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

(220)

CWP-11779-2000 (O&M)
DATE OF DECISION:- 11.09.2024

KARAM SINGH AND OTHERS **...PETITIONERS**

VERSUS

STATE OF PUNJAB AND OTHERS **...RESPONDENTS**

CWP-15629-2000 (O&M)

DALJIT SINGH AND OTHERS **...PETITIONERS**

VERSUS

STATE OF PUNJAB AND OTHERS **...RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. S.S.Swaich, Advocate and
Ms. Deepa Negi, Advocate
for the petitioner.

Mr. Anil Bansal, DAG, Punjab.

Mr. Ajay Mahajan, Advocate and
Mr. Abhinav Mahajan, Advocate
for the respondent No.4 in both the cases.

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SUVIR SEHGAL, J. ***(Oral)***

1. This order shall dispose of both the above noted writ petitions as they involve common questions of law and fact. For the sake of convenience, factual matrix is being taken from CWP-11779-2000.

2. Instant writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari challenging award dated 21.02.1992, Annexure P-1, and orders dated

17.05.1999 and 15.02.2000, Annexures P-2 and P-3, respectively, passed by the official respondents.

3. Facts, in brief, are that Dhera Singh, Surjan Singh and Prem Singh were members of Managing Committee of Manakpur Kallar Cooperative Agricultural Service Society Limited (hereinafter referred to as "the Society"). Surjan Singh expired on 20.12.1983 and Dhera Singh expired on 26.10.1988 and the writ petition has been filed through their legal representatives. In the year 1991, arbitration proceedings were initiated under Section 55 of the Punjab Cooperative Societies Act, 1961 (for short "the 1961 Act") against Banarsi Dass, the then Secretary of the Society, which culminated in the passing of award 21.02.1992, Annexure P-1, against him with the observation that in case the awarded amount is not recovered from him, then the same be recovered, in equal share, from the members of the then Managing Committee of the Society. In August, 1997, the Deputy Registrar, Cooperative Societies, Ropar exercising the powers of a recovery officer served demand notices upon the petitioners, who preferred objections, which were rejected vide impugned order dated 17.05.1999, Annexure P-2. Petitioners, preferred a revision petition, which was rejected by the Special Secretary, Cooperation vide order dated 15.02.2000, Annexure P-3. Challenging the award and orders, Annexures P-2 and P-3, petitioners have approached this Court by way of present writ petition.

4. Upon notice, writ petition has been contested by the official respondents No.1 to 3 and by the Society-respondent No.4 by filing separate written statements. The respondents have submitted that petitioners chose not to appear in the arbitral proceedings and an exparte award was passed against

them. Respondents submitted that this development has been deliberately concealed by the petitioners.

5. Counsel for the petitioners has argued that proceedings on the basis of an audit note can only be initiated under Section 54 of the 1961 Act, for which limitation is six years and the matter has been wrongly referred to the Arbitrator under Section 55/56 of the 1961 Act. It is his argument that the members of the Managing Committee can be made liable when breach of trust or wilful negligence is established as provided in Section 54, *ibid*. He urges that as the proceedings for the execution of the award are a nullity, the petitioners are entitled to take an objection to this effect in the execution petition.

6. *Per contra*, counsel for the respondents has opposed the prayer and by referring to the provisions of the 1961 Act has submitted that the case falls within the ambit of Section 55 (1) of the 1961 Act and after serving the legal representatives of the deceased members, ex-parte award was passed. He has placed reliance upon a Division Bench judgment of this Court in ***Laiq Singh Versus State of Punjab, 1997 (1) PLJ 1***, to support his assertion that the proceedings were maintainable under Section 55/56 of the 1961 Act.

7. I have heard the counsel for the parties and considered their respective submissions.

8. While interpreting Section 55 of the 1961 Act, a Division Bench of this Court in ***Laiq Singh's*** case (supra) has held that the special feature of this Section is that it begins with non obstante clause. The expression "notwithstanding contained in any other law for the time being in force", is indicative of the intention of the Legislature to give over-riding effect to the

provisions of Section 55 over the provision of Section 54. The relevant observations of the Division Bench are reproduced hereunder:-

> "*7. While Section 54 finds place in Chapter VII and relates to audit, inquiry, inspection and surcharge, Section 55 falls within Chapter VIII which relates to the settlement of disputes. Section 54 speaks of an inquiry by the Registrar or a person authorised by him in cases where it is discovered during the course of an audit, inquiry, inspection or the winding up of a Co-operative Society that a person entrusted with the organization or management of such Society has made any payment contrary to the provisions of 1961 Act or the Rules or the Bye-laws framed thereunder or who has caused any deficiency in the assets of the Society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such Society. Section 55, on the other hand, begins with non obstante clause and provides for reference of a dispute touching the constitution, management or the business of a Co-operative Society to the Registrar for decision. A cursory and superficial reading of Sections 54 and 55 together may suggest that Section 54 is in the nature of a special provision dealing with cases of wrongful payments, deficiency in the assets of the Society by breach of trust or wilful negligence or mis-appropriation or fraud by officers or employees entrusted with the organization and management of the Society as against general provisions contained in Section 55 for adjudication of disputes touching the constitution, management or the business of a Co-operative Society. However, a minute examination of the two provisions shows that in reality two options are available to a Society and the departmental authorities to initiate action against a person who is connected with the management or the organization of the Society. Ambit and scope of Section 55 is wider than of*

> *Section 54. In our opinion, when two options/remedies are available to the Society and the departmental authorities, they are entitled to elect any one of them and mere fact that action initiated under Section 55 by way of reference of dispute relates to allegation of embezzlement or fraud by officers or employees discovered in the course of audit, inquiry, inspection or winding up of the Society will not render the proceedings as without jurisdiction on the ground that actions could have been initiated under Section 54."*

9. It is evident from the above reproduction that the scope of Section 55 of the 1961 Act is much wider than Section 54 and when there are two options available to the Society and the Society is entitled to choose one of them, as has been done in the present case. Therefore, the argument of the counsel for the petitioners that the remedy with the Society was only under Section 54 of the 1961, Act deserves to be rejected.

10. Upon the death of Dhera Singh and Surjan Singh, by resolution, Annexures R-4/1 and R-4/2, the Society decided to implead the legal representatives of the deceased and the application to implead them was allowed by the learned Arbitrator vide orders dated 18.11.1991 and 03.02.1992. Upon being impleaded, summons were issued to them, they were duly served, but they chose not to appear before the Arbitrator and were proceeded against ex-parte resulting in the passing of the award. They did not challenge the award by filing a revision petition and when the respondent-authorities are taking steps to execute the award and recover the money, the petitioners are creating hindrances by filing objections, which have been rightly rejected by the authorities. There is no illegality or infirmity in the impugned award and orders.

11. Finding no merit in both the writ petitions, they are dismissed.

12. Since the main case has been decided, pending application(s), if any, are disposed of.

(SUVIR SEHGAL)
JUDGE

11.09.2024
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Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No