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**(1993) 06 P&H CK 0037**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 994 of 1992**

Pritam Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

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**Date of Decision :** 02-06-1993

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (1993) 104 PLR 609

**Hon'ble Judges :** J.L. Gupta, J

**Bench :** Single Bench

**Advocate :** G.C. Dhuriwala, for the Appellant; Charan Tuli, A.A.G. for Respondent Nos. 1 and 2 and Amarjeet Singh Ladhar, for Respondent Nos. 3 to 14, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Jawahar Lal Gupta, J.—The petitioners are aggrieved by the award of the Arbitrator, a copy of which has been produced as Annexure P-3 with this writ petition. By this award, it was held that the 48 persons named therein "are members of the Budhlada Scheduled Caste Land Owning Society Ltd. as per Bye-laws and provisions of the Punjab Co operative Societies Act, 1961" (hereinafter referred to as the Society) Aggrieved by this order, to petitioners filed an appeal which was dismissed by the Assistant Registrar, Co operative Societies by this order dated May 13, 1991. Their revision having met the same fate, they have approached this court through the present writ petition. A few facts may be noticed.

2. On January 19, 1957, the Registrar, Co operative Societies registered the society. It consisted of 12 members. In view of this registration and enrollment of. members, an application for transfer of Nazaol land was made to the District Collector, Bhatinda on December 9, 1957 A copy of this application has been produced on record as Annexure P. 1. Vide order dated February 22, 1972, the Collector, Bhatinda allotted land measuring 174 kanals 12 marlas to the Society

on payment of a total amount of Rs. 3,212.20 N P. The petitioners aver that after the registration of the Society, 48 members were enrolled by the Administrator. This enrollment of new members was "never approved by the general body of the society .....". It has been further averred that the Administrator cannot enroll the members of the Society. On this basis, it has been averred that "the admission of 48 members of the Co-operative Society by the Administrator without the resolution of the general body is illegal, null and void and is liable to be ignored". This matter was referred to the Arbitrator at the instance of some of the respondents and vide order dated November 19, 1990, the Arbitrator "allowed the admission of 48 members....." According to the petitioner this was done without impleading the Society to the suit. The appeal filed by the petitioners was rejected by the Assistant Registrar vide order dated May 13, 1991, a copy of which has been produced on record as Annexure P-4. The revisional authority upheld this order. A copy of the order dated October 31, 1991 passed by the Commissioner (Appeals) Jullundur Division has been produced on record as Annexure P-5. Thereafter, the Assistant Registrar, Co-operative Societies (respondent No. 2) passed an order suspending the managing committee of the Society u/s 27(2) of the Punjab Cooperative Societies Act, 1961 (hereinafter to be referred to as the Act). A copy of this order has been produced on record as Annexure P-6. The petitioners have impugned the award given by the Arbitrator and the orders passed in appeal and revision. They have also challenged the order of suspension passed by respondent No. 2. These orders have been challenged on various grounds.

3. A written statement has been filed on behalf of respondents Nos. 3 to 9 and 12 to 14 through respondent No. 4. Various preliminaries objections have been raised. It has been averred that the petitioners have concealed vital facts. It has been further stated that the petitioners cannot be allowed to challenge the membership of the respondents after the lapse of 35 years. It has been further averred that a Division Bench of this Court has held in *Bhag Singh v. Ranjodh Singh* 1976 P. L. J. 377, that the Administrator is competent to enroll members. It has also been stated that "the respondents are enjoying the rights of membership since 1957. All the 60 members have been electing their executive body continuously since 1957. Audit Book, Inspection Register etc. show 60 members. 60 members are giving the land on ch kota since 1957. These respondents have been taking part in the proceedings election on and had been elected several times for President/Vice President into management committee. At the time when the respondents become members of the Society, they fulfilled all the necessary qualifications- The petitioners never made any objection. All the 60 members are in possession of land of the Society." In support of the claim reliance has also been on an order dated April 16, 1991 passed by the Executive Magistrate, Budhlada in which it has been inter alia observed that "After perusing the record, I am of the view that both the partners are in possession of disputed land. The 60 members were in possession when suit u/s 145 was started and now I order u/s 145(4) Cr P.C. that all the 60 members be considered in

possession of the land and they should not be thrown out of possession by way of any force u/s 145 for Cr P.C. until any civil court ordered for the same," It has also been averred that the respondents were enrolled as members in accordance with the bye-laws and that they have deposited the entry fee as also their share money. They also claim to have signed/thumb marked the register of members. It is also averred that "all the 60 members made payment for transfer of the land Taking part of members shows that they were members of the society." On merits, the factual position as noticed above has been reiterated and the claim made on behalf of the petitioners has been controverted. On this basis it has been claimed that the writ petition is wholly lacking in merit and deserves to be dismissed

4. I have heard Mr. G. C. Dhuriwala, learned counsel for the petitioners. Mrs. Charu Tuli has argued the case on behalf of the respondents Nos. 1 and 2 while Mr. Amarjit Singh Ladhar has argued the case on behalf of the respondents Nos. 3 to 14.

