, Haryana.

Mr. Sandeep Moudgill, Advocate for respondent No.4
in both the petitions.

* * *

DAYA CHAUDHARY, J. (Oral)

By this judgment of mine, two petitions *i.e.* CWP No.8482 of
2013 and CWP No.8801 of 2013 shall be disposed of as common question

of law and facts are involved in both the petitions. However, the facts are being extracted from CWP No.8801 of 2013.

The present petition has been filed under Articles 226/227 of Constitution of India for issuance of a writ in the nature of certiorari for quashing of resolution dated 17.03.2013 (Annexure P-5) and also for direction to respondents to conduct the election of the Managing Committee of respondent-Society amongst the members as per approved L-Form available with respondent No.3 by allowing the petitioners to participate in the election process as they have not incurred any disqualification under the Act/Rules/Bye-laws and as no order of removal has been passed.

Briefly, the facts of the case as made out in the present petition are that The New Haryana Officer's Corporative Group Housing Society Ltd., Panchkula was registered vide registration No.255 dated 19.08.1998. The society applied for 3.5 acres of land in the Group Housing Scheme, 1998 for construction of 142 dwelling units. Accordingly, a plot No. G-20, measuring 14162 square meters was allotted by Haryana Urban Development Authority (here-in-after called as 'HUDA') vide letter dated 08.12.1999 in Sector 27, Panchkula. Due to severe earthquake, there was a big crack in the land near Nada Sahib and most of the members decided to withdraw their membership. A request was made by the Society to HUDA to allow them to construct 80 flats on the entire land measuring 14162 square meters, but the request was declined vide letter dated 16.05.2001. The term of the Managing Committee was upto 23.02.2005. After expiry of term of the Managing Committee, new members were enrolled in place of

old members as Secretary and President of the Society were authorized to enroll new members as per decision taken in the general house meeting. The strength of the members of the Society was 142. A request was made by the Society for allotment of two acres land for construction of flats for remaining members under the Group Housing Scheme, 2001. An amount of ₹23,32,800/- was deposited which was 10% of the estimated cost of the land. Earlier allotted plot to the Society in Sector 27 was surrendered prior to allotment of the land *i.e.* plot No.1, Sector 6 in Mansa Devi Complex measuring 8000 square meters. Because of interim order by this Court, the first, second and third installments of the plot could not be deposited as some of the members withdrew their membership and demanded back their deposited amount. Under aforesaid circumstances, the then Secretary and President enrolled new members but on visiting office of respondent No.3 for submission of revised L-Form, it came to their knowledge that the Society of the petitioners was not in existence as it was already declared defunct along with other 500 societies. An application was made by the office bearers of the Society to the Assistant Registrar, Cooperative Societies (respondent No.3) stating that their Society was never defunct as four installments were deposited with HUDA on 31.08.1998, 23.05.1999, 24.05.1999 and 10.01.2001 towards cost of the plot as demanded.

A complaint was filed by the Society before State Consumer Disputes Redressal Commission, Haryana at Panchkula for re-allotment of plot No.1, Sector 6, Mansa Devi Complex, Panchkula. The request of the Society was accepted and the Society was revived vide order dated

23.07.2003. Thereafter, the revised L-Form of 105 members was approved on 25.08.2004. The Society submitted Revised L-Form for 100 members with the approval of Assistant Registrar, Cooperative Societies to allow construction of 100 dwelling units for its members with enhanced FAR of 175% under the signature of President and Secretary of the Society. The Society was allowed to enhance the FAR from 150% to 175% and allowed to construct 100 dwelling units vide sanction letter dated 07.04.2005. The Society was accorded sanction to construct 100 dwelling units of 130 square meters super area each. Thereafter, the term of the Society expired on 23.02.2005 and its members raised demand to call general body meeting for constitution of fresh Managing Committee. The then Secretary of the Society also pressed the then President to call a general body meeting to conduct election of the Managing Committee but he did not agree. A dispute arose between the Secretary and the President of the Society and the then Secretary Shri Ram Kishan Birbian resigned from the post. Some of the Members of the Society made representation to respondent No.3 to call for general body meeting and to conduct election of the Managing Committee of the Society. The President of the Society was restrained to hold the meeting and he was directed to hand-over the record of the Society to the Assistant Registrar Cooperative Societies, so that proper election of the Managing Committee could be held as the term of the Committee had already expired on 23.02.2005. The President cancelled membership of number of members by constituting his own executive Committee before calling general body meeting, which resulted into multiple litigation and a

