

CM No. 10359-CWP of 2021 in/and
CWP No. 8804 of 2017

-1-

209

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

CM No. 10359-CWP of 2021 in/and
CWP No. 8804 of 2017
Date of Decision: 26.11.2021

Seth Kirorimal Charity Trust and another

-Petitioners

Versus

State of Haryana and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Brijender Kaushik, Advocate,
for the petitioners.

Mr. Ashish Yadav, Addl. A.G., Haryana.

Mr. Kshitij Sharma, Advocate,
for the caveator.

RAJ MOHAN SINGH, J. (Oral)

The case has been taken up for hearing through
video conferencing.

CM No. 10359-CWP of 2021

This is an application under Order 1 Rule 10 CPC
read with Articles 226/227 of the Constitution of India for
deletion of name of respondent No.5 from the array of parties.
Respondent No.5 was one of the trustees. He has expired on
07.11.2020.

Both the parties are *ad idem* that respondent No.5 be deleted from the memorandum of petition.

Ordered accordingly.

With the concurrence of both the parties, the main case is taken up today.

Main case

1. Petitioners have preferred this petition for issuance of an appropriate writ, order or direction especially in the nature of certiorari, quashing the order dated 20.01.2017 passed by respondent No.2, whereby the appeal filed by the petitioners was dismissed and order dated 28.08.2014 passed by respondent No.3 was upheld.

2. Vide the aforesaid order dated 28.08.2014, decision of District Registrar dated 21.03.2014 was set aside.

3. Perusal of the record would show that there was a contested litigation between the parties arising out of election of K.M. Public School (Managing Committee), Bhiwani. A dispute with regard to formation of executive bodies was adjudicated before the Courts. The District Registrar vide order dated 21.03.2014 held that the dispute with regard to formation of earlier two executive bodies was adjudicated before the Courts and during pendency of the same, a new executive body was constituted and the same was against the provisions of the

Society and therefore, formation of new executive body was held to be invalid. The new Executive body formed by deceased-respondent No.5 herein was found to be without any resolution of the trust known as Seth Kirodi Mal Charity Trust. Against the said order, respondent No.5 filed an appeal before the State Registrar of Societies, Haryana. Vide order dated 28.08.2014, State Registrar of Societies, Haryana set aside order dated 21.03.2014 passed by District Registrar and allowed the general body formed by respondent No.5 on 07.03.2014 to continue till completion of its term of 03 years or the issue of trusteeship regarding new trustees was finally decided by the Court at Raigarh whichever was earlier. Against the order dated 28.08.2014, Seth Kirodi Mal Charity Trust and managing committee of K.M. Public School filed appeal under Section 79 of HRRS Act 2012 before the Registrar General of Societies, Haryana. The Registrar General of Societies, Haryana vide order dated 20.01.2017 held that respondent No.5 was managing the affairs of the Society as President since 1989. The issue regarding validity of governing body of the Society was related to the dispute regarding induction of new trustees in the trust. The matter in respect of legitimacy of three trustees was pending in the Court of District Judge, Raigarh. The information regarding inclusion of new members was

submitted to the Registering Authority after a period of more than 07 years. Respondent No.5 was legally appointed trustee out of the two before inclusion of new three trustees after the death of two trustees and resignation of one trustee. The Registrar General of Societies, Haryana ultimately upheld the decision of State Registrar of Societies, Haryana dated 28.08.2014 and rejected the appeal. It was also held that after expiry of the tenure of the Managing Committee, a new managing committee would be constituted as per provisions of HRRS Act, 2012. It was also observed that the Society had not obtained new registration under the Act, therefore, it was ordered that the Society shall take requisite step as per provisions of the Act. The terms of Managing Committee as per order dated 20.01.2017 has already expired. Respondent No.5 has also died. Order dated 20.01.2017 has been assailed by the petitioners herein. The tenure of the Managing Committee had already expired on 06.03.2017. The Managing Committee was constituted on 07.03.2014 and therefore, its tenure came to an end on 06.03.2017.

4. Notice of motion was issued in the present case on 01.05.2017. The writ petition was admitted vide order dated 20.08.2018. Thereafter on 03.12.2019, following order was passed:-

“Registrar General of Societies, Haryana, will explore the possibility of holding elections to the Society from amongst the existing trustees de hors the pendency of the civil suit in Chhattisgarh and any of the orders passed in this case. He may confer with the State Government appointed Administrator of the Society, who is the Deputy Commissioner, Bhiwani, to share his views with the Court, in the matter of holding of elections, so that the democratic functioning is restored in the Society to run and manage its affairs.

List again on 6.2.2020.

Registrar General of the Society may hear the private parties appearing before this Court.

A photocopy of the order be placed on the files of other connected cases.

03.12.2019
neenu

(RAJIV NARAIN RAINA)
JUDGE”

5. Vide order dated 06.02.2020, copy of report dated 24.01.2020 filed by Director Industries and Commerce-cum-Registrar General of Societies, Haryana was taken on record. Paras no.12 and 13 of the said report read as under:-

“12. The Hon'ble High Court has asked this Authority to explore the possibility of holding elections to the Society from amongst the existing trustees de hors the pendency of the

civil suit in Chattisgarh and any of the orders passed in this case. In compliance of the order dated 13.12.2019 passed by the Hon'ble High Court, the factual position is hereby brought to the notice of this Hon'ble High Court that the list of the existing Trustees is available with the District Registrar, Bhiwani and the Administrator of the Society is ready to conduct the election provided, if the valid list of members of the Society is provided to him.

13. Therefore, if this Hon'ble High Court holds the Resolution dated 26.12.2019 of Seth Kirorimal Charity Trust to be a valid Resolution and approves the electoral college of the existing 5 Trustees then the election of the Society can be conducted. It is clarified that these observations have been provided in compliance of the order dated 03.12.2019 of the Hon'ble Punjab and Haryana High Court in CWP No.8804 of 2017- titled as Seth Kirorimal Charity Trust & others vs State of Haryana and others and the initiation of process of election shall only be initiated, if the Hon'ble Punjab and

Haryana High Court so directs in the above mentioned Civil Writ Petition.”

6. Perusal of the aforesaid report as well as order dated 03.12.2019 would show that the election of the Society can be conducted as per list of the existing trustees available with the District Registrar, Bhiwani and even administrator is ready to conduct the election provided the list of members of the Societies is provided to him. This Court vide order dated 03.12.2019 has already expressed an opinion that Registrar General of Societies, Haryana shall explore the possibility of holding the elections of the Society from amongst the existing trustees *de hors* the pending suit.

7. During course of arguments, both the parties are *ad idem* that fresh election of the Society can be held as per provisions of HRRS Act, 2012. Administrator has already been appointed and the parties have no objection to the holding of elections as per law.

8. Mr. Kshitij Sharma, learned counsel representing respondent No.5 however submits that since respondent No.5 has died, therefore, his concern and consent would be of no relevance, however, the election of the governing body would be in the interest of all concerned.

9. In view of aforesaid position, this petition is disposed of with a direction to respondent No.4 to conduct election of K.M. Public School Managing Committee Society strictly as per directions contained in order dated 03.12.2019 and also in view of recommendations given by Director General of Societies in report dated 24.01.2020. Provisions of HRRS Act, 2012 shall be complied with while holding the election.

26.11.2021

Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No