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

212

CWP-26720-2019 (O&M)
Date of decision: 08.11.2024

Pushpinder Kalia

...Petitioner

VERSUS

Financial Commissioner-cum-Secretary to Government of Haryana, Industries and Commerce Department and others

...Respondents

212-A

CWP-9111-2022 (O&M)
Date of decision: 08.11.2024

Brig. Surrinderpal Singh Jaswal (Retd.)

...Petitioner

VERSUS

Financial Commissioner-cum-Secretary to Government of Haryana, Industries and Commerce Department and others

...Respondents

212-B

CWP-12083-2022 (O&M)
Date of decision: 08.11.2024

Lt. Col. Piyus S. Katal and others

...Petitioners

VERSUS

Financial Commissioner-cum-Secretary to Government of Haryana, Industries and Commerce Department and others

...Respondents

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

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Present :- Mr. Prabhjeet Singh Sullar, Advocate for the petitioner(s).

Mr. Pankaj Mulwani, DAG Haryana.

Mr. Ish Puneet Singh, Advocate for respondent No.4.

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VINOD S. BHARDWAJ, J. (Oral)

1. Involving the common question of law, these three writ petitions are being decided by a common judgment.

2. For facility of reference facts are however being extracted from **CWP-26720-2019** titled as **Pushpinder Kalia Vs. Financial Commissioner-cum-Secretary to Government of Haryana, Industries and Commerce Department and others**.

3. Succinctly the grievance espoused in the above writ petition is against that respondent No.4 allegedly charging exorbitant fee to the tune of Rs.80,000/-in the name of transferring flats in favor of the subsequent purchasers. The dispute being with regards to Flat No.E-9/604 in Sandeep Vihar (AWHO) Welfare and Maintenance Society (herein after referred to as 'the Society'), GHS 79, Sector-20, Panchkula being the respondent Society in the said case. It is contended that Mr. P.S. Gill son of Late Mr. D.S. Gill was originally allotted the membership No.EOF/EA3/929558/S8/ Panchkula/2001 vide allotment letter dated 30.10.2009 of the said society which was registered under the Societies Registration Act, 1860. On the notification of the Haryana Registration and Regulation of Societies Act, 2012, the said Society got itself re-registered vide registration No.00132 dated 21.05.2013 under the new Act of 2012.

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4. It is averred that as per the condition No.83 of the Master Brochure issued by the Army Welfare Housing Organisation, it is entitled to charge a transfer fee of Rs.10,000/- or such amount as may be approved by the Executive Committee in addition to what the principal lessor has right to recover under the terms of lease entered into between the AWHO and the principal lessor. The petitioner, being eligible to become member of the said Society approached for transfer of the above flat whereupon the requisite documents were processed for which a demand of Rs.80,000/- was raised by them. Under compulsive circumstance, the petitioner deposited the said amount vide receipt No. 9011 dated 16.10.2014 but without prejudice to his rights. Hence, the petitioner became a provisional member of the Society vide letter dated 16.10.2014 after permission was accorded for transfer of the said flat. It is claimed that in certain judgments passed by this Court, such acts of the societies have been set aside and the demand levied has been held to be bad. It is contended that certain persons had approached the Registrar of Cooperative Societies Panchkula, Haryana, against such unwarranted and illegal claims raised by the societies whereupon circular dated 09.05.2008 was issued by the above said authority restricting all the cooperative house building/group housing and maintenance societies to refrain from charging more than Rs.10,000/- as transfer fee and the bye laws of the society were ordered to be suitably amended immediately and compliance report was directed to be sent. An act of a Society demanding more money than prescribed was ordered to be viewed seriously. The petitioner thus approached this Court impugning the aforesaid illegal demand and seeking

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refund of the excess amount by relying on the order issued by the Registrar Cooperative Societies, Haryana.

5. A short reply by way of affidavit dated 30.01.2023 of Mr. Gaurav Sharma, District Registrar Firms and Societies, Panchkula on behalf of respondents No.1 and 3 was filed informing that the Society is registered under Haryana Registration and Regulation of Societies Act, 2012. It was also stated that the representation sent by the petitioner against respondent No.4 was forwarded to the competent authority and no further action was required to be taken on their behalf.