number of appeals were filed before respondent No.2 and all illegal orders were stayed by him. Thereafter, the President of the Society withdrew all the orders by restoring the membership of all the members. All members of the Society were issued share certificates. The entire cost of plot was deposited with HUDA by the Society and unanimously decided to take up the matter with the Registrar for conducting election of the Managing Committee but its Secretary constituted a Managing Committee of five members and started functioning as Managing Committee of the Society. The membership of about 23 old members, who were enrolled during the years 2002 to 2004 was cancelled. New members were enrolled after the expiry of tenure of previous Managing Committee. Appeals were filed by the Members before the Registrar, wherein stay was granted in favour of those members. The Assistant Registrar (respondent No.3) set aside the election of the Secretary and constituted the Committee for a period of six months vide order dated 28.12.2007. Said order was challenged by way of filing an appeal but it was rejected vide order dated 24.01.2008. In the general body meeting held on 22.06.2008 identity cards were issued to 110 members and they were allowed to attend the meeting of general house but the Secretary resigned from the post.

After the resignation of the Secretary, petitioner No.1 was elected as President. Thereafter, the then President cancelled the membership of the then Secretary and 33 members. A complaint was made against the then Secretary. The allegations against him were not found to be correct. Against order of cancellation of membership of 33 members,

appeals were filed before Registrar Cooperative Societies, Haryana and it was entrusted to Additional Registrar (Credit) Cooperative Society, Haryana, Panchkula. Appeals were decided vide order dated 10.08.2009 with a direction to conduct the election of the Managing Committee by secret ballot by Assistant Registrar Cooperative Societies, Naraingarh, by appointing administrators till the Managing Committee was constituted. Against said order dated 10.08.2009, a revision was filed by the Society which was dismissed as withdrawn vide order dated 07.09.2010.

On request of various members of the Society, during pendency of the appeal, the Assistant Registrar Cooperative Society, Naraingarh was appointed Board of Administrator under Section 28 of the Act for a period of six months but the record of the Society was not handed over to the Administrator. A scrutiny committee was constituted after the decision of the appeal in compliance of direction passed by Additional Registrar Cooperative Societies on 10.08.2009. The cases of all members were scrutinized and only 93 members were found eligible. The list of 93 members was circulated as no objection was received from any of the member. Thereafter, a revised L-Form of the Society consisting of 93 members signed by the President and Secretary of the Society was submitted to the Assistant Registrar Cooperative Societies for approval. The decision taken in this regard was approved by the full house and list of the members was also approved. A notice was also issued to all concern to raise objection, if any, within a period of 15 days, but no objection was filed. The tenure of previous managing committee came to an end in the month of

July, 2012 and the Assistant Registrar Cooperative Societies appointed Board of Administrator of the Society on 01.10.2012. Thereafter on the very next day i.e. 02.10.2012, another Board of Administrator was appointed who took over the entire control of the Society. The Board of Administrator was appointed for a period of six months as a stop gap arrangement to run the day to day affairs of the Society and to conduct election of the Managing Committee within a period of six months, but no election was conducted.

As per case of the petitioners, the action of the Administrator was of misuse of power as he was holding the charge of Deputy Principal Secretary to C.M. and Incharge of affairs of Department of Corporation. Meeting was called in an illegal manner and contrary to the provisions of law. The action of Board of Administrator conducting election of the Managing Committee out of 52 members of the Society has been challenged in the present petition by stating it to be illegal, arbitrary and against the rules and regulations.