5. Learned counsel for the petitioners has contended that the order of the Arbitrator was wholly without jurisdiction In a dispute raised by three members, he could not have passed an order in favour of the 48 persons without impleading the Society as a party. It has been further contended that the orders passed by appellate as well as the revision authority are wholly illegal. Particular emphasis has been laid on the fact that the learned revisional authority has erred in relying on the provision of S. M to hold that the objection against the membership "could have been raised within 6 years from the date of their entry " The claim made on behalf of the petitioners has been controverted by the learned counsel for the respondents.

6. It may be noticed at the outset that the Motion Bench while admitting the writ petition had stayed the operation of the order dated December 26, 1991 (Annexure P-6) by which the managing committee of the Society had been suspended. Admittedly, the Society has already completed its term of 3 years Consequently, the challenge to the order at Annexure P-6 does not survive. Learned counsel I for the petitioners has not addressed any arguments against this order.

7. In the above situation, only the challenge to orders at Annexures P-3 to P-5 deserves to be examined. By the award of the Arbitrator it was held that the 48 members including respondents Nos. 3 to 40 were inducted as members of the Society. The validity of this order has been challenged on the ground that the Arbitrator while considering the claim made by Bachan Singh etc could not have determined the rights of either the Society or persons who were not party before him. The precise contention raised by the learned counsel is that in a dispute raised by 3 members the decision in favour of 48 members could not have been given.

8. A perusal of the award (a copy of which is at Annexure P-3) shows that the

dispute referred to the Arbitrator was- "whether after the registration of the Budhlada S C.LO Society on 19-1-57, enrollment of new 48 members, j 2 on 16 9 1957 and 36 on 1-10-1957- total 48 members are eligible to be members of the Society or not?" This being the precise scope of the dispute referred to the Arbitrator, he was certainly entitled to decide as to whether or not the 48 persons had been duly enrolled as members. This is precisely what has been done.

9. Mr. Dhuriwala however contends that under the Bye laws of the Society, only the general body could have enrolled members; and that the Administrator did not have the powers to enroll the members. On the other hand, learned counsel for the respondents contended that the applications for enrollment had been submitted by the 48 persons including respondents Nos. 3 to 14 in the year 1957 itself and that in accordance with provisions of Rule 17 of the Punjab Co-operative Societies Rules, 1963, all the applicants shall be deemed to have been enrolled as members as no order rejecting the applications was conveyed to them.

10. The contention raised on behalf of the respondents on the basis of Rule 17 is wholly misconceived. The rules framed in 1963 cannot be invoked to justify an action taken in 1957. Consequently, the contention cannot be accepted. However, in spite of this position, I am unable to accept the contention of the learned counsel for the petitioners that the induction of 48 members was void ab initio. It has been categorically averred in the written statement filed on behalf of the respondents that their names are included in the register of members ; and that they had been participating in the election of the executive body of the Society since 1957. Some of them were even elected as President or Vice-President of the managing committee It has also been averred that they have been leasing out the land on rent for cultivation. These averments of fact have not been controverted by filing any affidavit. In this situation, it may be grossly unfair to hold after lapse of more than 35 years that the members were wrongly inducted.

11. Equally lacking in merit is the contention that in a dispute raised by 3 persons, the rights of 48 could not have been determined. As already noticed, the basic dispute referred to the Arbitrator was whether the enrollment of 48 members was valid or not. It was further observed that "the 48 members enrolled after the registration of the society.....are party No. 1". After examining the complete sequence of events and the evidence produced by the parties, the Arbitrator came to a clear finding of fact that 48 members were enrolled after the registration of society. These members belong to scheduled castes and are recognised as per sub-rules. As per Sub-rule 4, they are the residents of village Budhlada and bear good moral character and they have been duly recognised by the majority of members at the time of its registration, As members of the Society they have deposited Rs. 1/- as entry fee and Rs. 10/- as share money. They have signed/thumb marked themselves in the Register of Members. They have share in the income and liabilities of the Society. For some differences arising since 30-32 years, as stated, it would not be justified to

declare these 48 members.....". The reference of the dispute was accordingly decided by the Arbitrator. The 12 petitioners filed an appeal u/s 68 of the Act. The appellate authority found that "as per record 60 members are continuing for the last 30-32 years, who remained as members in the working committee from time to time Therefore, their membership cannot be terminated now.....". Accordingly, the appeal was dismissed. I find no infirmity in these two orders. Accordingly, these are upheld.

