



CWP-1867-2023(O&M)

-1-

108

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

CWP-1867-2023(O&M)

Reserved on:-04.12.2024

Date of pronouncement:-07.01.2025

Maninder Deep Singh Mahant and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Amit Jhanji, Senior Advocate with
Mr. Anmol Puri, Advocate and
Ms. Eliza Gupta, Advocate and
Mr. Hakikat S. Grewal, Advocate
for petitioner No.1.

Mr. Anand Chibber, Senior Advocate with
Mr. Chahit Bansal, Advocate
for petitioner No.2.

Mr. Brijesh, AAG, Punjab.

Mr. D.S. Patwalia, Senior Advocate with
Mr. Kannan Malik, Advocate and
Ms. Rishu Bajaj, Advocate
for respondent No.3.

SUVIR SEHGAL, J.(ORAL)

1. Both the petitioners, who claim to be members of Rawalpindi Self Supporting Co-operative Cinema Society Ltd. (for brevity hereinafter referred to as "the Society") have invoked the writ



jurisdiction of this Court claiming the following relief:

“A. *Issue of a appropriate writ, order or direction, especially writ in the nature of mandamus for direction to Respondent No.2 to examine the activities & records / accounts of Rawalpindi Self-Supporting Co-operative Cinema Society Ltd. (earlier known as Rawalpindi Co-operative Cinema Society Ltd.);*

B. *During the pendency of the present writ petition, the respondent no.3 be restrained from alienating its property and maintain status quo regarding the same;*

C. *Issue a writ in the nature of mandamus for direction to Respondent no.2 to look into the illegality of Sale Deed dated 12.06.2000 (Annexure P/14) and declare the same to be illegal, null and void being violative of Section 10 of the Punjab Self-Supporting Co-operative Societies Act, 2006;*

D. *Issue of a writ in the nature of mandamus for direction to Respondent no.2 to give control of the management of Rawalpindi Self-Supporting Co-operative Cinema Society Ltd. (earlier known as Rawalpindi Co-operative Cinema Society Ltd.) to a Local Commissioner or an Independent Administrator;*

E. *During the pendency of the present writ petition, the control of Rawalpindi Self-Supporting Co-operative Cinema Society Ltd. (earlier known as Rawalpindi Co-operative Cinema Society Ltd.) be given to an Independent Administrator;*

F. *Issue a writ in the nature of mandamus directing Respondent No.2 to conduct an inquiry under Section 53 of the Punjab Self-Supporting Co-operative Societies Act, 2006, on the*



basis of the applications dated 07.04.2022 and 06.01.2023 (Annexure P/12) & (Annexure P/16) filed by the petitioner No.1 and petitioner No.2 respectively and adjudicate upon the same.”

2. It has been claimed that the society – respondent No.3 was registered under the Punjab Self-Supporting Co-operative Societies Act, 2006 (for short “2006 Act”) and was the owner of land and building known as “Society Cinema”, Ludhiana, which was on lease with a third party. By an agreement dated 14.03.2018, Annexure P13, society agreed to sell the land and building of the cinema to M/s Periwal Enterprises Private Ltd. for Rs.16 crores. A sale deed dated 12.06.2020, Annexure P14, was executed between the parties whereby 1/4th share of the property was sold to the company for Rs.4 crores.

3. Learned senior counsel appearing for the petitioners has urged that the property of a society can only be disposed off under Section 10 or under Section 63 of the 2006 Act and in any case, it cannot be alienated to a private limited company. He contends that as the society had sold the property in breach of the provisions of 2006 Act, applications dated 07.04.2022 and 06.01.2023, Annexures P12 and P16, respectively, were submitted to the Registrar, Cooperative Societies (RCS), Punjab – respondent No.2 to conduct an inquiry under Section 53 of the 2006 Act, but no action was taken. Learned Senior counsel submits that the information about the sale came to the knowledge of the petitioners during the pendency of a civil suit filed *inter se* the parties and the petitioners have separately filed a criminal complaint in New Delhi. It has been asserted that the Managing Director of M/s Periwal Enterprises Private Ltd. is the spouse of the President of



108

the society and they have embezzled huge funds of the society.