Learned counsel for the petitioners submits that as per L-Form there were 104 members of the Society which were approved by the office of the Assistant Registrar. Another L-Form forwarded by the previous Managing Committee declaring 93 members to be undisputed members and forwarding their L-Form to the Assistant Registrar for approval whereas only 52 members were allowed to cast vote to elect Managing Committee. Learned counsel submits that the action of the Administrator is not only illegal and arbitrary but unconstitutional as well and purpose was only to

capture the Managing Committee of the Society with ulterior motive. Learned counsel also submits that initially a plot was allotted by HUDA to construct 80 flats but subsequently FAR was increased from 150% to 175% to accommodate more members and even the permission was sought to construct 100 dwelling units in FAR of 175% which was allowed by HUDA and Chief Town Planner. Learned counsel submits that the membership of some of the persons was terminated and strength of the Society was reduced from 100 to 80 in an illegal and arbitrary manner, whereas it could have been reduced by the prescribed authority only in case any disqualification as provided under Bye-law 9. It is also the arguments of learned counsel for the petitioners that all the members whose names were mentioned in the approved L-Form by the competent authority were entitled to cast their vote and to participate in the election of the Managing Committee but still they were not allowed to cast their vote. Calling of a meeting by Board of Administrator to conduct election is not only illegal and unconstitutional but arbitrary and against the Act and Bye-laws of the Society. Learned counsel also submits that date of the election can be fixed only by calling meeting of general house. The action of the Administrator in debarring the eligible members to cast their votes and to participate in the election process was not only *mala fide* but infringement of their civil rights as well.

Learned counsel for the petitioners has relied upon the judgments of Hon'ble the Apex Court in cases ***K. Shantharaj and another Vs. M. L. Nagaraja and others 1997 (6) SCC 37, Gayatri De Vs. Mousumi Cooperative Housing Society Ltd. and others 2004(3) RCR***

(Civil) 204, Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd. and others 2003 AIR (SC) 2120 and judgment of this Court in case ***Mukesh Vs. State of Haryana and others 2012(4) RCR (Civil) 547.***

Learned counsel for respondent No.4 has opposed the submissions made by learned counsel for the petitioners. He has also raised a preliminary objection that the petition is liable to be dismissed as the petitioners have tried to mislead this Court by concealing certain material facts. Learned counsel has also raised an objection about the maintainability of the writ petition as respondent-Society is a Society registered under the Haryana Cooperative Societies Act, 1984 and as such no writ was maintainable. Neither there is any deep and pervasive control of the State Government nor of any authority over the respondent-Society. There is no share holding of the State Government or any other authority or agency in the respondent-Society. Even no financial aid is provided by the State Government or any State financial institution or its agency. It is an autonomous body having its own policies for its governance and functioning. The entire expenditure is to be meted out by the Society only. Learned counsel also submits that the Society is neither a State nor any authority or instrument of the State in any manner as defined under Article 12 of the Constitution of India.

Learned counsel for respondent No.4 has relied upon judgments of Hon'ble the Apex Court in cases ***Mr. Ajay Hasia etc. Vs. Khalid Mujid Sehravardi and others 1981 AIR (SC) 487, M.D. Bhadra Shahakari S. K. Niyamita Vs. President, Chitradurga Mazdoor Sangh***

and others 2006 (8) SCC 552, General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrughan Nishad and others 2004(1) SCT 216, S. S. Rana Vs. Registrar, Cooperative Societies and another 2006(2) SCT 570, judgments of this court in cases Mini Bank Karamchari Union Zila Jind, Narwana Vs. State of Haryana and others 2007(2) SCT 153, Gurmeet Singh Vs. The State of Punjab and others (CWP No.3524 of 1995) decided on 08.05.2014, Pritam Singh Gill Vs. State of Punjab and others 1982(2) SLR 135, judgment of Bombay High Court in case Jitendra Srivastava Vs. National Horticultural Research and Development Foundation Nashik and others 2011(8) RCR (Civil) 2152 and judgment of Gauhati High Court in case Sahabuddin Choudhury Vs. State of Assam 1994 (2) SCT 319, in support of his arguments.

Heard arguments of learned counsel for the parties and have also perused the documents on the file.

