
(2000) 03 P&H CK 0111
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6812 of 2000

Kuber Cooperative House Building Society Ltd.	APPELLANT
Vs	
State of Haryana	RESPONDENT

Date of Decision : 20-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 03 P&H CK 0111

Hon'ble Judges : Mehtab S. Gill, J

Bench : Single Bench

Advocate : Mr. Gobinder Singh Sandhu, for the Appellant; Mr. Rakesh Deswal, for the Respondent

Judgement

Mehtab S. Gill, J.—The petitioner has prayed for issuing of a writ in the nature of certiorari for quashing of order dated May 15, 2000 (Annex tire P-4) passed by respondent No. 3. i.e., the Assistant Registrar, Co-operative Societies. Narwana.

2. The petitioner, i.e., the Kuber Co-operative House Building Society Ltd., Narwana, District Jind (hereinafter referred to as "the Sociely") has averred that there were 18 Co-operative House Building Societies at Narwana, Earlier the Assistant Registrar, Co-operative Societies, Narwana (respondent No. 3) vide order dated March 31, 1999 amalgamated 06 societies in the petitioner- society and 09 Co-operative House Building Societies with the Narwana Co- operative House Building Society, Narwana, district Jind and after the amalgamation, there remained only three Co-operative Societies, namely, the petitioner-Society, the Narwana Co-operative House Building Society Ltd., Narwana district Jind and one Bharat Co-operative House Building Society Ltd., Narwana. A copy of the order dated March 31, 1999 passed by the Assistant Registrar, Co-operative Societies, Narwana (respondent No. 3) is attached with the writ petition as Annexure P-1. It has been further averred that the Bharat Co-operative House Building Society Ltd., Narwana and the petitioner- Society have further been amalgamated into the Narwana Co-operative House Building Society Ltd., Narwana vide order dated

May 15, 2000. It is this order which is under challenge in this writ petition. The main function of the society is to grant loans to build the houses. These societies are further members of the Haryana State Co-operative Housing Federation Ltd. The loanee, in lieu of the loan taken, mortgages his plot in favour of the society and the society further mortgages the said plot in favour of the Haryana State Cooperative Housing Federation Ltd. from where the societies get their main amount to be disbursed further to its members.

3. Respondent No. 3, i.e., the Assistant Registrar, Cooperative Societies, Nanwana, issued notice to the petitioner-Society u/s 14 of the Haryana Cooperative Societies Act, 1984 (hereinafter referred to as "the Act") on January 31, 2000, proposing to amalgamate the petitioner-Society into the Narwana Cooperative House Building Society Ltd., Nanwana. The petitioner-Society was required to file objections- in this respect within 15 days. A copy of the order dated January 31, 2000 inviting objections, passed by the Assistant Registrar, Co-operative Societies, Narwana exercising the powers of Registrar Co-operative Societies Haryana. Chandigarh is attached with the writ petition as Annexure P-2.

4. It has been further averred that Shri Niranjana Dev Sharma through whom the present writ petition has been filed, filed objections on behalf of the petitioner-Society, opposing this amalgamation, before the Assistant Registrar, Co-operative Societies, Narwana (respondent No. 3) on February 17, 2000, a copy of which is attached with the writ petition as Annexure P-3. The petitioner-Society had also submitted a copy of the judgment dated April 27, 1999 passed by a Division Bench of this Court in Civil Writ Petition No. 670 of 1999, a copy of which is attached with the writ petition as Annexure P-5. Sections 13(1)(2)(3) and 14(2) of the Act relate to amalgamation, which are reproduced as under :-

"13. Amalgamation, transfer of assets and liabilities and division of cooperative societies :- (1) a Cooperative society may with the previous approval of the Registrar and by a resolution passed by a two-third majority of the members present and voting at a general meeting of the society.

(a) transfer its assets and liabilities in whole or in part to any other cooperative society;

(b) divide itself into two or more cooperative societies.

(2) Any two or more cooperative societies may, with the previous approval of the Registrar and by a resolution passed by a two-third majority of the members present and voting at a general meeting of each such society, amalgamate themselves and form a new cooperative society.

(3) The resolution of a cooperative society under subsection (1) or subsection (2) shall contain all particulars of the transfer, division or amalgamation, as the case may be.

(4) xx xx xx xx

(5) xx xx xx xx

(6) xx xx xx xx

(7)xxxxxx xx

14. Compulsory amalgamation :--

(1) xx xx xx xx

(2) No order shall be made under this section, unless-

(i) a copy of the proposed, order has been sent to the society or each of the concerned societies requiring them to file objections or suggestions on the proposed order with in 15 days from the date of its receipt;

(ii) The Registrar has considered all objections or suggestions received from such societies or members or creditors thereof, and has made such modifications in the proposed order as he may deem proper;

(iii) every member or creditor of each of the societies to be amalgamated, who has objected to the scheme of amalgamation, shall be entitled to receive within the period specified in the order of amalgamation his share or interest if he be a member, and the amount in satisfaction of his dues if he be a creditor.

