



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

132

CWP-24426-2024 (O&M)

Date of decision: 23.09.2024

Rakesh Singh

...Petitioner

VERSUS

State of Haryana and others

...Respondents

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

Present :- Mr. Jashandeep Singh, Legal Aid Counsel for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the order dated 13.02.2024 passed by respondent No.2-The Registrar General of Societies, Haryana in appeal No.467 of 2022.

2. Learned counsel for the petitioner contends that the election to federation of Society i.e. Malibu Town a Welfare Association was allegedly held on 25.12.2020 unanimously and that approval of such election was granted by District Registrar, Firms and Societies on 19.04.2021. Raising a challenge to the said approval the petitioner filed an appeal before the State Registrar of Societies under Section 79 of the Haryana Registration and Regulation of Societies Act, 2012 against the recommendations made by District Registrar, Firms and Societies. The matter was examined and on noticing the rival contentions raised by the parties, the appeal was dismissed vide order dated 24.02.2022 for the following reasons: -



“5. That from perusal of the record and the submissions made by the appellant and respondents, following observations are made:-

5.1 That the District Registrar, Gurugram, vide letter dated 19.04.2021 made Reference under Section 40 of the HRRS Act, 2012, regarding the election dispute of Federation Malibu Towne Welfare Association, Gurugram. While making the said Reference, the District Registrar, Gurugram, also referred to his letter dated 08.04.2021 and representation dated 01.04.2021 from Er. Rakesh Singh, Malibu Towne Resident Welfare Association, Gurugram, regarding the election dispute of Malibu Towne Resident Welfare Association, Gurugram.

The District Registrar, Gurugram, has erroneously connected election disputes of two separate societies, namely, Malibu Towne Resident Welfare Association, Gurugram (Reg. No. HR018 2013 00792) and Federation Malibu Towne Welfare Association, Gurugram (Reg. No. HR018 2013 00611) in the same Reference made vide letter dated 19.04.2021. It is a fact on record that even though both are separate societies having distinct Registration Numbers. The Reference under Section 40 of the HRRS Act, 2012, made vide letter dated 08.04.2021 has been decided separately in Petition Case No. 964 of 2021 vide order dated 24.02.2022.



That the appellants in the present appeal are challenging Reference under Section 40 of the HRRS Act, 2012 made by the District Registrar, Gurugram, vide letter dated 19.04.2021 regarding election dispute of Federation Malibu Towne Welfare Association, Gurugram. The appellants have prayed that the approval vide memo dated 19.04.2021 based on latter dated 25.12.2020 said to have been approved as mentioned in letter No. District Registrar/DIC/GGM/934 dated 19.04.2021 be set aside. The appellants have further prayed that Governing Body duly elected as per Section 39 of the HRRS Act, 2012 and uploaded on the official portal on 03.04.2021 be approved with immediate effect.

5.3 That during the course of hearing on 27.01.2022, the appellants informed that the Reference made by the District Registrar, Gurugram, vide letter dated 19.04.2021 was not dealt. On enquiry, it was noted that the letter dated 19.04.2021 was emailed by the District Registrar, Gurugram, on 20.04.2021 but the Dealing Assistant was unable to put up the same owing to certain reasons. The delay in dealing with the said letter has been dealt separately.

5.4 Chapter VIII of the HRRS Act, 2012, contains various provisions viz. Section 39 and Section 40 relating to Elections. The District Registrar, Gurugram. has referred the above



representation for decision under section 40 of the HRRS Act, 2012, therefore, relevant portion of Section 40 of the HRRS Act, 2012, is reproduced below for ready reference:-

"40. Settlement of disputes arising from election of Collegium or Governing Body and its office-bearers:-(1) Where a dispute or doubt arises with regard to election or continuance in office of any elected member in a collegium, the District Registrar or at least one-fourth members of the General Body and where a dispute or doubt arises with regard to election or continuance of any member in the Governing Body, the District Registrar and if there is need to constitute the collegium then the District Registrar or at least one-fourth of the members of the collegium, may refer to the dispute or doubt by moving a reference or petition before the Registrar within thirty days from the date of declaration of result and the Registrar shall decide the same and pass such orders, as he may deem fit, preferably within a period of 90 days but not later than one hundred twenty days.

5.5 A perusal of Section 40 of the HRRS Act, 2012, shows that in case of any dispute or doubt arising from the election, there are two modes of approaching the State Registrar:-

(i) Either one fourth of the members of the General Body may refer to the dispute or doubt while making a



Petition before the State Registrar: or

- (ii) The District Registrar may refer such dispute or doubt by way of making a reference to the State Registrar for decision.***

5.6 Section 40 of the HRRS Act, 2012, provides that in case there is a dispute or doubt arising from the election, the members (with one fourth majority) or the District Registrar can make a Petition or Reference to the State Registrar for settlement of election dispute.

