
(1971) 08 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 58 of 1970

Harjit Singh Ahluwalia

APPELLANT

Vs

State of Punjab etc.

RESPONDENT

Date of Decision : 09-08-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1971) 08 P&H CK 0003

Hon'ble Judges : A.D. Koshal, J

Bench : Single Bench

Advocate : A.L. Bahri, for the Appellant; K.S. Keer, for Advocate-General, Punjab, Mr. H.L. Sarin with Sh. M.L. Sarin, Sh. K.R. Chaudhari, for the Respondent

Judgement

A.D. Koshal, J.—The facts giving rise to this petition under Articles 226 and 227 of the Constitution of India are these: The petitioner was one of the founder-members of the State Bank of India Employees. Co-operative Housing Society Ltd. Ludhiana Respondent No. 2 (hereinafter referred to as the respondent-Society). Before he became such a member, he owned a house situated on the Jagraon road at Ludhiana. On the 4th of March, 1967, the Society despatched a letter (Annexure A) to the petitioner stating that it was proposed to expel him from the Society for the reason inter-alia that he owned, a house situated on the Jagraon road. Ludhiana. which was a contravention of bye-law 6 (d) of the Bye-laws of the Society. On the 5th of April, 1967, the Managing Committee of the Society passed a resolution (Annexure B to the petition) expelling the petitioner from its membership. This resolution was confirmed in a General Body meeting of the Society held on the same day.

Against his removal from the membership of the Society, the petitioner filed an appeal with the Registrar, Co-operative Societies, Punjab (hereinafter called the Registrar) u/s 68(1)(d) of Punjab Co-operative Societies Act (hereinafter, referred to as the Act), which was accepted by the Assistant Registrar; Co-

operative Societies, Ludhiana, exercising the powers of the Registrar, by means of an order dated the 18th of July. 1968 (Annexure D to the petition), which was based on the findings given below:

(a) There is no bye-law governing the Society which debars a person from becoming its member if that person owns a house.

(b) The contention of the Society that bye law 6 (d) debars a person owning a house from becoming a member of the Society is untenable inasmuch as Clause (d) of bye-law 6 was introduced through an amendment which has not been registered by the Registrar.

Aggrieved by the order of the Assistant Registrar, the Society filed a petition for its revision and the same was accepted on the 3rd of October, 1969, by Shri Amrik Singh, Under Secretary, Co operation, Punjab, who held (Annexure E to the petition):

(a) It is a matter of common knowledge that only a person not having a house earlier could become a member of a Housing Society

(b) A Housing Society aims at providing facilities only to the homeless and the ownership of a house is a serious disqualification for membership.

It is this order of the State Government which the petitioner impugns.

2. This petition must succeed. There is nothing at all in the bye-laws governing the Society which prohibits a person, who owns a house, from becoming a member thereof Bye-law 4 (i) on which reliance in this connection is placed for the society states -

The object of the Society shall be primarily to establish on co- operative basis settlement for members with moderate income by affording them facilities (or owning a house and ultimately to develop, as far as practicable, the settlements into self-sufficient committees.

The part of the bye-law merely lays down one of the objects of the Society and, as it stands it cannot be interpreted to mean that a person owning a house shall be debarred from the membership of the Society. On the other hand, if the objects of the Society are any indication of the qualifications for its membership, Clause (ii) of bye-law 4 would negative its case. That clause is in the following terms:

To advance or guarantee loans to individual members and/or help them in purchasing, erecting or otherwise acquiring buildings, lands and other immovable properties or repairing them or making modifications or erections thereto or developing or otherwise dealing with them.

This clause clearly envisages the carrying out of repairs and effecting alterations to existing buildings and the advancement of loans for that purpose to members and indicates, therefore, that the ownership of a house is not a disqualification

for membership. I, thus, find that bye-law 4 does not help the case of the respondent Society.

3. It is next urged on behalf of the Society that the addition of Sub-clause (d) to Clause (i) of bye-law 6 specifically lays down that the ownership of a house would be a disqualification for membership. It is claimed that the sub-clause was added by means of an amendment effected through a resolution which was passed by the Society on the 2nd of August, 1966, and a copy of which was sent to the Registrar for its registration. Now, the only way in which an amendment of a bye-law can be brought about is laid down in Section 10 of the Act, which runs thus-

10. Amendment of bye-laws of a Co-operative Society:

(1) No. amendment of any bye-laws of a cooperative society shall be valid unless such amendment has been registered under this Act

(2) Every proposal for such amendment shall be forwarded to the Registrar and if the Registrar is satisfied that the proposed amendment:

(i) is not contrary to the provisions of this Act and the Rules;

(ii) does not conflict with co-operative principles; and

(iii) will promote the economic interests of the members of the society; he may register the amendment

(3) The Registrar shall forward to the Society a copy of the registered amendment together with a certificate signed by him and such certificate shall be conclusive evidence that the amendment has been duly registered.

(4) where the Registrar refuses to register an amendment of the bye-laws of a cooperative society, he shall communicate the order of refusal together with the reasons therefore, in the manner prescribed.

It is quite clear that the mere dispatch of a proposed amendment to the Registrar does not constitute its registration. Unless the Registrar receives the amendment and actually registers it. It cannot take effect. Besides, it is discretionary with the Registrar whether he would register a proposed amendment. It is not incumbent on him to register every amendment communicated to him by the society. and in the present case it has not at all been shown that the amendment through which Sub-clause (d) was sought to be added to Clause (i) of bye-law 6 was ever registered by the Registrar. That clause, therefore, cannot be taken notice of. In the absence of the clause no disqualification, such as is claimed by the Society to attach to the petitioner, can be said to operate as a bar against his membership of the Society.

4. From the above discussion, it is clear that from whatever angle the impugned order is looked upon it is shown to be based on findings for which there is no proper foundation, in law. On the other hand, the appellate order of the Asstt.

Registrar (Annexure D to the petition) appears to be fully justified The impugned order is accordingly quashed. The petitioner shall have his costs of these proceedings. Counsel's fee Rs 100/-.