

RA-CW-170-2017 in CWP-12630-2015
RA-CW-213-2017 in CWP-12898-2015
CM-4456-CWP-2017 in CWP-5955-2015

1

201+203

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

Date of decision : 22.09.2017

1.

**RA-CW-170-2017 in
CWP-12630-2015**

Mandeep and others

... Applicant/Petitioners

Versus

State of Haryana and others

... Respondent(s)

2.

**RA-CW-213-2017 in
CWP-12898-2015**

Ishwar Singh Gaur

... Applicant/Petitioners

Versus

State of Haryana and others

... Respondent(s)

3.

**CM-4456-CWP-2017 in
CWP-5955-2015**

Shiv Kumar Sharma and others

... Applicant/Petitioners

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Lekh Raj Sharma, Advocate
for the applicant/petitioner in RA-CW-170-2017.

Mr. Surinder Garg, Advocate and
Mr. Surinder Gaur, Advocate
for the applicant/petitioner in RA-CW-213-2017.

Mr. Sandeep K. Sharma, Advocate
for the applicant/petitioners in CM-4456-CWP-2017 and
for respondent Nos.6 to 8 in RA-CW-170-2017.

Mr. R.K. Malik, Senior Advocate with
Mr. Mandeep Singh, Advocate
for respondent No.3 and 4 in RA-CW-213-2017,

for respondent No.3 in RA-CW-170-2017 and

Mr. Ramesh Hooda, Advocate
for respondent Nos.4 & 5 in CM-4456-CWP-2017.

Ms. Mamta Singla Talwar, DAG, Haryana.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two review applications bearing RA-CW Nos.170 & 213 of 2017 and one CM No.4456-CWP of 2017, seeking recalling/modification of the order dated 28.02.2017 passed by this Court, which reads as under:-

"Learned counsel for the petitioners seeks permission of this Court to withdraw the present writ petition with liberty to avail the alternative remedy of filing the civil suit.

In view of the statement made by learned counsel for the petitioners, present writ petition stands dismissed as withdrawn with liberty to avail the alternative remedy of filing the civil suit. In case the civil suit is filed within a period of one month from the date of receipt of certified copy of this order, the period spent herein shall deemed to be condoned."

on the premise that the remedy of civil suit as granted by this Court, is not sustainable as the impugned action of the Administrator appointed, as per Section 68 of the Haryana Registration and Regulation of Societies Act, 2012 (in short 'the Act'), had only to play the role as the governing body of the Society, but cannot, as per the provisions of Section 21 of the Act, settle the dispute amongst the members and therefore, there is an error apparent on record.

I have heard the learned counsel for the parties and appraised

the paper book.

Before commenting upon the arguments of learned counsel for the review applicant/petitioners, it would be in the fitness of things to extract the provisions of Sections 21 and 68 of the Act, which reads as under:-

*"21. **Settlement of Membership Disputes** (1) Where any member claims to have been admitted as a member but not included in the register of members or any member is aggrieved with his removal from the membership of the Society, such person may submit a petition to the District Registrar along with prescribed fee.*

(2) The District Registrar may require such person to support his petition with such documentary or other evidence, as may be considered appropriate.

(3) Upon receipt of any such petition, the District Registrar shall consider the matter and settle the disputes in accordance with the Bye-laws after giving opportunity of hearing to all concerned.

(4) Where the Bye-laws are observed to be silent or lack clarity for addressing the dispute or are inconsistent with the provisions of the Act and the rules made thereunder, the District Registrar shall decide the matter in accordance with the provisions contained in the Act or the rules made thereunder.

(5) Where the Society has large number of members and it is considered expedient to verify, determine and establish the identity and genuineness of such members, the District Registrar may require all members of the Society to appear before him in person alongwith an acceptable proof of identity and address, as recorded in the register of members, within such time and in such manner, as may be prescribed.

(6) Where action is taken in accordance with sub-section (5) above and certain members do not appear before him in spite of two opportunities granted, the District Registrar shall be competent to strike off the names of such members from the register.

68. Suspension of Governing Body & Appointment of Administrator *(1) If, in the opinion of the Government, the Governing Body of any Society,—*

(i) makes default or is negligent in the performance of duties imposed on it; or

(ii) commits acts which are prejudicial to the interests of the Society, its members or public at large; or

(iii) fails to resolve disputes with regard to the eligibility of members; or

(iv) fails to hold elections of the Governing Body; or

(v) is otherwise not functioning properly,

it may, after giving a show cause notice, direct the supersession of the Governing Body and appoint an Administrator, alongwith or without constitution of committee of persons to assist him for a period not exceeding two years in the first instance:

Provided that the period may be extended and continued at the request of Administrator but it shall not exceed five years in continuity.

(2) The Administrator shall, subject to the overall control of the Registrar General and such directions as may be received from him, have the powers to exercise all or any of the functions of the Governing Body of the Society and take action as may be required for proper management of the Society.

(3) The Administrator so appointed shall, before the expiry of his term, make efforts to arrange for the constitution of the Collegium, if applicable and the Governing Body, as the case

may be, in accordance with the Bye-laws, provisions of the Act and the rules made thereunder.

(4) The Registrar General may fix the honorarium or remuneration payable to the Administrator or the member of the committee with the approval of the Government and direct such expenditure to be defrayed out of the funds of the Society."

On conjoint reading of the aforementioned provisions, it is evident that the Administrator by deriving the powers from the provisions of Section 68 of the Act and as per the authority given to him by the Registrar, has been assigned to perform the roles as prescribed therein and not beyond, whereas the advertisement dated 08.06.2015/07.06.2015 in CWP Nos.12630 & 12898 of 2015, was caused by the Administrator by assuming the role of the Registrar, which according to the provisions of Section 21 of the Act, is without jurisdiction.

In other petition bearing CWP No.5955 of 2015, the petitioners had approached this Court for issuance of appropriate writ, order or direction in the nature of *mandamus*, directing the respondents to hold the elections of the Executive Committee of the Society/respondent No.5 and this Court vide order dated 31.03.2015 had issued the following direction:-

"In the meanwhile, the Administrator shall take steps to fulfil the responsibility No.(ii) as per clause 4 of the order of Appointment of the Administrator dated 22.01.2015 (Annexure P-5) and shall facilitate the elections to be held to the governing Body of the Gaur Brahman Vidya Parcharni Sabha (Registered)-respondent No.5. "

In pursuance to the aforementioned direction, the advertisement

dated 08.06.2015 caused by the Administrator gave cause of action to the petitioners to approach this Court.

Be that as it may, the plain and simple reading of the provisions of Section 21 of the Act, leaves no manner of doubt that for determination of the settlement of dispute amongst the members, the powers/jurisdiction vests with the Registrar and not with the Administrator.

The review applicant/petitioners are at liberty to approach the Registrar for vindication/redressal of the grievances as agitated and raised in the writ petitions by moving an appropriate application.

Resultantly, the order dated 28.02.2017 is hereby modified to the extent that the petitioners instead of availing the alternative remedy of filing civil suit, shall be at liberty to approach the Registrar, in terms of Section 21 of the Act and seek the appropriate relief. In case such application is filed, the Registrar shall decide the same as expeditiously as possible.

The petitioners shall also at liberty to move an application for interim relief viz-a-viz non-holding of the elections, during the pendency of the application, in view of the apprehension expressed.

The RA-CW Nos.170 & 213 of 2017 and CM No.4456-CWP of 2017 are disposed of.

22.09.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No