CWP-1786-2025

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1786-2025
DATE OF DECISION : JANUARY 23, 2025

NARINDER SINGH AND ANOTHER …PETITIONERS

Versus

REGISTRAR, COOPERATIVE SOCIETIES, PUNJAB AND OTHERS …RESPONDENTS

CORAM : HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Vikas Chatrath, Advocate for the petitioners.

LAPITA BANERJI, J.(ORAL)

Learned counsel appearing on behalf of the petitioners submits that vide the impugned order dated November 29, 2022 (Annexure P-15), the Registrar, Cooperative Societies, Punjab, Chandigarh erroneously had given leave to the management of the society to conduct a special audit in the interest of justice. The said order was challenged in the revision petition and Revisional Authority/Special Chief Secretary-cum-Financial Commissioner, Cooperation, Punjab, Chandigarh had upheld the order passed by the Registrar vide an order dated October 10, 2024 (Annexure P-16). The said order passed by the Revisional Authority upholding the order of the Registrar is erroneous and arbitrary.

2. He draws the attention of this Court on Section 48(8) of the Punjab Cooperative Societies Act, 1961 (for brevity '1961 Act'). The said provision is reproduced hereunderbelow:-

> *"(8) If the Registrar, suo moto, or on the application of not less than ten members of a co-operative society finds that it is necessary or expedient to conduct special audit of the accounts of a co-operative society, he may be an order, provide for such special audit and the provisions of this Act, and the rules applicable to the audit shall also apply to such special audit.*
>
> *Provided that such special audit shall be ordered only where there is a prima facie case of fraud or misappropriation or embezzlement of funds."*

3. He submits that only after the Registrar was satisfied that there was a *prima facie* case of fraud or misappropriation or embezzlement of funds, a special audit could have been ordered to be initiated. However, there is no *prima facie* finding by the learned Registrar to that effect. Furthermore, he submits that the Registrar did not have the power to open up all the past records and order a special audit.

4. He also contends that the society in question-respondent No.3 had filed a writ petition, challenging an order whereby the society's registration under the Punjab Self Supporting Cooperative Societies Act, 2006 had been cancelled and the society was declared to be a society under the Punjab Cooperative Societies Act, 1961.

5. This Court has heard the learned counsel for the petitioners and perused the material on record.

6. Upon perusal of the order passed by the Joint Registrar, it appears that the Deputy Registrar, Cooperative Society, Mohali had caused an investigation and informed the office that the members who had been

granted no objection certificate during the general meeting held for the year 2020, could not be declared as defaulters. The letter of intent dated January 19, 2010 was issued by the GMADA, according to which the difference of 90-112 flats was to be paid by the society but the society had not paid the same as per the instalment schedule. The legal proceedings were initiated in the High Court in CWP-12671-2022. In the said proceedings, it was prayed that a financial audit should be conducted under the supervision of the Chief Auditor, Cooperative Societies, Punjab and Technical Audit Expert to find out regarding the diversion of public money from the financial year 2010 to March 2022. It was alleged by the members of the society that the management had diverted the funds payable for the cost of lands to GMADA and even though, the members had paid the cost of lands to the management, the same was not paid by the management to GMADA. GMADA had dues to the tune of Rs.7 crores against the society and even though, the management had constructed 112 flats but only 90 flats had been allotted. The management had accumulated 17.13 crores whereas only 15.93 crores were deposited with GMADA. It was further alleged that the society had 47 crores with it till 2015 but no payment was made to GMADA as per the instalment schedule intentionally and the management had diverted the money. The management neither conducted the audit nor any financial information was given to the members. The management failed to take completion certificate from GMADA. The water connection and sewerage connection taken by the management was also illegal. The Management Committee was consisting of various members who were the directors of private real estate companies and FIRs have been lodged against the Secretary of the society.

7. Furthermore, the financial irregularities were conducted by the Managing Committee by handing over the flats to their friends and families without recovering the full amount. Therefore, the President and Secretary of the Managing Committee had acted illegally and failed to provide any information which they were duty bound to do. After recording the aforesaid irregularities and the provision under which Deputy Registrar/Joint Registrar was held to be a competent authority for taking any decision in case of centralised society and pursuant to the orders passed in the said writ petition and after looking into the records submitted by the management of the society before the Registrar, it was found that conducting a special audit of the society would be in the interest of society. Therefore, the Registrar vide an impugned order dated November 29, 2022, directed the Deputy Registrar, Cooperative Society, SAS Nagar (Mohali) to complete a special audit by paying special attention to the aforesaid matters.

8. In the revision petition filed by the petitioners, the Special Chief Secretary held that it was expedient upon respondent No.1-Registrar to conduct a special audit of the society given the serious charges of financial irregularities received from 45 members of the society pointing towards the diversion of the funds by the society. It was also recorded that the petitioners' counsel had failed to demonstrate as to how the conduct of the special audit, as mandated under Section 48(8) of the 1961 Act would

adversely affect the petitioners' interest particularly given the assertion of no wrong doing or embezzlement being done by them.

9. This Court finds that under Section 48(8) of the 1961 Act, the Registrar *suo moto* or on the application of not less than 10 members of the Cooperative Society can give directions of conducting special audit regarding the accounts of the Cooperative Society, if he found it necessary or expedient to do so. As per the proviso to Section 48(8), the special audit could only be ordered when a *prima facie* case of fraud or misappropriation or embezzlement of funds is found by the Registrar. This Court finds it perplexing that despite recording of such glaring allegations against the members of the management society regarding embezzlement and diversion of funds, it has been sought to be argued that there is no *prima facie* case based on which the Registrar could have directed special audit. The Hon'ble High Court had directed the books of account, records to be submitted to the Registrar and upon the same being submitted, the Registrar noted all the glaring errors which had been brought to his notice by at least 45 members of the society.

10. This Court also cannot appreciate the apprehension of the petitioners in an investigation/special audit being undertaken since it is the specific case of the petitioners that they were not involved in any kind of wrong doing/embezzlement. To the mind of this Court, in the event, such glaring allegations were brought to the notice of the Registrar and the Registrar failed to direct any special audit, the same could have been held to

be a lapse on his part under Section 48(8) of the 1961 Act. There is no provision for any finding to be recorded in writing as to the *prima facie* case of fraud or misappropriation or embezzlement of funds by the Registrar under Section 48(8) of the 1961 Act. The said provision gives power to the Registrar to look into the facts and conduct a special audit if it was necessary and expedient for the interest of the members of the society. Therefore, the submission that the Registrar could not open up everything cannot also be accepted by this Court.

11. The third limb of the argument that the society was a society under the Punjab Self Supporting Cooperative Societies Act, 2006 cannot also be accepted since by dismissal of CWP-284-2022 **Dr. Ambedkar Cooperative House Building Society Ltd. and others Vs. State of Punjab and others** on 17.03.2023, a Coordinate Bench of this Court vide detailed order had declined such a prayer of the society-respondent No.3.

12. Accordingly, this Court finds that a frivolous writ petition has been filed and CWP-1786-2025 is consequently **dismissed.** Precious judicial time is being wasted by litigants wanting to scuttle the process of investigation and such litigations should be nipped in the bud.

13. Connected application(s), if any, shall also stand disposed of.

JANUARY 23, 2025
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(LAPITA BANERJI)
JUDGE

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