

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

134

**CWP-627-2023
Date of decision: 12.01.2023**

VEENA DATTA SUNANDA DATTA

.....Petitioner

VERSUS

THE STATE OF HARYANA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Ajay Jain, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of Certiorari challenging the show cause notice No. 58 dated 20.09.2022 (Annexure P-2) and all other proceedings arising therefrom being arbitrary, illegal and contrary to the provisions of the Act and rules framed thereunder.

2. Briefly summarized the facts of the present case are that Kumari Chandra Datta daughter of Hari Kishan Datta is stated to have formed a registered society known as Hari Gian Education Society vide Registration No. 2007-1987-88 in the year 1987 and handed over property to Shishu Shala School, 318, Model Town Rewari. During her life time Kumari Chandra Datta had executed a registered Will dated 27.03.2001 in favour of the petitioner and that on her demise, the petitioner succeeded to the properties being beneficiary under the Will as aforesaid. The petitioner

subsequently executed a transfer deed bearing Vasika No. 6103 dated 14.03.2017 in favour of Karan Datta son of Subhash Chandra Datta resident of Flat No. 157, Block-10, Mohali Employees Society, Sector-68, Mohali. A complaint was filed by one respondent No.7-Davinder Kumar Jain to the Deputy Commissioner Rewari *inter alia* alleging that after the death of Smt. Chandra Datta, some members of the Society had misappropriated the assets and mismanaged the affairs of the society in violation of its aims and objectives and accordingly it was prayed for conducting of a detailed enquiry under Section 54 of the Haryana Registration & Regulations of Societies Act, 2012. A copy of the aforesaid complaint was forwarded by respondent No.2-Deputy Commissioner Rewari to the Registrar General Firms & Societies for initiating appropriate proceedings on 26.02.2021. The Additional Deputy Commissioner, Rewari-respondent No.6 was also appointed as Enquiry Officer to look into the remaining allegations. A Show Cause Notice No.58 dated 20.09.2022 (Annexure P-2) has been issued by the Enquiry Officer to the petitioner to show cause as to why necessary action be not taken against her by cancelling Vasika No. 6103 dated 14.03.2017 whereby transfer of property has been effected in favour of Karan Datta son of Subhash Chandra Datta. It has also been averred in the writ petition that pursuant to the receipt of the said show cause notice, a detailed reply has already been submitted by the petitioner pointing out that the transfer deed is based on the Will duly executed by Chandra Datta in favour of the petitioner and the same has already been held legal and valid vide the judgment and decree of the Civil Court dated 29.03.2017 in Civil Suit No. 399 of 2017. It was also submitted that the society has also filed a civil suit titled as "Hari Gian Education Society versus Veena Datta and

others” challenging the transfer deed Vasika No. 6103 dated 14.03.2017 and also the Will of Chandra Datta executed in favour of the petitioner. The said Civil Suit is pending before the Civil Court at Rewari. It was, thus, urged in the said response that in view of the pending civil litigation, the legality of the transfer deed dated 14.03.2017 cannot be enquired into.

3. Learned counsel appearing on behalf of the petitioner has referred to the show cause notice (Annexure P-2) and has held that the show cause notice is liable to be set aside as the enquiry officer has issued the abovesaid notice with a bias mind and finding of fact has already been returned by the Enquiry Officer. It is thus urged that the enquiry proceedings are false and do not afford a fair opportunity to the petitioner to put forth her case. He places reliance on the judgment dated 14.12.2021 passed in the matter of “***Jasleen versus Union of India and Others***” reported as **2022 (3) RCR (Civil) 752** to contend that writ petition against Show Cause Notice would be maintainable. Reliance has been placed on Para 19 of the aforesaid judgment which reads thus :-

“Facts speak louder than words. The preceding facts clearly establish that commencement of proceedings was motivated. There was no breach of terms of agreement nor there was violation of the Guidelines. Acquisition of foreign citizenship did not constitute violation of contractual obligations. There was no evidence of non-performance or lack of supervision. On the contrary, the facts loudly proclaim that vested interests were operating to harm the interests of the petitioner. The wording of show-cause notice dated 02.02.2021 concludes the issue. It leaves no doubt that the respondents were proceeding with a pre-determined mind. Consequently, Oryx Fisheries (supra) squarely applies. The apprehension of the petitioner was justified and the writ petition is held to be maintainable.”

4. He has further made a reference to the judgment of the Hon'ble Supreme Court in the matter of ***“Orxy Fisheries Private Limited versus Union of India”*** reported as ***2010 (13) SCC 427*** to contend that the proceedings initiated by a show cause notice gets vitiated by unfairness and bias and that the subsequent proceedings become an ideal ceremony.

5. I have heard the learned counsel appearing on behalf of the petitioner and have gone through the documents appended alongwith the instant petition as also the judgment cited by the Counsel during the course of the arguments.

6. To appreciate the present controversy, it would be appropriate to refer to the relevant extract of the Show Cause Notice and the facts that have been noticed thereunder:

“The aforesaid Transfer Deed bearing Vasika No.6103 dated 14.03.2017 with regard to immoveable property measuring 4000 sq. yard duly presented by Sunanda Dutta @ Veena Dutta is registered through the claimant Karan Dutta. The following facts have come into light during the ongoing investigation in respect of Hari Gyan Education Society Rewari (Shishu-Shala School, Model Town, Rewari):

- 1) *Nagar Parishad bearing No.379 dated 09.03.2016 attached with regard to Vasika No.6103 dated 14.03.2017 is not the basis of ownership, in accordance with law nor is valid for the registration. Therefore, this Vasika is not valid.*
- 2) *Vasika No.3702 dated 27.03.2001 has been pointed in the sale deed bearing Vasika No.6103 dated 14.03.2017. On the perusal of Vasika No.3702 dated 27.03.2001, it has been found that Vasika No.3702 dated 27.03.2021 is the Will relating to residential area/house in the school*

situated within Shishu-Shala School, # 318, Model Town, Rewari as per the report received from the concerned Tehsildar which is about 375 sq. yards externally. Therefore, Vasika No.3702 dated 27.03.2001 (approx. 375 sq. yard) pertains to residential place.

