

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

CWP No.22151 of 2015
Date of Decision:06.08.2018

Satpal Thakran

..... Petitioner

Vs.

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.S.K. Hooda, Advocate,
for the petitioner.

Mr.Saurabh Mohunta, DAG, Haryana,
for respondents No.1 & 2.

Mr.Naveen S. Bhardwaj, Advocate,
for respondent No.3.

RAKESH KUMAR JAIN, J.

This petition is directed against the order dated 1.10.2015 passed by respondent No.2 under Section 133 of the Criminal Procedure Code, 1973 [for short 'the Cr.P.C.'] and notice dated 8.10.2015, issued in pursuance of the impugned order dated 1.10.2015, on the ground of being illegal and without jurisdiction.

The petitioner was allegedly elected as the president of the Society called Mayfield Garden Resident Welfare Society, Sector 51, Gurgaon [for short 'the Society']. The District Registrar of Firms and Societies, Gurgaon vide his order dated 25.5.2012 approved the newly constituted society. The said decision was challenged by the members of the Society by way of an appeal filed before the State Registrar of Societies, who vide his order dated 15.4.2013, set aside the order of the District

by way of CWP No.8649 of 2013 which was allowed and the matter was remanded back to the State Registrar of Societies, who again allowed the appeal vide its order dated 04.03.2015. The said order was challenged by the Society by way of CWP No.8302 of 2015 which was allowed on 11.5.2015. The Intra-Court appeal bearing LPA No.887 of 2015 against the decision dated 11.5.2015 was withdrawn on 30.6.2015 to move an appropriate application. The Review Application was also dismissed. Thereafter some members of the Society filed a complaint under Section 133 of the Cr.P.C before the Sub Divisional Magistrate, Gurgaon on the ground that the Society is not providing basic amenities of water and electricity. The SDM, Gurgaon/respondent No.2 vide his impugned order dated 1.10.2015 issued direction to the District Registrar of Firms and Societies and also constituted an independent interim committee of the Government officers/officials for running the affairs of the Society on the ground that the tenure of the Society had already ended in the year 2015. Following the impugned order dated 1.10.2015, the Government Administrator has taken the charge and required all residents of J. Block, Mayfield Garden to deposit ₹6,000/- to the Administrator account.

Learned counsel for the petitioner has vehemently argued that respondent No.2 has transgressed his powers much less exceeded his jurisdiction in passing the impugned order by which he had issued directions to the District Registrar of Firms and Societies and appointed an interim committee of Government officers/officials and further issued a direction to appoint Administrator to run the affairs of the Society.

On the other hand, learned counsel for the respondents has submitted that the impugned order is well in accordance with law because

submitted that the members of the Society were not being provided water and electricity because of the internal bickering, therefore, the impugned order has been passed. It is also submitted that even on 6.10.2015, the District Registrar of Firms and Societies himself has appointed the Tehsildar as an Administrator and the said order has not been challenged by the petitioner.

I have heard learned counsel for the parties and perused the record.

In order to appreciate the arguments raised by learned counsel for the petitioner, it would be relevant to refer to the provisions of Section 133 of the Cr.P.C., which read as under:-

“133. Conditional order for removal of nuisance.

(1) Whenever a District Magistrate or a Sub- divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any

goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion configuration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order-

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) *to remove, repair or support such building, tent or structure, or to remove or support such trees; or*

(v) *to fence such tank, well or excavation; or*

(vi) *to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;*

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the Order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation- A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes."

A perusal of the aforesaid provision show that neither respondent No.2 had the jurisdiction to entertain the complaint to consider the grievances raised therein nor he had the power to pass the impugned

order which is exclusively in the domain of the authorities prescribed under the Cooperative Societies Act.

Learned counsel for the respondents could not raise any meaningful argument to contest except for referring to the subsequent order passed by the District Registrar of Firms and Societies dated 6.10.2015 by which Sanjiv Singla, Tehsildar, Gurgaon was appointed as Administrator.

As regards the appointment of Administrator is concerned, the petitioner may avail his remedy in accordance with law but insofar as the impugned order and subsequent notice are concerned, these are patently illegal and without jurisdiction. Hence, the present petition is hereby allowed and the impugned order and notice are hereby quashed.

06.08.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No