(iv) the order referred to in sub-section (1) may contain such incidental, consequential and supplemental provisions as may, in the opinion of the Registrar, be necessary to give effect to the amalgamation."

5. Notice of motion was issued to the respondents.

6. Written statement on behalf of respondent Nos. 1,3 and 5 has been filed as they are the contesting respondents.

7. Leaded counsel for the petitioner has stated that as envisaged under Sections 13(1)(2)(3)and 14(2) of the Act, the procedure laid down was not followed by the respondents for the amalgamation of the societies. As per Section 13(2) of the Act, an amalgamation can take place by a resolution passed by a two-third majority of the members present and voting at a general meeting of the society. This was not done. Further Section 14(2) of the Act lays down that no order can be made under this Section unless a copy of the proposed order has been sent to the society or each of the societies so that objections can be tiled within 15 days from the date of its receipt.

8. Going through the petition and the annexures attached thereto, it comes out that neither is there any resolution passed by a two-third majority, thus, violating of Section 13(2) of the Act, and further violating Section 14(2) of the Act, whereby no copy of proposed amalgamation was sent to the society, nor were the assets and liabilities of the society taken into consideration.

9. Learned counsel for the petitioner has placed reliance on a judgment dated

April 27, 1999 passed In Civil Writ Petition No. 670 of 1999 titled "The Hansi Cooperative House Building Society Ltd. Hansi and others v. State of Haryana through its Secretary, Department of Cooperative and others, a copy of which is attached with the writ petition as Annexure P-5, wherein a Division Bench of this Court has held as under :-

"We are further of the opinion that the orders passed by the Assistant Registrar deserve to be quashed on the additional ground that they are not speaking. The requirement of recording of reasons and communication thereof to the cooperative society which is ordered to be amalgamated with another cooperative society though not spelt out from the language of Section 14(1) and 14(2) must be read as implicit in the nature of the power vested in the Registrar to pass an order of amalgamation and the impact of such order on the rights and liabilities of the members and creditors of the concerned cooperative societies. There can be no denying that while deciding the issue of amalgamation of one cooperative society with the other, the Registrar exercises quasi judicial power. The requirement of sending a copy of the proposed order to the concerned cooperative societies and giving an opportunity to the cooperative society, its members and the creditors to file objections or to give suggestions in relation to the proposed amalgamation and consideration thereof, which is expressly ingrained in Section 14, leaves no manner of doubt that the principles of natural justice, i.e. (i) giving of an opportunity of hearing against the proposed action, and (ii) recording of reasons in support of the order form an integral part of the scheme of amalgamation. In the cases in hand, these requirements have been followed only in their breach, inasmuch as, the concerned Assistant Registrars did not give opportunity to the petitioner-societies to make effective representation against their proposed amalgamation with the non-petitioner-societies and no reason worth the name has been assigned for rejecting the contentions urged by them against the proposed action."

10. Learned counsel for the State has vehemently argued that before filing the present writ petition, an alternative remedy of filing a revision against the order dated May 15, 2000 (Annexure P-4) passed by the Assistant Registrar, Cooperative Societies. Narwana (respondent No. 3) was not availed by the petitioner-Society. He has further argued that u/s 115 of the Act, revision is maintainable before the State Government. Since the petitioner-Society was not satisfied with the decision of the Assistant Registrar, Cooperative Societies, Narwana (respondent No. 3), it can challenge the same before the State Government.

10. It is now a well settled proposition of law that there is no absolute bar in filing the writ petition in exercise of writ jurisdiction under Article 226 of the Constitution of India where an alternative remedy is available under some statute or an Act and the High Court could interfere in the particular facts and circumstances of a case. Learned counsel for the petitioner has relied on a decision in the case of Kali Ram and others v. The State of Haryana and others

1984 P.L.J. 504, wherein a Division Bench of this Court has held as under:-

"As far as the second preliminary objection is concerned, it may be observed that the Division Bench admitted the petition after considering the objections that had been raised in the written statement and at the time of final hearing we do not think it right to throw away the petition on the ground of non-availing of the alternative remedy."

11. Learned counsel for the petitioner has also placed reliance on a decision rendered in *Nachhattar Singh and others v. State of Punjab etc.* 1993(2) RCR(Civil) 693 (P&H): 1993(2) P.L.R. 147, wherein a Division Bench of this Court has held as under :-

"On a consideration of the judgments quoted above, it is clear that while the remedy for the purpose of challenging the result of the election by way of an election petition u/s 13-B of the Act may be available yet in the facts and circumstances of a particular case the High Court could interfere under Article 226 of the Constitution. The mere availability of an alternative remedy is not the Military test; such a remedy must, in addition, be adequate and efficacious."

With these observations, the writ petition is allowed. The impugned order dated May 15, 2000 (Annexure P-4) passed by the Assistant Registrar, Cooperative Societies, Narwana (respondent No. 3) qua the petitioner-society is quashed. However, parties are left to bear their own costs.

12. Petition allowed

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