

118.

2023:PHHC:054788

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

CWP-7948-2023

Date of Decision: 19.04.2023

**THE SWARN JYOTI EWS CO-OPERATIVE GROUP HOUSING
SOCIETY LTD. GURUGRAM**

.... Petitioner

Versus

STATE OF HARYANA AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Anand Chhibbar, Senior Advocate, with
Mr. Ivan S. Khosa, Mr. Shivam Grover, Mr. Ashutosh K. Singh,
Mr. A.K. Sandhu, Advocates, for the petitioner.

JAISHREE THAKUR.J (Oral)

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the order dated 24.03.2023 passed by the Assistant Registrar, Cooperative Societies, Gurugram (Annexure P-23).

2. In brief the facts as stated are that the petitioner Society came into existence on 19.05.1999 and an agreement was entered into between the petitioner Society and HUDA to construct dwelling units for EWS category on a plot allotted to it i.e. Plot No.76, Sector 56, Gurugram, measuring 4852 square meters. The possession of the plot was handed over to the petitioner Society and a conveyance deed was also executed. Occupation Certificate was duly issued. However, on some complaints being made against the petitioner Society, the Principal Secretary, Town and Country Planning,

Haryana suo moto invoked powers under Section 30(2) of the HUDA Act, 1977 and cancelled the allotment. The action of the Principal Secretary was challenged by way of filing CWP No.26764 of 2014, which was eventually allowed and the cancellation/resumption of the allotment of the plot to the petitioner Society was set aside. The petitioner Society continued to function, which functioning was under the aegis of the representative of the Registrar, Cooperative Societies, Haryana.

3. Learned Senior Advocate appearing on behalf of the petitioner Society would contend that the elections were duly held as would be noted in the Proceeding Book annexed as Annexure P-20. The vacant posts of the Managing Committee were also filled up after the elections were held. The Proceeding Book would note that all formalities pertaining to the functioning of the petitioner Society were duly noted by Satya Pal Singh, Inspector, Cooperative Societies, Gurugram as well as Joginder Singh, Sub-Inspector, Cooperative Societies, Gurugram. It is argued that despite smooth functioning of the petitioner Society, the Assistant Registrar by the impugned order, passed under Section 33(1) of the Haryana Cooperative Societies Act, 1984, has appointed Administrators, who incidentally are none other than the Sub-Inspectors who had noted the proceedings in the Proceeding Book. It is further argued that the impugned order which has been passed under Section 33(1) is not applicable in the present case considering that Section 33(1) provides for a Registrar to appoint Administrators in case a Committee constituted in accordance with the provisions of the Haryana Cooperative Societies Act to any Cooperative Society does not exist or has ceased to exist, which is not the case in hand. The duly constituted Committee of the

petitioner Society is functional. Moreover, the impugned order has been passed without giving any show cause notice or an opportunity of hearing to the Select Committee duly constituted and headed by the Managing Committee of the petitioner Society.

4. Notice of motion.

5. At this stage, Mr. Anant Kataria, DAG, Haryana, who is present in Court, accepts notice on behalf of respondents. He would submit that the instant writ petition is not maintainable since the petitioner Society has a remedy of filing an appeal.

6. Mr. Chhibbar, learned Senior Advocate, at this stage, would submit that an appeal can only be filed under Section 114 of the Haryana Cooperative Societies Act, 1984 and as per Section 114(1)(f), an order of the Registrar removing the Committee or a Member of the Committee of a Cooperative Society under Sections 34 and 35 is appealable, whereas in the instant case, an order has been passed under Section 33(1) appointing Administrators.

7. Mr. Kataria, learned State counsel would point out that a revision under Section 115 of the Haryana Cooperative Societies Act, is maintainable on an application of an aggrieved party to the Government where no appeal lies under Section 114 and, therefore, having the remedy available, the petitioner Society ought to have approached in revision.

8. I have heard learned counsel for the parties.

9. A perusal of the pleadings, as set out in the writ petition, would reflect that the Administrators have been appointed by invoking Section 33(1) whereas the pleadings would reflect that a Managing Committee is

already in place. Prima facie the elections were held under the aegis of the Sub Inspectors who have duly noted the proceedings of the petitioner Society. Moreover, the pleadings would also reflect that no show cause notice was issued before the two Administrators were appointed who have now sought the entire record from the Managing Committee vide an undated letter annexed as Annexure P-23. Even though an appeal is not maintainable under Section 114, the impugned order can be challenged by filing a revision under Section 115 of the Haryana Cooperative Societies Act, 1984.

10. At this stage, it is noted that the present writ petition has been filed by placing reliance on a resolution/authority letter dated 01.03.2023/11.04.2023.

11. Learned Senior Advocate appearing on behalf of the petitioner Society would submit that the instant writ petition be treated as a writ petition filed by a member in his individual capacity considering that he is a member of the Managing Committee of the Society and would be aggrieved against the impugned order.

12. Ordered accordingly.

13. In view of above, this writ petition is being disposed of by relegating the petitioner Society to invoke Section 115 of the Haryana Cooperative Societies Act, 1984 by filing a revision before the competent authority. The impugned order of asking the record to be handed over to the newly appointed Administrator is stayed limited to two weeks to enable the petitioner Society to approach the revisional authority and press for their stay application.

14. Finding that the principles of natural justice have not been followed in the present case, let the impugned order be challenged before the appropriate authority within a period of two weeks from today and in case the same is done, let the communication as addressed by the Administrators asking the record would be stayed till such time as the decision is taken on the application filed for staying the impugned order.

15. Needless to say in case the same is not done within the stipulated period, any protection allowed as on date would stand automatically vacated.

(JAISHREE THAKUR)
JUDGE

19.04.2023

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No