
(2011) 08 P&H CK 0108
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11876 of 2009

Arun Kumar Basra and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Citation : (2011) 164 PLR 783 : (2012) 1 RCR(Civil) 959

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Alok Singh, J.—Present petition is filed challenging order dated 28.05.2009, as well as, order dated 03.07.2009, thereby appointing the Administrator for Ajatshatru Kendriya Avam Sarkari Upkram Karamchari Cooperative Group Housing Society Limited.

2. Record reveals that earlier Civil Writ Petition No. 10809 of 2008 was filed before this Court making serious allegations against the Managing Committee of the Society and complaining the scam in the Society. This Court vide order dated 22.07.2008 was pleased to dispose of Civil Writ Petition No. 10809 of 2008 directing the Secretary, Government of Haryana, Department of Co-operation, to look into the matter and pass appropriate order within three months from the date of receipt of a copy of the order Learned Financial Commissioner & Principal Secretary vide order dated 28.05.2009 has observed that the main issue involved before him is as to whether election of the Managing Committee vide resolution dated 15.01.2007 is valid or not, therefore, he has directed the Assistant Registrar, Cooperative Societies, to treat the petition as an election petition u/s 102 of the Act and to decide the same within a period of 60 days; meanwhile, Administrator was appointed to look into the affairs of the Society.

3. Mr. D.V. Sharma, learned Senior Advocate has stated that about the maintainability of the election petition and about the question of limitation,

petitioners shall agitate before the Assistant Registrar, Co-operative Societies, who has been directed by the Financial Commissioner to treat the petition as election petition, however, as per Mr. D.V. Sharma, during the pendency of the election petition, Administrator ought not to have been appointed. As per Mr. D.V. Sharma, learned Senior Advocate, if election petition is allowed, then elected Managing Committee will go, however, there is no question of appointment of the Administrator.

4. Mr. Gaurav Dhir, learned Deputy Advocate General, Haryana, appearing on behalf of the State, has supported order dated 28.05.2009 saying that since there is a serious dispute about the Managing Committee and about the legality of the election dated 15.01.2007, therefore, Administrator was rightly appointed by the Financial Commissioner & Principal Secretary.

5. I have heard learned counsel for the parties and perused the record.

6. Section 34 of the Haryana Co-operative Societies Act, 1984 (hereinafter referred to as the Act) reads as under:-

34. Removal of Committee - (1) If in the opinion of the Registrar, a committee persistently makes default or is negligent in the performance of duties imposed on it by this Act or the rules or the bye-laws or commits any act which is prejudicial to the interest of the society or its members, the registrar may after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee, and order fresh election of the committee or appoint administrators in accordance with the provisions of Section 33. Provided that the appointment of administrators shall be for a period of one year which may be extended, from time to time, up to three years.

(2) Where the Registrar, while proceeding to take action under sub-section (1), is of the opinion that suspension of the committee during the period of proceedings is necessary in the interest of the cooperative society, he may suspend the committee and make such arrangement as he thinks proper for the management of the affairs of the society till the proceedings are completed. Provided that if the committee so suspended is not removed, it shall be re-instated and the period of suspension shall count towards its tenure;

Provided further that the period of suspension shall not exceed six months.

(3) The administrators appointed under sub-section (1) shall arrange, for the election of a committee in accordance with the bye-laws of the society falling which the Registrar shall arrange to hold the election.

(4) Before taking any action under sub-section (1) in respect of a co-operative society, the Registrar shall consult the financing institution to which it is indebted.

As amended by Haryana Co-operative Societies (Amendment) Act, 2006.

In Section 34 of the principal Act, (i) in sub-section (1), for the words and figures "in accordance with the provisions of section 33" existing at the end, the words

"for a period of one year which may be extended by the Government for a further period of one year" shall be substituted;

(ii) for the existing proviso, the following proviso shall be substituted, namely:

Provided that if the committee of a cooperative bank is superseded, the Registrar shall do so with the approval of the Reserve Bank of India. The period of suspension in case of a co-operative bank may extend upto three years with the concurrence of the Reserve Bank of India.

7. From the perusal of Section 34 of the Act, an administrator can be appointed when Registrar is of the opinion that committee persistently makes default or is negligent in the performance of duties imposed on it by the Act or the rules or the bye-laws or Managing Committee commits any such act which is prejudicial to the interest of the Society or its members. Section 34 of the Act nowhere authorized the Registrar or Secretary to appoint the administrator pending the election petition. Therefore, in the opinion of this Court, order passed by respondent No.1 is without jurisdiction which cannot be sustained in the eyes of law.

8. Present petition is allowed. Impugned Orders dated 28.05.2009 and 03.07.2009 (Annexure P/1 and P/3 respectively) to the extent of appointment of administrator stand set aside. However, rest of the impugned orders shall remain intact with liberty to the petitioners to agitate before the Assistant Registrar, Co-operative Societies about the maintainability of the petition.