

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

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2023:PHHC:098498-DB
CWP-16455-2023
Date of Decision: 01.08.2023

Air Commodore Perminder Singh Basanti (Retd.) and others

.....Petitioner(s)

Versus

State of Punjab and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Rahul Sharma-I, Advocate,
for the petitioners.

Mr. V.G. Jauhar, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J. (Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India praying for issuance of a writ in the nature of certiorari quashing the order dated 05.07.2023 (Annexure P-8) whereby respondent No.5-Association has been registered under the provisions of Punjab Apartment Ownership Act, 1995 (in short the 1995 Act'). Similarly, challenge has also been raised to the subsequent order dated 17.07.2023 (Annexure P-9) whereby, the respondent No.2-Sub Division Magistrate, Kharar has appointed respondent No.6 as an Administrator of respondent No.4-Society. The jurisdiction of respondent No.2-Sub Divisional Magistrate, Kharar as such is questioned for registration of respondent No.5 under the 1995 Act as per the certificate issued on 04.07.2023. Vide the subsequent order dated 17.07.2023 (Annexure P-9), the Administrator has also been appointed under Section 23(3) of the 1995 Act.

2. It has been brought to the notice of this Court by Mr. Jauhar that respondent No.4 had approached this Court in CWP-2734-2023 wherein the

writ petition was disposed of with liberty to approach the competent authority

by filing an appeal under Section 33 of the 1995 Act. A perusal of the prayer clause of the said writ petition would go on to show that the challenge as such at that point of time was to the order dated 02.02.2023 wherein, there was a deletion of some clauses of the proposed amendment of the by-laws of the Association. It has also been brought to our notice that there was a resolution to amend the by-law in the meeting which was held on 12.01.2023, which has been placed on record as Annexure P-6 wherein eligibility conditions to contest the elections has apparently been varied. From a perusal of the prayer clause and the pleadings, it would be apparent that there is a conflict as such between the two Associations which are set up and the festering of which is apparently the elections and the control of the society/the building in which the residents are living including the petitioners as such.

3. In such circumstances, we are of the considered opinion that since the matter has been relegated to the alternative jurisdiction provided under the Statue itself, it is open to the petitioners also to approach the competent authority. Needless to say, it is open to the petitioners as such to raise all pleas including the issue of jurisdiction, which the appellate authority shall go into. It is also open to the petitioners to file an application for interim protection of the assets of the society in the peculiar facts and circumstances as apparently the tug of war is over the movable assets in the form of contribution by the members.

4. The writ petition stands disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

01.08.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
No