

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

Civil Writ Petition No. 32198 of 2019

DATE OF DECISION : November 14, 2019

Guru Nanak Hall and another

..... PETITIONER(S)

VERSUS

State of Punjab and others

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Dr. Rau P.S. Girwar, Advocate, for the petitioners.

...

Sanjay Kumar, J.

The petitioners in this case are Guru Nanak Hall and Library, through its President, and Civil Lines Club, through its President. Both the petitioners are shown to be societies registered under the Societies Registration Act, 1860 (hereinafter, referred to as 'the Act of 1860'), and are situated at Bathinda, Punjab.

By way of this writ petition, they seek a writ of mandamus directing the Registrar of Firms and Societies, Chandigarh, the second respondent, not to accept any purported election list, by violating the Constitution of the Civil Lines Club, the second petitioner, dated 11.09.1997. They also seek a writ of certiorari to quash the list of

trespassers/illegally elected President and General Secretary.

Heard Dr. Rau. P.S. Girwar, learned counsel for the petitioners.

It is an admitted fact that both the petitioner-Societies were registered under the Act of 1860, a Central enactment. Section 3 thereof deals with the registration of a society and provides that upon a certified copy of the Memorandum of Association, as set out in Section 2 thereof, being filed, the Registrar of Societies is required to register the said society. Section 4 provides that once in every year, on or before the fourteenth day succeeding the day on which the annual general meeting of the society is held, a list should be filed with the Registrar indicating the names, addresses and occupations of the governors, council, directors, committee, or other governing body, entrusted with the management of the affairs of the society.

It is obvious from the pleadings in this writ petition that all is not well with the petitioner-Societies and there appears to be any amount of infighting amongst its members. So much so, a suit in CS/1359/2019 was filed by the first petitioner Society and two others seeking a permanent injunction restraining the Registrar from accepting any document from defendants No.2 and 3 therein. They also sought a mandatory injunction restraining the Registrar from giving any document related to the second petitioner-society without their permission, apart from a mandatory injunction restraining the unofficial defendants in the suit from establishing the Indian National Congress Malwa office in the land or building claimed by them. Significantly, the suit plaint was

rejected against the Registrar, vide order dated 06.09.2019 passed by the trial Court. Perusal of the said order demonstrates that the trial Court was of the opinion that no injunction could be passed against a public servant restraining him from discharging official duties.

It may be noted that Section 4 of the Act of 1860 does not visit any mandate upon the Registrar in relation to the annual lists that are to be filed before him. On the other hand, the mandate thereunder is upon the societies and their governing bodies to file annual lists within the time stipulated. Such annual lists are to be taken on file by the Registrar only for the purpose of record. Significantly, the Act of 1860 does not clothe the Registrar with any adjudicatory function in relation to the elections held to the governing bodies of societies, whereupon such annual lists would be filed with him. It is not open to a society to involve the Registrar in such election disputes indirectly, i.e., by seeking an injunction restraining him from entertaining and accepting an annual list filed before him. It is not for the Registrar to go into the validity of any annual list placed before him as he is only required to take the same on file. If there are any disputes within a society, be it in relation to its affairs or in relation to the elections held to its governing body, it is for the aggrieved members to take recourse to the proper remedy available to them in law.

Though Dr. Rau P.S. Girwar, learned counsel, would contend that the first petitioner already exhausted the civil remedy of filing a suit and assert that no other remedy is available to the petitioners except to file a writ petition under Article 226 of the Constitution, this Court is not persuaded to agree. As already pointed out supra, the first petitioner and

the other plaintiffs in CS/1359/2019 chose to seek an injunction restraining the Registrar from carrying out his official duty of taking on file an annual list, as set out in Section 4 of the Act of 1860. The trial Court, therefore, rightly dismissed the suit as against the Registrar. It was for the plaintiffs to frame their prayer properly and seek the right relief. Having failed to do so, it is not open to the petitioners to now claim that they have no other efficacious remedy except by way of a writ petition under Article 226 of the Constitution. In exercise of the extra ordinary powers vesting in this Court under the said Article, it would not be possible to resolve the election disputes of the petitioner-Societies.

Reliance placed by Dr. Rau P.S. Girwar, learned counsel, on case law is of no avail as neither of the judgments cited by him further the case of the petitioners. In **Maharashtra Chess Association V/s Union of India and others [2019(3) Apex Court Judgments (SC) 166]**, the Supreme Court observed that two clear principles would emerge with respect to when writ jurisdiction of the High Court should be engaged - firstly, when the decision of the High Court to entertain or not to entertain a particular action under writ jurisdiction is fundamentally discretionary and secondly, when limitations placed on the Court's decision to exercise or refusing to exercise its writ jurisdiction are self imposed. The Supreme Court further observed that it is well settled that writ jurisdiction cannot be completely excluded by statute. As this Court is presently exercising its discretion not to exercise writ jurisdiction in as much as the petitioners are unable to demonstrate as to how the Registrar of Societies, the second respondent, would have any role to play in their election disputes and the

Act of 1860 does not postulate any bar to the writ jurisdiction of this Court, this judgment is irrelevant.

Similarly, the decision of a Division Bench of this Court in **St. Kabir Educational Society V/s Central Board of Direct Taxes and others [2014(3) PLR 331 : 2014(366) ITR 378]** does not touch upon any of the issues sought to be raised in this writ petition and is therefore, wholly irrelevant.

The writ petition is utterly devoid of merit and is accordingly dismissed *in limine*. This order shall however not preclude the petitioners from taking recourse to appropriate remedies available to them before the appropriate forum in accordance with law. No order as to costs.

November 14, 2019
Kang

(Sanjay Kumar)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes