

2024:PHHC:132740



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

224

CWP-22968-2021 (O&M)
Date of decision: 24.09.2024

DEEPAK KUMAR AND OTHERS

.....Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present: - Mr. Nihul Pratap Singh, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Amandeep Vashishth, Advocate
for respondent No.5.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the impugned order passed in Appeal No. 332 of 2019 passed by the Registrar General of Societies, Haryana, Chandigarh dated 28.10.2020 to the extent whereby he has not interfered with the orders dated 04.04.2019 and 21.02.2019 passed by the State Registrar of Societies and District Registrar of Societies respectively. A further prayer has also been made for setting aside of the election of societies that took place pursuant to the order dated 19.06.2018 passed by the District Registrar of Societies, Faridabad.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioners are former members of the Society namely Shri Mahakali Mandir Sansthan and that no election of the said society was ever held after 04.06.2009. The petitioner or any other member never resigned from the membership of the said Society. It was alleged that certain people, who are not even members of the Society, are trying to grab the society and take possession of the property i.e. the Mandir and assets alongwith the record of society forcibly and illegally. Various complaints were moved by the petitioner to the Police Department against respondent No.5-Rakesh Kumar Diwakar. A complaint in this regard was also filed before the District Registrar on 12.10.2017 against respondent No.5 and vide order dated 19.06.2018, the District Registrar of Societies directed the SDO (Civil), Badkhal, District Faridabad to manage the affairs of the society and to conduct the election of the governing body of the society within three months from issuance of the said order, noticing that the election of the said society had not been held. He contends that on the information sought under the Right to Information Act, 2005, a list of members was supplied to the petitioner on 18.08.2018 as per which the name of the petitioners were missing from the said list. It was alleged that the said list was bogus and the same had been submitted during the pendency of the complaint that had been instituted by the petitioner. The order dated 19.06.2018 passed by the District Registrar directing the SDO (Civil), Badkhal to take over the management of the Society and to ensure conducting of the elections for the governing body was challenged by the petitioner alongwith the list of members by means of petition No. 69 dated 24.08.2018 before the District Registrar which was dismissed vide order dated 21.02.2019.

3. Aggrieved of the said dismissal, the petitioner preferred an appeal before the State Registrar of Societies, Haryana which was also dismissed vide order dated 04.04.2019. The petitioner thereafter approached this Court by CWP-12024 of 2019. Since there was a statutory remedy of appeal before the Registrar General of Societies under the Haryana Registration & Regulations of Society Act, 2012, the writ petition was withdrawn to avail the alternative remedies. Appeal No. 657 of 2019 was accordingly filed by the petitioner before the Registrar General of Societies, Haryana challenging the list of the members provided by the District Registrar, Faridabad and also to the election held pursuant to the order dated 19.06.2018 passed by the District Registrar of Societies, Faridabad.

4. The aforesaid appeal filed by the petitioner was allowed by the Registrar General of Societies and the respondent No.4 was directed to include the name of the petitioner into the list of the members of the Society. He however did not set aside the impugned orders as prayed for. It is contended that as a result of the same, the respondent No.5 still continues to manage the affairs of the Society and the petitioner has no say in the administration of the society.

5. Learned Counsel for the contesting respondents on the other hand defended the order passed by the authorities and has argued that the membership of the respondent had never been set aside. He contends that the tenure of the governing body then elected, pursuant to the order passed by the District Registrar of Societies, already came to an end in the year 2023 and thereafter new elections were also held in which one of the petitioners also participated and he is now a member of the governing body. It is contended that the petitioners neither raised any challenge to the subsequent

elections that were held nor filed any election petition challenging the result. Consequently, the challenge at this stage is highly belated and the exercise is merely academic. The petitioners having participated in the election process were always aware of all facts. It is also noted that no evidence of any nature whatsoever is referred on the basis whereof it may be established that the respondent No.5 was not a duly inducted member of the said society. The authorities have concurrently not accepted the plea of the petitioner with respect to the allegations against non induction/improper induction of the respondent No.5.

6. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents available on record.

7. It is evident from perusal of the impugned order that the petitioners alleged that respondent No.5-Rakesh Diwakar had not been inducted as a member of the Society and that the list reflecting his name alongwith others is bogus and illegal in the eyes of law.

8. It was claimed that the petitioner was the founder member and had neither resigned from the Society nor was ever removed and that he had been conducting all the meetings, Annual General Meetings and Special General Meetings etc. and passing order in this regard. The same was one issue which was required to be decided. The respondent No.5 was never a member of the Society.

9. The arguments of the petitioner however did not find any merit with the District Registrar as he could not lead any evidence on the basis whereof it would be held that the induction of respondent No.5 as a member of the Society was not valid or it has bogus resolutions/documents having been furnished by him. The said order was also affirmed by the State

Registrar of Societies. However, at the stage of the Registrar General, the matter was examined at length and after hearing of the respective contentions, the Registrar General recorded as under:-

5. *Having taken into consideration, the material on record and hearing the arguments of both the parties, the following observations have been made:-*

- (i) *As per section 79(3) of HRRS Act, 2012, any appeal shall be filed within a period of sixty days from the date of issue of the impugned orders. The appellate authority may entertain an appeal beyond this period up to a maximum of another sixty days on sufficient grounds of condonation of delay being shown. In exercise of these powers exercised under section 79(3) of the Act, the delay in filing of the appeal is condoned.*
- (ii) *The appellants have sought relief under Section 21(1) of HRRS Act, 2012. The mandate of Section 21(1) is that "where any member claims to have been admitted as a member but not included in the register of members or any member is aggrieved with his removal from the membership of the Society". The appellants in this case has produced the original registration document issued by the District Registrar of Societies, Faridabad dated 04.06.2009 in which the name of all the 06 appellants namely, S/Sh. Deepak Kumar S/o Late Sh. Mangal Dass, Bal Dev Raj S/o Sh. Chunni Lal, Raj Kumar S/o Sh. Om Prakash, Amit S/o Sh. Bal Dev Raj, Raj Kumar S/o Sh. Tika Ram and Ajay Kumar S/o Sh. Om Prakash are there. The defendants/respondents have failed to show any document by which these persons have been shown to be removed from the membership of the Society, These persons have also not resigned from the membership of the Society.*

In view of these facts and the production of original deed of registration, the appeal of the appellants is hereby allowed under Section 21(1) of the HRRS Act, 2012 and the District Registrar, Faridabad is directed to include the names of these members into the list of members of the Society.”

10. It is evident from perusal of the aforesaid that the Registrar General has confined his order only to the extent of membership of the petitioner but has chosen not to reflect any consideration with respect to the second part of the contention raised by the petitioner about the valid induction of the respondent No.5 as the member of the Society.

11. Since the said issue has not been adverted to by the Registrar General of the Society, despite being raised, I deem it appropriate to set aside the order dated 28.10.2020 passed in Appeal No. 332 of 2019 passed by the Registrar General of Societies, Haryana. The matter is further remanded to the Registrar General of Societies, Haryana to take in to consideration all the objections of the petitioners and to pass a reasoned and speaking order thereupon after granting an opportunity of hearing to the respective parties.

12. Petition is accordingly allowed and matter is remanded to the Registrar General of Societies, Haryana for a fresh decision.

(VINOD S. BHARDWAJ)

JUDGE

SEPTEMBER 24, 2024

Vishal Sharma

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