5.7 Proviso to Section 40(1) of the HRRS Act, 2012, empowers the State Registrar to set aside the election of any or all the members of the Collegium or the office-bearers of the Governing Body. Proviso to Section 40(1) of the HRRS Act, 2012, is reproduced as under:-

Provided that the election of any or all the members of the Collegium or the office- bearers of the Governing Body shall be set aside where the Registrar is satisfied-

- (i) that any corrupt practice has been committed by such office-bearer (s); or***
- (ii) that the nomination of any candidate has been improperly rejected: or***
- (iii) that the result of the election, in so far as it concerns such office-bearer, has been materially affected by the improper acceptance of any nomination or by the***



improper reception, refusal or rejection of any vote or the reception of any vote which is void or does not comply with the provisions of any Bye-law.

A perusal of the above shows that at least one of the above conditions must be satisfied for setting aside the election.

5.8 As per the provisions of the HRRS Act, 2012, the District Registrar is responsible for free and fair conduct of election of a society and in case of any dispute arisen during the conduct of election, the District Registrar has been given powers to make a reference to the State Registrar for decision.

6. The District Registrar, Gurugram, referred the matter vide letter dated 19.04.2021 under Section 40 to the present authority for decision. A perusal of the Reference made by District Registrar, Gurugram, shows that he did not mention about any dispute or doubt arising from the election. In the absence of specific recommendations of doubt or dispute by the District Registrar, Gurugram, the reference made by the District Registrar, Gurugram is not maintainable and therefore, the Reference made by District Registrar, Gurugram, vide letter dated 19.04.2021 is rejected, therefore, the present appeal is disposed of consequentially.

Orders be communicated to all the concerned.”

3. Aggrieved thereof appeal No. 467 of 2022 was preferred before



the Registrar General of Societies, Haryana, the said appeal was also dismissed vide order dated 13.02.2024 wherein it was held as under:-

“4. After hearing the arguments and written submissions made by the parties, from the perusal of record available, bye-laws of the society and the provisions of HRRS Act, 2012 the following observations have been made:-

- I. The election of the Governing Body of the society was conducted on 25.12.2020 in the meeting of the members of the society and newly elected Governing Body of the society was approved on 19.04 2021. The election held on 25.12.2020 were conducted unanimously.***
- II. The appellants have disputed the said election on the ground, that there were only six members in the society at the relevant time and the society is defunct society-as per Section 14 of the HRRS Act, 2012 and challenged the approval dated 19.04.2021 given by the District Registrar, Gurugram to the newly elected Governing Body of the society.***
- III. As per Section 14 of the HRRS Act. 2012, minimum seven members are required for a society at the time of its registration. The provisions of HRRS Act, 2012 are silent in case the number of members decreases after the registration of the society. Without any provision in HRRS Act, 2012, it cannot be concluded that a society***



will be considered as a defunct society, in case, membership decrease from seven members after its registration.

IV The District Registrar, Gurugram has failed to give any reason while forwarding the matter as election dispute vide reference dated 19.04.2021. While making the reference, he has failed to consider that approval for the election held on 25.12.2020 was given by him on the day he forwarded the reference i.e. on 19.04.2021. He simply forwarded the matter as election reference only on the ground that the election of the Governing Body of the society held on 25.12.2020 has already been approved by his office on 19.04.2021. He has also failed to give his recommendations while referring the matter as election dispute.

In view of the above, I am of the considered view that reference dated 19.04.2021 moved by the then District Registrar, Gurugram was not a valid reference. Further, as far as prayer of the appellants regarding setting aside the Governing Body of the society approved by the District Registrar, Gurugram vide order dated 19.04.2021 is concerned, the tenure of the Governing Body of the society has already been over and new Governing Body of the society has been approved on 03.04.2023, so, this prayer of the



appellants is infructuous in present circumstances. The present appeal is hereby disposed of in above terms. The pending applications, if any, stands disposed of.”

4. The said orders are now a subject matter of challenge in the present petition.
5. On a pointed query raised to the learned counsel appearing on behalf of petitioner about the term of the elected body, it has been informed that the said elected body was to function for a period of 03 years from the date of its approval. He fairly concedes that the since the election of the said body was approved on 19.04.2021, hence, its tenure has already come to an end on 18.04.2024.
6. It seems that the present petition is more in the nature of pursuing a stale cause at this stage.
7. Hence, in view of the same, the present writ petition is disposed of as having been rendered infructuous at this stage while keeping the question of law open.

(VINOD S. BHARDWAJ)
JUDGE

23.09.2024
Mangal Singh

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