6. A separate reply was, however, filed on behalf of the contesting respondent No.4 taking a specific objection that the prayer was not maintainable since the amount had been deposited by the petitioner in the year 2014 while the writ petition had been filed in the year 2019. Hence, the writ petition was barred by delay and latches. It was also averred that the above said deposit was made by the petitioner without any protest and as such he would be estopped from raising a dispute after such a delayed period of 05 years. A plea was also taken that the amount of Rs.80,000/-was not claimed towards the transfer fee but was claimed under the head of "Members Additional Corpus –Disaster/Long Term Maintenance Fund". He submits that transfer fee of only Rs.10,000/- was charged by respondent No.2, in consonance with the AWHO Master Brochure-1987, and that the charge of Rs.80,000/- collected by respondent No.4-the Society is separate and distinct. It is further submitted that as per the Bye Law 6(i) of respondent No.4-the Society, each member had contributed an amount of

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Rs.20,000/- to the corpus of the Society and that Bye Law 6(iv) provided that upon transfer of an apartment to a 3rd party, he shall be liable to pay a one time membership fee, contribution to long term development fund/corpus fund, service charges, other contributions or fees etc. as laid down by the general body. In furtherance thereto, the Society had approved the charge, for the growth of the corpus fund in the annual general meeting dated 21.09.2014, wherein the said charge was determined for an economy flat. The minutes of the meeting dated 21.09.2014 are extracted as under:-

> ***"7. Corpus Fund Growth. The President apprised the house that the Original Allottee Members paid on an average 1.3% appx (Rs 20,000/-) of the cost of Flat as contribution towards Corpus Fund for repair/replacement of common facilities e.g. Lifts, Generators, Pump Sets, Electrical Panels, Transformers, Fighting System, Internal Roads Fire etc. which involve heavy cost/expenditure (Rs 11.50 crores during 2005-06). Considering that the society is more than 6 (six) years old and heavy outflow of funds is likely to maintain common facilities, the Collegium therefore unanimously resolved that the New Member (Transferee) should, henceforth, contribute a sum of Rs. 50,000/- for a thrifty flat, Rs. 60,000/- for a utility flat, Rs. 80,000/ for an economy flat and Rs. 1,00,000/- for a deluxe flat. These figures will be revised as per the change, if any, in the Collector's rate/prevalent market value and be presented by the***

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Managing Committee at the AGM for its approval. The funds thus generated will be accounted for under the head "Members Additional Corpus- Disaster/Long Term Maintenance Fund", the fifty percent of which will be expended on new projects as well as on development works during the same financial year or as decided by the Managing Committee in view of the funds position subject approval by the immediate next AGM".

7. It is thus averred that the petitioner has no cause of action for institution of the present writ petition since the levy has been strictly in accordance with the applicable Bye Laws and the decision to levy the charge had been taken in the annual general meeting of the Society. The said resolution/decision has not been challenged by the petitioner or any other person before any competent authority under the Haryana Registration and Regulation of Societies Act, 2012 and as such would hold good and be binding.

8. Neither any other argument has been raised nor any judgment has been cited by the learned counsel for the respective parties.

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

10. So far as the prayer made in the present petition about issuance of direction of mandamus to the State Registrar of Societies to further direct respondent No.4-the Society to refund the extra amount charged from new members on transfer of a dwelling unit by way of sale is concerned, it is

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undisputed that there was no provision in the Act of 2012 or the Rules framed thereunder whereby any such authority has been conferred upon the State Registrar i.e. respondent No.3 to direct a refund of an amount charged as per resolution of the Society. For entertaining a plea for issuing direction in the nature of mandamus to a statutory authority, the first test required to be satisfied is that the law should enjoin upon the concerned statutory authority to act in the manner as is being sought for. In the absence of statutory authority having been conferred upon respondent No.3, High Court, under Article 226 of the Constitution of India, cannot confer an authority and declare that the demand, which is otherwise approved by the governing body of the society, be deemed to be set aside notwithstanding that there is no challenge to the resolution. Any decision taken by the competent authority of the Society is amenable to a challenge in the manner known to law and in the absence thereof, an action, which is otherwise in conformity with law in force cannot be held to be *per se* bad.

11. Learned counsel for the petitioner could not refer to any provision under the Haryana Registration and Regulation of Societies Act, 2012 or the Rules framed thereunder as per which there was any restriction on the power of the Society to prescribed fee and charges for its members. He also could not point out any illegality or impropriety in the resolution passed by the Society and its applicability at the time when the petitioner sought transfer of the Unit. Hence, the levy of the charge at the relevant point cannot be hold to be bad or unenforceable.

