

**239-2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-5116-2013 (O&M)

Date of decision: 26.04.2022

The Jind District Govt. Employees Co-operative
House Building Society Ltd., Jind

.....Petitioner

versus

Munni Devi and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.N. Lohan, Advocate
for the petitioner.

Mr. R.K. Gupta, Advocate
for respondent No.1.

FATEH DEEP SINGH, J.

A suit for permanent injunction was preferred by plaintiffs-Munni Devi and Karan Singh restraining the defendant-the Jind District Govt. Employees Co-operative House Building Society Ltd., Jind (in short 'the Society'), from making any construction on the land detailed in the head note of the plaint.

The brief stand of the plaintiffs, now respondents, is that plaintiff No.1-Munni Devi is owner in possession of plot No.184 while respondent No.2-Karan Singh is owner in possession

of plot No.192 which has been transferred in their name by the Society. The plot of Munni Devi was initially allotted to Sushil Kumar and who, subsequently, sold it through a sale deed dated 27.12.2005 to this plaintiff. Furthermore, the other plot was originally allotted to Inder Singh Malik who through document dated 20.11.1988 had transferred it to plaintiff-Karan Singh. The brief dispute between the two sides that it is claimed by the plaintiff that a common passage/*rasta* has been left for proposed bypass which is vacant and adjoins the properties of the plaintiffs. It is alleged that the defendant-Society is trying to change the nature of the said passage for facilitating allotment of the same to another person and that is how the suit in question was filed for restraining the defendant society for making any construction on this land which is 100ft. wide and is situated in the Society so formed for residential purposes.

An application under Order 7 Rule 11 was moved by the Society for rejection of the plaint on the grounds that under Section 24 of the Haryana Cooperative Society Act (in short 'the Act'), no suit can be instituted against the Cooperative Society or any of its officers, in respect of any act touching the business of the Society until the expiry of two months of notice in writing which is

to be delivered at the office of the Registrar. The stand of the plaintiffs was of denial claiming that since the act in question does not touches the business of the Society and, therefore, applicability of Section 124 of the Cooperative Society Act, come into operation and sought the dismissal of the application. The Court of the learned Additional Civil Judge (Senior Division) vide impugned order dated 20.05.2013 dismissed the application holding that it is only after the parties lead evidence, the matter can be adjudicated that is how the instant revision petition has come about by the Society.

Heard learned counsel for the parties and perused the records.

The moot point involved in the present imbroglio revolves around is if the subject matter of dispute falls within the domain of, in course of business of the Society, or not. Section 124 of the Act deals with issuance of notice before filing of the suit and the same is reproduced as below to lay emphasis:-

“124. Notice necessary in suits

No suit shall be instituted against a co-operative society or any of its officers in respect of any act touching the business of society until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims

and the plaint shall contain a statement that such notice has been so delivered or left.”

A plain reading of these provisions emphatically makes it clear that it only in the eventuality when any act touches the business of the Society then only a notice is required and, therefore, the present dispute is purely over a property which the plaintiff apprehends might be put to misuse for which provisions for laying a bypass have been provided earlier at the time when the Society was carved out.

On behalf of the petitioner, reliance has sought to be placed by the petitioner on the judgment of this Court titled as 'Rajpal Grover versus The Guru Nanak Joint Co-op. Farming Society Ltd. Situate at Village Gumthala Garhu' 1982 PLR 277 to ensure that failure to serve notice as contemplated, the suit is not maintainable while to controvert these submissions, reliance has sought to be placed by the respondents on the judgment of this Court titled as 'N.K. Gram Udyog Mandal and others versus Meghi Devi and others' 2009(4) R.C.R. (Civil) 794 and 'M/s Amin Chand Shiv Saran Dass versus Nalagarh Co-operative Transport Society Ltd., Nalagarh' 1981 PLJ 473 to drive home the point. This Court seeks support from the judgments titled as 'The Allahabad Dist. Co-op, Ltd. Versus Hannuman Dutt Tewari' (1981) 4 SCC 431; 'The Jullundur Central Co-operative Bank

Ltd. Versus Gian Singh' 1973 (1) ILR (Punjab) 453; 'The Deccan Merchants Co-operative Bank Ltd. Versus Messrs Dalichand and Jugraj Jain' (1969) 1 SCR 887 and 'Co-operative Central Bank Ltd. and others etc. versus Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others etc.' 1970 AIR (Supreme Court) 245 to hold out the requirement of notice to be delivered only arises, if the suit against the Cooperative Society arises out of any act touching its business and not in every suit. Therefore, the present suit is nothing but an act outside the purview of the act which govern the Society and is purely a civil dispute by an allottee apprehending that property adjoining to them may be put to misuse illegally. It is well clarified by the Apex Court in 'Co-operative Central Bank Ltd. and others etc. versus Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others etc.' 1970 AIR (Supreme Court) 245, where tests have been laid to ascertain where a dispute touches the business of a Society or not and whether the word 'business' has been equated with the actual trading or commercial activity of any similar business activity of the Society and, therefore, one can safely draw the analogy that whatever the Society does or is necessarily required to do for the purpose of carrying out of its objects only becomes part of its business and other acts do not fall within this and which is precisely the present dispute which is outside the scope of the

running of the affairs of the Society and even in 'The Deccan Merchants Co-operative Bank Ltd. Versus Messrs Dalichand and Jugraj Jain' (1969) 1 SCR 887, the Apex Court had detailed that any dispute between the member of a Society and illegal acts of the Society are not covered by the definition of course of business of the Society.

The learned Court below in the impugned order has tried to deviate from its duty in adjudicating on the application under Order 7 Rule 11 and has rather left it undecided when such a provision for rejection of the plaint ensures that wherever a suit appears from the plaint to be barred by any law, the Court ought to adjudicate such a question at the earliest and is a tool in the hands of the Court to effectuate dispose off such matters which the learned Court below has not done.

In light of the foregoing discussions, the present petition stands disposed off with the directions to the Trial Court but first adjudicate on the application under Order 7 Rule 11 CPC by passing a comprehensive order either way it feels it.

(FATEH DEEP SINGH)
JUDGE

26.04.2022

Neha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No