After hearing the arguments and on perusal of the record, it appears that the petitioners are aggrieved by action of the respondents in not allowing them to participate in the election and to cast their votes. They are also aggrieved by action of Administrator as their names were included in the list of 93 members but they were not allowed to attend the meeting and to cast their votes. One group of the members held its general body meeting on 17.03.2013 and passed the impugned resolution (Annexure P-5), whereby the petitioners were debarred from participating in the election. Feeling aggrieved by the action of the respondents and the impugned resolution (Annexure P-5), the petitioners had approached the Registrar

Cooperative Societies, Haryana by serving upon him a legal notice dated 15.04.2013. They were having the apprehension that on the basis of that resolution, the petitioners were not going to be allowed to cast their votes. While issuing notice of motion on 23.04.2013, it was also directed that in case respondent-Society intended to hold election, let the election process go on, but the petitioners were also directed to be allowed to cast their votes. It was also directed that the result of the election be not declared without permission of the Court. As per the submission made by learned counsel for the petitioners, they went to participate in the general house meeting and also to cast their votes but they were not allowed to participate. They filed COCP No.1094 of 2013 for non-compliance of interim order dated 23.04.2013 passed in CWP No.8482 of 2013, which is also pending to be heard along with the main petition. Petitioners along with others also filed CWP No.8801 of 2013 as they were also debarred by passing resolution dated 17.03.2013. As per case of the petitioners, they were present at the venue of the meeting but they were not allowed to participate in the meeting and even some of them were not allowed to enter the premises. Interim order passed in favour of the petitioners was brought to the notice to the members of Board of Administrators *i.e.* respondents No.2 & 3 with a request to allow them to attend the meeting and to cast their votes. The allegation levelled by the petitioners regarding disallowing them to enter the premises and to cast their votes has been denied by learned counsel for respondents No.2 and 3. He submits that they were allowed to mark their presence in the attendance register by putting their signatures but

they themselves returned and some of the members remained present but subsequently they also left the place.

Petitioners are also aggrieved by the action of the respondents that they have paid the regular installments towards the cost amount and there was no default on their part. CWP No.21375 of 2013 was filed for quashing of resolutions dated 17.03.2013 passed in general body meeting of the respondent-Society and also order dated 28.04.2013 along with all subsequent proceedings carried out for implementing the decisions taken in the meeting whereby Board of Administrators held the general body meeting consisting of 52 members only out of 100 members of the Society and cancelled the membership of various members. It was also the prayer in that petition for direction to respondents to execute order dated 10.08.2009 passed by Additional Registrar Cooperative Societies and to hold the election of the Managing Committee of respondent-Society amongst the members of the Society in accordance with an approved Form-L dated 25.08.2004. Nine other connected matters were also listed for hearing along with aforesaid petition, which were dismissed vide order dated 27.01.2016. However, a liberty was given to the petitioners to take recourse to their remedies in law apart from one before the Registrar Cooperative Societies/Financial Commissioner, if any, is available. Relevant portion of said judgment is reproduced as under : -

“A perusal of the resolution dated 28.4.2013 which has been appended to the petition as Annexure P-18 would indicate that apart from other issues that were discussed in the resolution it was also a ratification of the

earlier resolution dated 17.3.2013. Since the grievance of the petitioners centres around membership which stands cancelled in the resolution dated 28.4.2013 (Annexure P-18) and dated 17.3.2013 (Annexure P-17) and tested before the Registrar, Cooperative Societies, the subsequent resolution dated 28.4.2013 seeking ratification of the earlier resolution would naturally be convergent in content to earlier resolution stated above.

In the considered view of this Court once the Additional Registrar, Cooperative Societies has taken a view on the substantive issue which is also based largely on disputed question of facts which this Court would be unable to answer in the exercise of its jurisdiction under Article 226 of the Constitution of India, it would be just and apposite to relegate the petitioners to a similar remedy of appeal before the Registrar, Cooperative Societies/Financial Commissioner. Ordered accordingly. If such an exercise is taken up by the petitioners the question of limitation would not stand in their way.

Needless to say that since the Additional Registrar, Cooperative Societies has already opined on the issue the petitioners would also have the cause of joining the proceedings before the Financial Commissioner directly as it has been stated before this Court that such an exercise is already underway upon dis-satisfied members having filed revision before him.