4. Writ petition has been contested by official respondents No.1 and 2 and by the society – respondent No.3 by filing separate replies. Besides challenging the *locus standi* of the petitioners, in their short reply, respondents No.1 and 2 have submitted that there is no provision for appointment of an Administrator under the 2006 Act nor does the RCS have any authority to declare any registered sale deed as null and void. It has been stated that RCS cannot restrain the society from alienating its property and the accounts of the society are audited by a Chartered Accountant under Section 50 of the 2006 Act. Once an audit is conducted and its report is to be examined by the general body of the society and the RCS has no role to play. By referring to Section 53 of the 2006 Act, it has been averred that the applications, Annexure P12 and P16, submitted by the petitioners do not meet the requirements of Section 53 of the 2006 Act and cannot be examined. In its written statement, society – respondent No.3 has taken a categorical stand that petitioner No.1 was never a member of the society and the membership of petitioner No.2 has been terminated by resolution dated 11.06.2023, Annexure A10, passed under Section 24 of the 2006 Act. A stand has been taken that petitioner No.2 was a signatory to the proceedings held on 29.07.2016, Annexure R3/1, whereby decision was taken to finalize the deal with M/s Periwal Enterprises Private Ltd. While supporting official respondents, it has been argued by the learned senior counsel representing the society that an inquiry under Section 53 of the 2006 Act, cannot be conducted and that the petitioners have an alternative remedy under the statute. Justifying the sale of the society's property,

**CWP-1867-2023(O&M)****-5-****108**

learned senior counsel has referred to resolutions, Annexures R3/2 to R3/4 as well as the documents appended with the miscellaneous application to assert that the statutory provisions have been complied with. An additional argument has been raised that petitioner No.2 is not a citizen of India and writ petition filed by him through a special power of attorney is not maintainable.

5. I have heard counsel for the parties and considered their respective submissions besides examining the documents brought on the record.

6. Petitioner No.1 is the son of late Mahant Joginder Singh, who was a member of the society – respondent No.3 and had a small share in it. He passed away on 25.01.2014 and left behind a Will dated 08.11.2011, Annexure P1, bequeathing 1/6th share in his properties in favour of petitioner No.1. There is a recital in the Will, Annexure P1, that the share in the society will be transferred in the name of one of his heirs after he/she signs a MOU with the other heirs to give them an equal portion from the income generated from the society's property. Petitioner No.1 has not placed on record any MOU with the other heirs to establish that he is the exclusive owner of the property of the society. Late Mahant Joginder Singh had nominated his brother Pritpal Singh to be the nominee of his share in the society. Pritpal Singh filed a civil suit for declaration to the effect that he is the owner in possession of some properties and for rendition of accounts of the society. After the death of Mahant Joginder Singh, petitioner No.1 along with other heirs have been impleaded as defendants to the civil suit and are contesting it. Petitioner No.1 filed an application under Section 55 of the Punjab Co-operative

**CWP-1867-2023(O&M)****-6-****108**

Societies Act, 1961 for transfer of the shares of his deceased father to his name but the application was dismissed by the RCS vide order dated 20.12.2018, Annexure A4, holding that the application is not maintainable under the Act. It is, therefore apparent that petitioner No.1 is not a member of the society.

7. Insofar as petitioner No.2 is concerned, he was a member of the society, but after he obtained the citizenship of United States of America, he consequently became ineligible to continue as a member. By a resolution passed by the society on 28.03.2023, Annexure A7, it was decided to issue a show-cause notice, Annexure A8, to him, which was sent on 29.03.2023. Petitioner No.2 submitted a reply, Annexure A9, on 23.04.2023 and after being afforded an opportunity of being heard, his membership was terminated vide resolution dated 11.06.2023, Annexure A10. Despite being intimated about the termination, petitioner No.2 did not challenge the resolution. It is, therefore evident from the above that both the petitioners are not the members of the society. They cannot claim to have any *locus standi* to file the writ petition and the writ petition at their hands is not maintainable.

8. It may also be mentioned that petitioners cannot bank upon Section 53 of the 2006 Act to seek a direction to respondent No.2 to conduct an inquiry into the affairs of the society – respondent No.3. Sub-Section (2) of Section 53 of the 2006 Act provides that an application under the provision has to be made by a federal self-supporting, co-operative society of which the concerned self-supporting co-operative society is a member, or by a creditor, or by not less than one-third of the Directors or by not less than one-tenth of the members

**CWP-1867-2023(O&M)****-7-****108**

of the society. An application by an individual, who is not even a member of the society, is not envisaged under Section 53 of the 2006 Act. Therefore, no direction can be issued to respondent No.2 to conduct an inquiry on the basis of applications submitted by the petitioners.

9. There is civil and criminal litigation pending between the parties over the property of the society. Petitioners have invoked the writ jurisdiction of this Court to settle their personal disputes which is an abuse of the process of the Court. No relief can be granted to the petitioners and the writ petition is dismissed.

10. Pending miscellaneous application, if any, shall stand disposed off.

(SUVIR SEHGAL)
JUDGE

07.01.2025
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No