12. Having held so, it needs to be also seen that the Government of

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Haryana had issued a notification on 22.06.2018 whereby the "Haryana Registration and Regulation of Societies (Amendment) Rules, 2018" were notified. Rules 32 and 33 were thereafter added which read thus:-

> ***"32. Fixation of transfer fee.- The Society shall not charge transfer fee not more than ten thousand rupees in case of sale of apartment and such society shall also modify the bye-laws accordingly and get the modified bye-laws approved from the District Registrar".***
>
> ***33. Fixation of maintenance charges.-The society shall fix the charges on the basis of size of apartment for maintenance of common area and facilities, as such, existing society shall also modify the bye-laws accordingly and get the modified bye-laws approved from the District Registrar."***

13. It is thus evident that upon the notification of the amendment and addition in the Rules, the transfer fee has been fixed under the Rules to not exceed Rs.10,000/- in case of sale of apartment and all the Bye Laws were required to be modified accordingly. Hence, after the coming into force of the above notified Rules, any earlier resolution passed by the governing body/executive body in its annual general body meeting had to be read in conformity with the Rules. The levy of any transfer charges beyond a sum of Rs.10,000/- after the date of notification was thus illegal. Any amount so collected is thus unlawful in the hands of the Society and is liable to be returned.

14. Now adverting to the submission of the respondent that the said

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amount was not a transfer fee but was a corpus fund growth, I find that the argument is inherently flawed. Needless to mention that this corpus charge is being levied on a new member as if the contribution for creation of the asset is to be recovered from him. The transferee member steps into the shoes of the old member, who had already paid the charge for creation of the asset. Each member is liable to pay the proportionate maintenance charge even otherwise. Thus, fresh charge cannot be levied on the purchaser each time a unit is sold as it amounts to collection of the same charge from the subsequent purchaser, on each transaction. It tantamounts to levy of any arbitrary charge on a new buyer and is thus essentially a part of transfer charge only. The nature of fees and charges and its components got determined by Rules and the levy had to be thereafter uniform for all.

15. A mere change of nomenclature under which a charge is being demanded even though it is principally toward the transfer fee, cannot be sustained since any such attempt by a Society would be deemed to be a fraud on the statute. No society can be permitted to indulge in a mischief so as to over-reach a legislative intent aimed to curb the arbitrary decisions of the Societies and to bring in uniformity in levy and equal treatment.

16. Under the given circumstances, I am of the firm opinion that a demand beyond Rs. 10,000/- from a new member as transfer fee would be illegal and cannot be validated merely because the society mischievously fasten the charge under another head. The same being in conflict with law would be unsustainable.

17. Needless to mention that the entitlement, if any, for claiming

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maintenance charge can only be with respect to the maintenance charge, that may have remained outstanding against the erstwhile owner, from the transferee of the property and that no separate charge under the garb of maintenance charge, over and above a charge which is applicable to all other members of the society, can be recovered from a subsequent purchaser.

18. Now adverting to the judgment appended alongwith the petition as well as to the order of Registrar Cooperative Societies, Haryana that had been relied upon by the petitioner. The said reliance is misplaced since the said order as well as judgment is in relation to the Societies governed under the Haryana Cooperative Societies Act and not under the Haryana Registration and Regulation of Societies Act, 2012. No such provisions akin to surcharge proceedings/recovery proceedings under the H.C.S Act existed in the Haryana Registration and Regulation of Societies Act, 2012. Thus, the judgment and the order have been passed by a separate authority exercising powers under a separate special statute and the same cannot be supplanted on the Haryana Registration and Regulation of Societies Act, 2012. The provisions are not *pari-materia* and thus cannot be used even as an external aid for interpretation.

19. In view of the above, the present petitions are disposed of with a direction that respondent No.4-Sandeep Vihar (AWHO) Welfare and Maintenance Society, GHS 79, Sector-20, Panchkula shall refund wherever the amount charged is beyond Rs.10,000/- towards transfer fee including corpus fund charge and (irrespective of the nomenclature used by them for raising such a demand) from the date of notification dated 22.06.2018 and

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the same shall be refunded by the respondent-Society within a period of 60 days of receipt of a certified copy of this order, along with interest @ 6% per annum from the date of collection of such charge till its actual disbursement.

20. In the event, the above said amount is not refunded in the time frame as aforesaid, the rate of interest shall be leviable @12% per annum.

21. All the three writ petitions are accordingly disposed of.

22. All pending civil misc. application(s), if any, stand disposed of.

(VINOD S. BHARDWAJ)
JUDGE

08.11.2024
Mangal Singh

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

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