

CWP No. 7479 of 2022

Date of Decision: 15.07.2022

Col. Ramesh Ghai and another

.....Petitioners

Vs.

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Ms. Sonia G. Singh , Advocate, for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the two petitioners herein seek that the Registration Certificate dated 24.09.2019 (copy Annexure P-5), issued by the SDM, Dera Bassi, (as the competent authority), to the Residents Welfare Association Maya Garden City, Nagla Road, Zirakpur, be quashed, as it is (alleged to be) in complete violation of the Punjab Apartment Ownership Act 1995, and the Rules framed thereunder.

A further direction is sought from this court to respondent no. 6, i.e. M/s Barnala Builders and Property Consultants, to furnish the complete accounts of the funds of the society, collected for maintenance; and with a prayer also made for a stay on the activity of, what is termed before us to be, an illegally registered RWA (respondent no. 5).

The 2nd petitioner herein, i.e. Loveneesh Arya, had earlier filed CWP No. 10298 of 2020, which was disposed of by a learned Single Judge of this court on 21.07.2020, directing that a speaking order be passed by respondent no. 6 therein (i.e. the SDM), to decide the representation made by the petitioner in that case, dated 25.06.2020.

Pursuant to that the order impugned herein, dated 04.02.2021

(Annexure P-11), was passed by the SDM, holding as follows:-

“Whereas it is clear that as per provisions of Rule 5 (a) and (c) of the Punjab Apartment and Owners Act and Rules 1995 only a member of RWA who is registered owner of apartment can participate in the activities of Association, therefore, if applicant is not the owner of any flat, he cannot be a member of Association and he could not have any right to participate in any activity of the association.

Whereas the representation dated 25.06.2020 of the petitioner regarding demolishing the unauthorized structure of Maya Garden City, it is cleared that the Builder has obtained the required NOC/Certificates from relevant authorities, so demolition cannot be carried out.

Whereas, the representation regarding audit of accounts for Rs. 25 crore, it will be conducted by Independent Chartered Accountant within 4 months and Audit fee will be paid by Resident Welfare Association, Maya Garden City, Nagla Road, Zirakpur. If any discrepancy is found in accounts in Audit, the recovery of amount will be due from the defaulters.

Whereas, undersigned has registered the Resident Welfare Association, Maya Garden City, Nagla Road, Zirakpur correctly under the provisions of the Punjab Apartment Ownership Act & Rules 1995 after taking the requisite

documents as per law.”

Learned counsel submits that other than the fact that subsequently another representation was also filed on 28.03.2020 by four persons, including the two petitioners herein and with petitioner no. 3 duly being a flat owner, and the wife of petitioner no. 2, i.e. the original applicant, also being a flat owner, the SDM has held that petitioner no. 2 had no locus in the matter; and even as regards the directions subsequently given for conducting an audit within four months by an independent Chartered Accountant, that too has not been done.

Consequently, this petition is disposed of with liberty to the petitioners and any other flat owners to file a fresh detailed representation before the competent authority (stated to be the SDM Dera Bassi), who would then go into each aspect of that representation and pass a detailed speaking order thereupon; and further would also ensure any fresh audit ordered by him, as was ordered by the impugned order Annexure P-11, the said audit is duly carried out and submitted to the competent authority within time, who would thereafter again pass speaking orders with regard thereto and consequent orders as may be necessary thereafter.

The needful be done within a period of 03 months from the date of receipt of a certified copy of this order

It is also to be noticed that in the appeal filed against the order dated 04.02.2021 (Annexure P-11), the appellate authority, i.e. the Additional Deputy Commissioner, SAS Nagar, vide an order dated 27.10.2021, held that the term of office of the Residents Welfare Association had expired on 20.10.2021 and new elections were about to be held.

Learned counsel submits that as a matter of fact no such elections have been held.

(AMOL RATTAN SINGH)
JUDGE

July 15, 2022
nitin

(LALIT BATRA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No.