

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.9110 of 2019 (O&M)

Date of Decision.10.04.2023

Balwan Saini and others

...Petitioners

Vs

The Registrar Cooperative Societies, Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. S.S. Dalal, Advocate
for the petitioners.

Mr. Kapil Bansal, DAG, Haryana.

Ms. Sheetal Vaishnav, Advocate
for respondent No.3.

Mr. Om Parkash Sharma, Advocate and
Mr. Shamindra Kadian, Advocate
for respondents No.4 to 6.

-. -

JAISHREE THAKUR J. (ORAL)

C.M. No.10502 of 2019

Application is allowed.

Order dated 08.07.2019 passed by respondent No.2 is taken on
record as Annexure P-4.

C.M. No.2522 of 2022

Application is allowed.

Proceeding book dated 09.06.2021 is taken on record as Annexure
R-4/6.

C.M. No.16406 of 2022

Application is allowed.

Documents Annexures A-1 to A-7 are taken on record.

CWP No.9110 of 2019 (O&M)

The present civil writ petition has been filed under Article 226/227 of the Constitution of India for quashing order dated 01.02.2019 (Annexure P-2) passed by the Assistant Registrar, Cooperative Societies, Rohtak whereby petitioners, who were elected members of the Managing Committee of the Akashwani & Doordarshan Staff Cooperative House Building Society Ltd. (hereinafter referred to as respondent No.3-Society) have been placed under suspension without issuing any show cause notice to them.

Mr. Dalal, learned counsel appearing for the petitioners would contend that petitioners herein are duly elected members of the Managing Committee of the respondent No.3-Society. They were elected by the General House on 12.12.2018 for a period of five years. Their election was never challenged by way of filing an election petition under Sections 102 & 103 of the Haryana Cooperative Societies Act, 1984. It is submitted that complaints were filed against the Managing Committee by certain persons alleging to be members of respondent No.3-Society and on receipt of the said complaints, impugned order (Annexure P-2) was passed by the Assistant Registrar, Cooperative Societies, Rohtak appointing a Board of Administrators under Section 33 of the Act. It is further submitted that once a Managing Committee stands duly elected, there is no provision for an Administrator to be appointed by the Assistant Registrar without an election petition being filed to challenge the elections that were duly conducted.

Appearance has been caused on behalf of respondents No.4 to 6 claiming to be members of the respondent No.3-Society, who had filed a complaint regarding the mismanagement/irregularities in the elections held of the Managing Committee. It is submitted that petitioners have not approached this Court with clean hands as they have not disclosed the fact that after appointment

of the Board of Administrators, an appeal had been filed by Sh. Jitender Rathi before the Deputy Registrar, Cooperative Societies, Rohtak. The Deputy Registrar took note of the fact that the President of the respondent No.3-Society had been asked on several occasions to produce the original record of the Society including membership but the same was not produced nor was any record produced regarding validity/legality of the Managing Committee so constituted. Taking into account the fact that no record had been produced, the Deputy Registrar, Cooperative Societies, Rohtak upheld the order of appointing Board of Administrator passed by the Assistant Registrar, Cooperative Societies, Rohtak and the appeal was dismissed.

Learned counsel appearing for respondents No. 4 to 6 would argue that the Assistant Registrar, Cooperative Societies, Rohtak vide his order dated 06.12.2018 had specifically directed that elections be not held by the respondent No.3-Society at its own level, considering that record regarding membership was incomplete. However, despite the said directions, petitioners held the alleged elections of the Managing Committee and declared themselves as elected on 12.12.2018. It is further submitted that question of filing election petition against petitioners herein would not arise, considering the fact that they have not been able to establish their membership.

In response to the arguments raised by counsel appearing for respondents No.4 to 6, learned counsel appearing for petitioners would argue that none of petitioners herein had filed any appeal before the Deputy Registrar, Cooperative Societies, Rohtak and it was only one Mr. Jatinder Rathi, who had done so. It is also argued that Assistant Registrar himself had taken note of the fact that original record of the respondent No.3-Society was lying deposited in

the office and therefore, petitioners herein were not able to substantiate their membership, which is not in dispute.

I have heard learned counsel for the parties and find that in this writ petition disputed questions of fact are raised regarding; whether the petitioners are members of respondent No.3-Society or not, as claimed by the private respondents and vice versa. It is not for the writ court to go into this question so as to determine the membership of any particular person. Learned counsel appearing for petitioners has placed on record receipts showing that they had applied to become members of the respondent No.3-Society as far back as 2012 & 2017 whereas learned counsel appearing for respondents No.4 to 6 would point out that there are resolutions on record showing that petitioners had given up their membership in the year 2011 and that resolution had been signed by Jitender Rathi. Again this Court reiterates that it is unable to determine; whether or not, petitioners are members or not, as is the situation with the respondents.

This Court is also conscious of the fact that there is no mention in the writ petition itself that an appeal had been filed by Jitender Rathi against appointment of the Board of Administrators, which appeal stood dismissed by a speaking order primarily on the ground that the record had not been produced, even though counsel appearing for petitioners would submit that petitioners were not party to those proceedings. However, a reading of the said order would establish that presence of Balwan Saini, petitioner No.1 had been recorded in those proceedings and therefore, it became incumbent upon him to mention in the writ petition that he was aware of those proceedings, even though appeal had not been filed by him personally.

However, since there are serious allegations regarding embezzlement, fraud and forgery, interim order dated 02.07.2019 passed by this

Court whereby order dated 01.02.2019 passed by the Assistant Registrar, Cooperative Societies, Rohtak was stayed, stands vacated. Therefore, the Board of Administrators so appointed vide order dated 01.02.2019 of Assistant Registrar Cooperative Societies, Rohtak would take over the management of the Committee and would primarily determine the membership of parties by giving them ample opportunity to establish the same. Once the list of members is established, elections of the Managing Committee be held forthwith. This exercise would be completed within a period of three months from today.

The writ petition stands disposed of in above terms.

(JAISHREE THAKUR)
JUDGE

April 10, 2023
Pankaj*

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