It is also stated by the learned counsel for the petitioners that the order of this Court dated 21.8.2014 has been challenged by way of Letters Patent Appeal. However, there is no order varying the directions of the Court dated 21.8.2014. I am as on today bound by my earlier view. The petitioners would be at liberty to take recourse to their remedies in law apart from the one before the Registrar, Cooperative Societies/Financial Commissioner, if any is

available to them.

Hence, instant petitions are hereby dismissed.”

Against said judgment of learned Single Bench dated 27.01.2016, LPA No.296 of 2016 was filed which was admitted and was ordered to be heard within a period of one year. In the application for stay, it was ordered that any action taken for allotment of flats shall be subject to final result of the appeal. Said LPA is still pending. Sunil Kumar along with two others namely Brig. S.P.S. Dhaliwal and Dr. Sunita filed three petitions before this Court and those petitions were dismissed vide order dated 27.01.2016. A strong observation was made while dismissing those petitions and the relevant portion is reproduced as under:-

“It is not disputed that the Additional Registrar Cooperative Societies has passed a detailed order dated 27.8.2014 commenting on the claims of several claimants including the petitioners. Some of the appeals were also withdrawn on the premise that the writ petitions have been filed in this Court. The Court would not like to comment on this aspect as it was entirely upto those appellants aided by legal advise to take recourse to such an action. Suffice it to say that the Additional Registrar, Cooperative Societies as an authority competent in law had the occasion to comment on the substantive issue raised in the petition.

Learned counsel for the petitioner would make an attempt to say that it is only the resolution dated 17.3.2013 which was the subject matter of appeal before the Addl. Registrar, Cooperative Societies and not resolution dated 28.4.2013 which is questioned herein.

A perusal of the resolution dated 28.4.2013 which has been appended to the petition as Annexure P-20 would

indicate that apart from other issues that were discussed in the resolution it was also a ratification of the earlier resolution dated 17.3.2013. Since the grievance of the petitioners centres around membership which stands cancelled in the resolution dated 28.4.2013 (in CWP no. 23532 and 28285 of 2013) and dated 17.3.2013 (in CWP no. 28337 of 2013) and tested before the Registrar, Cooperative Societies, the subsequent resolution dated 28.4.2013 seeking ratification of the earlier resolution would naturally be convergent in content to earlier resolution stated above.

In the considered view of this Court, once the Additional Registrar, Cooperative Societies has taken a view on the substantive issue which is also based largely on disputed question of facts which this Court would be unable to answer in the exercise of its jurisdiction under Article 226 of the Constitution of India, it would be just and apposite to relegate the petitioners to a similar remedy of appeal before the Registrar, Cooperative Societies/Financial Commissioner. Ordered accordingly. If such an exercise is taken up by the petitioners the question of limitation would not stand in their way.

Needless to say that since the Additional Registrar, Cooperative Societies has already opined on the issue the petitioners would also have the cause of joining the proceedings before the Financial Commissioner directly as it has been stated before this Court that such an exercise is already underway upon dis-satisfied members having filed revision before him.

It is also stated by the learned counsel for the petitioners that the order of this Court dated 21.8.2014 has been challenged by way of Letters Patent Appeal. However, there is no order varying the directions of the Court dated 21.8.2014. I am as on today bound by my earlier view. The petitioners would be at liberty to take recourse to their

remedies in law apart from the one before the Registrar, Cooperative Societies/Financial Commissioner, if any is available to them.

Hence, instant petitions are hereby dismissed.”

In view of said order, it is apparent that the order of this Court dated 21.08.2014 has been challenged by way of filing LPA but there is no order varying the direction of this Court dated 21.08.2014. A liberty was given to the petitioners who are similarly situated to take a recourse to their remedies as per law apart from one before the Registrar Cooperative Society/Financial Commissioner, if any, available to them.

Accordingly, in view of what has been discussed above and as the same issue has already been dealt with by the Coordinate Bench and the writ petition has been dismissed by granting liberty and LPA is still pending, there is no reason to consider the present writ petitions when the matter has already been decided in the earlier petition. Hence, the present writ petitions being devoid of any merit, are hereby dismissed.

22.12.2017

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No