- 3) *It has been mentioned in the report given by the Record Keeper, office of Deputy Commissioner, Rewari that the sale deed is registered vide Vasika No.3702 dated 15.10.2021 which pertains to Village Lisana, District Rewari. Therefore, the Vasika No.3702 dated 27.03.2001 presented by you is not registered in the revenue record.*
- 4) *Shishu-Shala School # 318, Model Town, Rewari is operated under 4) Hari Gyan Education Society.*
- 5) *It is indicated in the constitution of Hari Gyan Education Society, Rewari that moveable and immoveable property relating to Hari Gyan Education Society, Rewari should not be sold to anyone. Therefore, to execute/register the Transfer Deed of the land of the Hari Gyan Education Society by you is against the Rules.*

On the basis of the above, notice is issued to you that why not necessary action should be taken against you by cancelling Vasika No.6103 dated 14.03.2017. Give/submit your reply in the office within a week failing which, final decision will be taken on the basis of the documents.”

7. A perusal of the same would show that the Enquiry Officer has only apprised the petitioner about the facts that have come to the notice of the Enquiry Officer during the course of the ongoing enquiry and from the basis of the Show Cause Notice and that communication of such facts would not amount to recording a finding as regards the conclusion of guilt established against the petitioner. In fact, it is rather in furtherance of the

principle of fairness, transparency and affording of an effective opportunity that the facts have come forth during the course of ongoing enquiry to the notice of Enquiry Officer be put to the petitioner so as to enable her to effectively respond to the same. The very object of a Show Cause Notice is to inform the person of the material against him so that an effective response can be received and one is not condemned on the strength of material that was never put to him to respond.

8. The petitioner has not levelled any allegations of malice or bias against the Enquiry Officer and a mere recitation of the documentary evidence in the S.C.N cannot be presumed as a proved notice or bias.

9. The counsel for the petitioner has argued that the property of the society was given to her by the Will dated 27.03.2001 and the said Will was upheld by the Civil Court in its judgment and decree dated 29.03.2017. However perusal of the judgment & decree above shows that the said Will was never a subject in issue in the above civil suit. The plaintiffs therein sought declaration in their favour on the basis of the trust deeds that could not be established. No issue in this regard was also framed. As a matter of fact, it is the own case of the petitioner in the written statement filed in the Civil Suit above in Para 8 was that only the residential building was given to her vide the Will for residing. Consciously, the petitioner chose to make an incorrect and misleading averment in the petition that the petitioner got succeeded to the entire property & management of the society. It is the stand of the petitioner that Vaika No. 6103 dated 14.03.2017 is based on the Will. What has been conveyed by the Enquiry Officer in the S.C.N. is that Vasika No. 6103 dated 14.03.2017 refers about vasika No. 3702 dated 27.03.2001 & that it relates only to residential area measuring 375 sq. yards

insides school only. Thus there will many aspects that required to be enquired into once a complaint had been received.

10. It is also significant to notice that even though the Enquiry had already been concluded and an incarcerating report dated 20.12.2022 (Annexure P-6) had already been submitted, however, the petitioner has chosen not to raise a challenge to the Enquiry Report and attempted to cover it up by seeking setting aside of all consequential proceeding. The petitioner not only participated in the enquiry proceedings, but also waited for the outcome of the enquiry proceedings before filing of the present petition as a clear afterthought and in an attempt to wriggle out of the recommendations made by the Enquiry Officer. The filing of the present petition seemingly is mischievous.

11. Insofar as the reference to the judgment in the matter of ***“Jasleen versus Union of India and Others”*** (supra) is concerned, the ratio of the case would not be applicable to the facts of the present case inasmuch as the recitation in the Show Cause Notice is not sufficient to establish or prove it on record to be an outcome of a biased mind. So much so, the petitioner also has not alleged any bias against any of the officials associated in the enquiry proceedings. Resultantly, the said judgment would not be applicable to the facts of the present case. Similarly, insofar as reliance on the judgment of Hon’ble Supreme Court in the matter of ***“Orxy Fisheries Private Limited versus Union of India”*** (supra) is concerned, even the same is not applicable to the case of the petitioner since in the said case the authority had pre concluded that the petitioner was guilty of having caused destruction of the consignment and the show cause notice had been issued as to why the license granted to the petitioner be not cancelled. The same is not

the case here. As a matter of a fact, no conclusion had been drawn at the time of issuance of the Show Cause Notice and an opportunity of responding to the material that had come forth during the course of an ongoing enquiry had been extended to the petitioner. The same cannot be perceived as a falsely drawn conclusion by the Enquiry Officer.

12. Besides, it is also apparent that the final Enquiry Report having already been concluded and recommendation having been made, the petitioner having not impugned the same on any ground and having opted to raise a challenge only to the said Show Cause Notice reflects that the petitioner had no grievance against the continuation of the proceedings. Having subjected himself to the Enquiry proceedings, the petitioner cannot be granted liberty to raise a challenge to the initiation enquiry proceeding without challenge to the final report.

13. Besides, a Civil Suit has already been filed by the Society against the petitioner & the same is pending. The petitioner has filed the instant petition even though disputed questions of fact arise herein which cannot be adjudicated in a writ petition.

The present petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 12, 2023

Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No