12. This brings me to the consideration of the order passed by the revisional authority. The revisional authority after noticing the contentions raised by the petitioners held that the Administrator was not competent to enroll new members under the provisions of the Act. It further observed that "however, continuance of these enrolled members as such for more than 36 years gives them right as the membership was not challenged at the appropriate time." It is undoubtedly correct that while noticing the contentions of the counsel for the parties and referring to the written arguments, reference has been made to the provision contained in Section 5) of the Act. However, the decision of the learned authority is not based on the provisions of Section 54. In any event, the primary consideration which weighed with the authority was that it would not be fair to remove the 48 members from the membership after the lapse of long period of 36 years. This consideration is neither extraneous nor illegal. Consequently, no infirmity can be found with the order.

13. There is another aspect of the matter. The petitioners have challenged the order of the Commissioner (Appeals) Jullundur Division who exercises the powers of revision under the Act. They are also aggrieved by the action of the respondents in upholding the enrolment of the 48 persons as members of the Society. Neither the authority which dismissed the revision petition filed by the petitioners nor all of the 48 persons have been impleaded as respondents. The petitioners are challenging the orders passed by quasi judicial authorities which can be quashed by the issue of a writ of certiorari. In such a case, not only the authority which passed the order but also the persons in whose favour such an order has been passed are necessary parties. This proposition of law was enunciated by their Lordships of the Supreme Court in *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, . It reads as under : -

"In a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties. But it is in the discretion of the court to add or implead proper parties for completely setting all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or an application filed at the instance of such party."

In view of the above dictum of law, the challenge made by the petitioners to the order of the revisional authority by which the appellate authority's order was upheld, cannot even be entertained. Still further, in spite of the fact that the petitioners are aggrieved by the enrolment of the 48 members, only 12 of them

have been impleaded as respondents. Acceptance of the writ petition would operate to the prejudice of even the persons who have not been impleaded as parties. No order to the prejudice of the persons can be passed in their absence. Since necessary parties have not been impleaded, the writ petition, cannot be entertained.

14. Learned counsel for the petitioners relied upon the decision of this Court in *Shamsher Singh v. State of Haryana* 1986 PLR 110, to contend that an award can operate against the parties thereto and not against the others. Learned counsel is absolutely correct in his contention. It however, deserves notice that Mukand Singh and Pritam Singh petitioners Nos 1 and 2 were parties before the Arbitrator. It appear they were pursuing the case on behalf of the petitioners. This is so because the appeal was filed before the Assistant Registrar by all the 12 petitioners who were the members of the Society at the time of its initial registration. Similarly, at the stage of the filing of the revision petition, even the Society was impleaded as petitioner No. 13. No objection of the sort as is now sought to be raised was ever raised before the appellate authority or before the revisional authority. In any case, since petitioners Nos. 1 to 12 had filed the appeal and even petitioner No. 13 had filed the revision petition, no prejudice whatsoever can be said to have been caused to the petitioners, if their names were not specifically included in the reference before the Arbitrator.

15. Mr. Dhuriwala then contended that the enrolment of 48 persons was a nullity and writ could be held, even after the lapse of any time I am unable to accept this contention. Firstly, all the persons have not been impleaded as party to the petition. Secondly, it is clear from the record that these persons have continuously acted\* as members of the Society since the year 1957. No objection appears to have been raised by any of the petitioners at any stage. The averments in the written statements have not been controverted by filing any replication. Taking the totality of circumstances into consideration, it appears to be grossly unfair if the names of these 48 members are now ordered to be deleted from the membership of the Society.

16. There is another aspect of the matter. The Society was allotted H4 kanals I 2 marlas of land for a quandry sum of Rs. 3,212-28 n p. The effort of the petitioners appears to be to grab the entire land by excluding respondents Nos. 3 to 14 and the 36 other members. All the petitioners and the other 48 members are admittedly members of the Society. It has not been shown that they were not eligible to be enrolled as members of the Society. It "would be grossly unfair and manifestly unjust to now deprive them of small share in the land holding which they have enjoyed for the last many years, in fact, they claim to be in possession of the land alongwith with the petitioners. It has also been averred that they have been leasing out land for consideration alongwith the petitioners. Taking the totality of circumstances into consideration, it appears that it will be grossly inequitable to deprive them of this claim at this belated stage. There is no equity in favour of the petitioners which may entitled them to invoke the

discretionary jurisdiction of this court under Article 226 of the Constitution.

17. Accordingly, the writ petition is wholly lacking in merit. It is dismissed. In the circumstances of the case, there will be no order as to costs.