

(2002) 01 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 16373 of 1999

Ravinder Kumar and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 07-01-2002

Acts Referred:

Citation : (2002) 01 P&H CK 0053

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : C.S. Pasricha, for the Appellant; Palika Monga and S.S. Rangi, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—Is the order dated March 23, 1999 passed by the Assistant Registrar, Co-operative House Building Societies, for the amalgamation of three societies in conformity with provisions of Section 13 of the Haryana Co-operative Societies Act, 1984? This is the short question that arises for consideration in this writ petition.

2. The petitioners are members of Jan Kalyan Co-operative House Building Society, Jagadhri. They are aggrieved by the order dated March 23, 1999 by which the Assistant Registrar has ordered "the amalgamation" of the Jan Kalyan Co-operative House Building Society with the Prince and the Smpark Co-operative House Building Societies. A copy of this order has been produced as Annexure P1 with the writ petition. The petitioners allege that their society was functioning properly. No Resolution as contemplated u/s 13 of the Haryana Co-operative Societies Act, 1984 had been passed. Thus, the impugned order of amalgamation is illegal and invalid.

3. A written statement has been filed on behalf of the 4th respondent viz. the Jan Kalyan Co-operative House Building Society. In para 9 of this reply it has been categorically admitted that "the said Resolution was not passed by the General

House and did not have the consent of the General House". It has been further averred that this fact was "communicated to the respondents No.2 & 3 and they were also asked to withdraw the said order, but to no avail;;.

4. On behalf of respondent Nos. 1 and 2, a short affidavit has been filed by Mr. Kan-war Bhan, Assistant Registrar. In this affidavit, it has been averred as under:-

"That para No. 8 of the petition as stated is wrong and hence denied. It is wrong to allege that no meeting of the society of which the petitioner is a member was held but in fact by the 2/3 majority of the members present in meeting the resolution for the amalgamation of the society was passed and the said resolution bears the signature of petitioner No. 1 Ravinder Kumar at Sr. No.37. The respondent No.2 in discharge of the duties has passed the order dated 23.3.99 and was bound to act as per resolution of the society. The order is absolutely legal and perfectly valid."

5. A separate written statement has also been filed by respondent No.3 viz. the Development Officer, The Haryana State Co-operative Housing Federation Ltd- in this affidavit it has been averred that the society "has passed the Resolution dated 22.2.1999 making a prayer to the Registrar to amalgamate the Society with another one to save the loss. Copy of this Resolution is attached herewith as Annexure R/3/1". It is on the basis of this Resolution that the impugned order is sought to be sustained.

6. Mr. Pasricha, learned counsel for the petitioners, has contended that the impugned order is contrary to the provisions of Section 13 of the Act. On behalf of the respondents, it is not disputed that no Resolution as contemplated u/s 13 has been passed. Yet, the order is sought to be supported.

7. A perusal of Section 13 of the Act shows that a Co-operative society can merge with another society only when a resolution is passed "by a 2/3rd majority of the members present and voting as at a General Meeting of each such society". Approval of the registrar is also essential. In the present case, the categorical averment made by the petitioners is that no meeting of the General Body had taken place. The resolution had been passed only by the Executive Committee of the Society. Thus, the Resolution does not conform to the requirements of Section 13 of the Act. This claim has been accepted by the Jan Kalyan Co-operative House Building Society in its reply in para 9. However, respondent No. 3 has controverted this claim. Ms. Palika Monga points out that a copy of the Resolution dated February 22, 1999 has been produced as Annexure R-3/1. This conforms to the requirements of Section 13 of the Act. Is it so?

8. A perusal of the opening part of the Resolution shows that only a meeting "of the Executive Body of the Jan Kalyan Co-operative House Building Society Ltd., Jagad-hari..... " had been held. It was not a meeting of the General Body as contemplated u/s 13 of the Act. Still further, Mr, Pasricha has pointed out that the decision of the Executive Body was for amalgamation with the Sangam Co-operative House Building Society Ltd., Yamuna Nagar and not with the two

societies mentioned in the impugned order. The counsel appears to be right. It is, thus, clear that the Resolution was passed only by the Executive Body. The decision was for amalgamation with the San-gam Co-operative House Building Society Ltd., Yamuna Nagar and not with the Prince Co-operative House Building Society Ltd., Jagadhari and the Sampark Co-operative House Building Society, Jagadhari.

9. In view of the above, it is clear that the impugned order does not conform to the requirements of Section 13 of the Act. It is consequently vitiated.

10. Resultantly, the impugned order is quashed. The writ petition is accordingly allowed. In the circumstances there will be no order as to costs.