

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

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Civil Writ Petition No.16666 of 2016
Date of Decision: October 1st, 2019

Gurdeep Kaur and others

...Petitioners

Versus

Financial Commissioner Cooperation, Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. H.S. Bedi, Advocate
for the petitioners.

Ms. Charanpreet Singh, Assistant Advocate General, Punjab.

Mr. Harit Sharma, Advocate
for respondent No.5.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 11.02.2016 (Annexure P-7) passed by the Financial Commissioner, Cooperation, Punjab, whereby revision petition preferred by the petitioners has been dismissed challenging the order dated 11.09.2013 (Annexure P-6) passed by the Registrar, Cooperative Societies, Punjab, in an appeal preferred by the petitioners, whereby the Additional Registrar (Credit), Cooperative Societies, Punjab, set aside the inquiry report dated 28.06.2007 of the Assistant Registrar, Cooperative Societies, Kharar, and to hold a fresh inquiry within a period of one month by giving opportunity of hearing to both the parties vide order dated 31.01.2013 (Annexure P-5).

2. It is the contention of learned counsel for the petitioners that a fraud was played upon the predecessor-in-interest of the petitioners namely Shri Gurmeet Singh, who was a member of The Madanpur Cooperative House Building Society Limited-respondent No.4 when the President of the

Society, Shri Gurdeep Singh, fraudulently by asserting that incentive/interest had to be given to the members by the society to the tune of ₹65,000/- had obtained signatures of Gurmeet Singh on a blank stamp paper of ₹10,000/-, which was converted into a transfer deed and a cheque of ₹65,000/- was given to Gurmeet Singh, who encashed the same under a *bona fide* belief that it was incentive/interest given by the society. As a matter of fact, the membership/plot which was allotted to Gurmeet Singh i.e. Plot No.194 was transferred in the name of Smt. Anita Bhatia-respondent No.4.

3. On coming to know about this fact, Gurmeet Singh filed a complaint to the Registrar, Cooperative Societies, Punjab, which was marked to the Deputy Registrar, Cooperative Societies, Ropar, who further marked it to the Assistant Registrar, Cooperative Societies, Kharar, who on holding the inquiry and considering the documentary evidence, returned a finding that the transfer was illegally made and it should be cancelled. The inquiry report is dated 02.07.2007. A dispute was raised and a reference preferred by Smt. Anita Bhatia-respondent No.4 under Section 55/56 of The Punjab Cooperative Societies, Act, 1956, on the basis of the inquiry report dated 02.07.2007, when the Deputy Registrar, Cooperative Societies, Ropar, accepted the said report and directed the Assistant Registrar, Cooperative Societies, Kharar, to comply with the inquiry report. Objections were raised by the petitioners with regard to the maintainability of the reference as such as also to the effect that nothing has been claimed in the relief. On completion of the pleadings and the evidence led by the parties, Additional Registrar (Credit), Cooperative Societies, Punjab, without

considering the objections of the petitioners, passed a totally non-speaking order dated 31.01.2013 (Annexure P-5) setting aside the inquiry conducted by the Assistant Registrar, Cooperative Societies, Kharar and remanded the case back to the Assistant Registrar (Legal), Cooperative Societies, Punjab, Chandigarh, for holding a fresh inquiry with a direction that both the parties be called and the inquiry be completed within one month.

4. This order was challenged in appeal by the petitioners before the Registrar, Cooperative Societies, Punjab, which was allowed and the impugned order dated 31.01.2013 (Annexure P-5) passed by the Additional Registrar, Cooperative Societies, was set aside and the case remanded to the Additional Registrar, Cooperative Societies (General), to decide afresh after giving full opportunity of hearing to the parties keeping in view the fact that the Additional Registrar has not considered the points raised by the appellants that the Arbitrator has not passed a speaking order and that the order of the Arbitrator for re-inquiry is also not correct. It is the duty of the Arbitrator to decide all the issues himself instead of entrusting the matter for inquiry to some other officer, as has been done in the present case. This order dated 11.09.2013 (Annexure P-6) was further challenged by the petitioners by filing a revision petition before the Financial Commissioner, Cooperation, Punjab, which has been dismissed by accepting the order passed by the Registrar, Cooperative Societies, keeping in view the fact that all the pleas which have been taken by the petitioners before the Arbitrator including the preliminary objections with regard to the maintainability of the reference, would be considered and decided by the Arbitrator. This order is dated 11.02.2016 (Annexure P-7).

5. On the basis of the above facts, counsel for the petitioners has asserted that the legality and correctness of the inquiry report cannot be looked into by the authority under the Arbitration Act and, therefore, no reference is maintainable as the said report is not an order. It has further been asserted that the powers, which have been exercised on the administrative side in the inquiry, cannot be set aside while exercising the powers of a quasi judicial authority. He submits that since the reference could not have been entertained by the Arbitrator, he had no jurisdiction to decide the prayer made by respondent No.4 in the reference and, therefore, the Registrar, Cooperative Societies, as well as the Financial Commissioner, Cooperation, Punjab, should have dismissed the reference itself instead of remanding it back to the Arbitrator for fresh decision. He, thus, contends that the impugned orders cannot sustain and deserve to be set aside.

6. Counsel for the respondents, on the other hand, asserts that the Registrar, Cooperative Societies, as well as the Financial Commissioner, while passing the impugned orders, have kept all the points and issues, as have been raised by the petitioners, open for decision of the Arbitrator, which is the competent authority to decide such objections as have been raised by the petitioners as the same would be dependent upon the evidence which were/have to be led by the parties. It is contended that the claims and counter claims of the parties have been kept open for the Arbitrator to decide as the Registrar, Cooperative Societies, Punjab, has rightly proceeded to hold that the Arbitrator should himself decide the reference on the basis of the pleadings and the evidence of the parties and cannot resort to referring the matter to another authority except in exceptional

circumstances, which were not found to be so in the present case. It is, therefore, asserted that the writ petition deserves to be rejected.

7. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the pleadings and the impugned orders.

8. The facts as have been narrated by the counsel for the petitioners cannot be disputed but the pleas and submissions made cannot be accepted at this stage in the light of the pleadings of the parties as the matter is to be decided afresh by the Arbitrator as vide the impugned orders, the matter stands remanded to the Arbitrator for fresh decision by giving opportunity to the parties. The contention of the counsel for the petitioners that the reference would not be maintainable before the Arbitrator as the inquiry report which has been set aside was not an order, suffice it to say that the said aspect is open for consideration by the Arbitrator. All the pleas which have been taken by the counsel for the petitioners in the present writ petition have been kept open by the Registrar, Cooperative Societies, as well as the Financial Commissioner, keeping in view the fact that the matter has been remanded to the Arbitrator for fresh decision himself. The reasoning as assigned by the Registrar, Cooperative Societies, while passing the order dated 11.09.2013 (Annexure P-6) cannot be faulted with both in law and in equity, whereby the order dated 31.01.2013 (Annexure P-5) passed by the Additional Registrar being the Arbitrator has been set aside and the matter remanded for fresh decision. For the same reasoning and the logic, the order dated 11.02.2016 (Annexure P-7) of the Financial Commissioner, Cooperation, Punjab, can also not be faulted with.

9. Keeping in view the above facts and circumstances of the present case, this Court refrains from exercising its extraordinary writ jurisdiction, especially when the equity requires that both the parties should be given an opportunity to project their respective case/claim before the Arbitrator keeping open all the objections which have been raised by the petitioners including the jurisdiction and maintainability of the reference.
10. Accordingly, the writ petition stands dismissed.

October 1st, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No