

(2010) 09 SHI CK 0050
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 3059 of 2009

Progressive Stone Crusher Welfare Association	APPELLANT
Vs	
State of H.P. and Others	RESPONDENT

Date of Decision : 10-09-2010

Acts Referred:

Himachal Pradesh Societies Registration Act, 2006 — Section 1(3)

Citation : (2010) 09 SHI CK 0050

Hon'ble Judges : Sanjay Karol, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Deepak Gupta, J.—On 1st April, 2010 we had passed a detailed order, which reads as follows:

This petition has been filed by the Progressive Stone Crusher Welfare Association which is stated to be a Society. This society was originally registered under the Societies Registration Act, 1860 and has now been registered under the H.P. Societies Act, 2006. Both Shri M. D. Sharma who has filed the petition and Shri Lal Chand, respondent No. 5 herein claim to be the Secretary of the Society. Whether M. D. Sharma is the Secretary or not is also an issue in Civil Suit No, 190/2000 titled as Progressive Stone Crusher Welfare Association v. Lal Chand. On this basis, it is urged by Mr. Tarlok Chauhan that the present petition itself is not maintainable. We shall decide this question at a later stage.

At the outset we may notice that both under the Societies Registration Act, 1860 and the H.P. Societies Registration Act, 2006, only Societies set up for promotion of literature, science or fine arts or for the diffusion of useful knowledge or for charitable purpose, were entitled to be registered. The H.P. Act also provides that 7 or more persons being members of different families associated for any literary, scientific or for charitable purpose, may form a society which can be registered under the Act. Section 1(3) of the H.P. Societies Registration Act, 2006 gives details of the Societies contemplated by the legislature which could be registered under the Act.

From a perusal of the averments made in the petition, reply etc. we are prima facie of the view that the present society does not fall under any of the categories contemplated under the aforesaid two Acts. It is a pure and simple commercial venture, which has been given the name of a society. However, before taking further action in the matter, the petitioner or the respondent No. 5 may produce before us, on or before the next date, any material to show that ever since it was registered the petitioner society has performed any functioning contemplated under the Societies Registration Act, 1860 and the H.P. Societies Act, 2006. In case they cannot produce any such record we may recommend that the society itself be de-registered.

On perusal of the record we find that the respondent No. 5 had at different times described himself in different capacities. CWP No. 470/2006 was filed by respondent No. 5 Lal Chand in which he claimed that the HPSEB should be directed to grant electricity connection and electricity supply to the stone crusher. He described himself to be the proprietor of M/s. Progressive Stone Crusher Welfare Association and in fact did not mention that it was a society. In certain other documents he has shown himself to be the sole proprietor of M/s. Progressive Stone Crusher Welfare Association but in the reply affidavit filed in this petition he has stated that he is the Secretary of the Society. He is directed to file his affidavit within four weeks in which he shall clearly state that what is his exact relationship with the petitioner society. In fact respondent No. 5 Lal Chand described himself to be the sole and absolute owner of the Stone Crusher being run under the name and style of M/s. Progressive Stone Crusher Welfare Association and vide lease deed Ext.P-22 leased out the same to Budh Ram. In this lease deed there is no mention of the society. In his affidavit, Lal Chand shall also clearly spells out how he entered into this lease deed without showing that M/s. Progressive Stone Crusher Welfare Association is a society.

It has been alleged that M. D. Sharma has taken Rs. 6 lacs from Budh Ram as part of sale consideration for sale of the stone crusher. He shall also file his affidavit stating in what capacity he entered into an agreement with Sh. Budh Ram and shall place on record the resolution of the Society, if any, authorizing him to sell the property of the Society.

From the aforesaid observations, it is more than obvious that both Lal Chand and M. D. Sharma are more interested in their personal interest than in the interest of the society. Therefore, they have been asked to file their affidavits.

We are constrained to observe that despite the order dated 1.9.2009 passed in the presence of the learned Advocate General, whereby it was directed that the application filed by respondent No. 5 be processed but no final decision shall be taken except with leave of the Court, Mr. Arun Sharma, State Geologist who is a party to the petition has granted a mining lease in favour of Lal Chand in his capacity as Secretary of the M/s. Progressive Stone Crusher Welfare Association. Notice be issued to Arun Sharma, State Geologist to show cause why proceedings for contempt be not initiated against him. The contempt proceedings

shall be separately registered and shall be listed along with the present petition on the next date. The Registry shall issue notice to Sh. Arun Sharma without insisting of deposit of any process fee. A copy of this order shall also be sent to Sh. Arun Sharma along with the notice.

We may make it clear that no mining operation or stone crushing shall be done either by the petitioner or by respondent No. 5. We hold respondent No. 4 Mining Officer, Kullu responsible for compliance of this order. Mr. Vivek Thakur, learned Addl. A.G. is requested to send a copy of this order to the Mining Officer during the course of the day today. The Court Secretary shall hand over duly certified copy of this order to the parties during the course of the day today.

Since we are prima facie of the opinion that the mining lease has been granted to respondent No. 5 in defiance of the order passed by this Court, the operation of the mining lease Annexure P-24 is stayed till further orders.

2. In response to our directions, affidavits have been filed both by the petitioner as well as by respondent No. 5. Both the parties have failed to place on record any material whatsoever to show that the Society has ever performed any of the functions expected of a society either under the Societies Registration Act, 1860 or under the H.P. Societies Registration Act, 2006. It is more than apparent that the business of running a stone crusher was being run under the garb of a society registered under these acts. This as we have clearly held is not permissible. The objects of the Association of the Society itself clearly show that it a pure commercial venture. The only charitable purpose, if it can be called that, is that there shall be welfare of the people of the area as employment will be provided to them. This would happen in the case of any commercial venture which may then be styled as a charitable society. We, therefore, have no hesitation in holding that the respondents committed a grave error in granting mining lease in favour of a society, since no commercial venture could be run by such a society. The mining lease in favour of the petitioner-Progressive Stone Crusher Welfare Association and permission to run a stone crusher is consequently held to be illegal and invalid. In a number of cases we have found that societies registered under the Societies Registration Act, 1860 or under the H.P. Societies Registration Act, 2006, permission are being granted to run stone crusher. We, therefore, direct the Industries Department and the Registrar of Societies H.P. to verify the antecedents of such societies and take necessary action in this behalf within three months from today.

3. Shri Vinod Thakur, learned Counsel appearing on behalf of respondent No. 7 submits that respondent No. 7 had paid huge amounts to Shri M.D. Sharma as well as to respondent No. 5. He, therefore, prays that he may be permitted to run the stone crusher and he shall make the payment to the society. The society, as we have held above, is only a front set up to run a business venture and no mining lease could have been granted to it. Therefore, respondent No. 7 cannot be permitted to operate the mining lease or run the stone crusher. Respondent No. 7 shall, however, be at liberty to recover the amount, if any, payable to him

by Shri M.D. Sharma or by respondent No. 5 in accordance with law. The petition is disposed of in the aforesaid terms. No order as to costs.