

**(2013) 04 P&H CK 0077**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CWP No. 3291 of 2012**

Smt. Vidya Devi and Another

APPELLANT

Vs

Financial Commissioner and Principal Secretary to Govt. of  
Haryana and Others

RESPONDENT

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**Date of Decision :** 03-04-2013

**Acts Referred:**

Haryana Co-operative Societies Act, 1984 — Section 102, 102(2), 102(3), 103, 114  
Punjab Co-operative Societies Act, 1961 — Section 55(2)

**Citation :** (2013) 171 PLR 124

**Hon'ble Judges :** Rameshwar Singh Malik, J

**Bench :** Single Bench

**Advocate :** Rajvir Singh, for the Appellant; Kirti Singh, DAG, Haryana and Mr. Sudhir Hooda, Advocate, for the Respondent

**Final Decision :** Allowed

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## Judgement

Rameshwar Singh Malik, J.—The present writ petition is directed against the impugned order dated 3.10.2011 (Annexure P-5) passed by respondent No. 1, whereby the order dated 16.6.2008 (Annexure P-4) and order dated 15.2.2008 (Annexure P-3) passed by respondents Nos. 2 and 3, respectively, were set aside. Brief facts of the case are that late Shri Ishwar Singh son of Ramji Lal, who was husband of petitioner No. 1 and father of petitioner No. 2, became member of respondent No. 4-Society. He was allotted a plot bearing No. 49-A measuring 160 square yards by the respondent Society in the month of March 1983, vide Annexure P-1. The respondent-Society was situated in the village Gangwa on the outskirts of the city of Hisar. Shri Ishwar Singh, predecessor-in-interest of the petitioners, died on 27.5.2000. When the repeated requests of the petitioners for transfer of the abovesaid plot in their name were not being acceded to by the respondent-Society, they approached Assistant Registrar Cooperative Societies, Hisar-respondent No. 3, by way of an application under Sections 102/103 of the Haryana Cooperative Societies Act, 1984 ("the Act" for short), vide Annexure P-2. The application of the petitioners was allowed by

respondent No. 3, directing the respondent-Society to transfer the plot in favour of the petitioners, vide Annexure P-3 dated 15.2.2008. Dissatisfied respondent No. 4-Society filed its appeal before respondent No. 2 u/s 114 of the Act, which came to be dismissed vide Annexure P-4 dated 16.6.2008. Respondent No. 4 further challenged both the above-said orders dated 15.2.2008 (Annexure P-3) and order dated 16.6.2008 (Annexure P-4) by way of revision petition u/s 115 of the Act before respondent No. 1. Revision of respondent No. 4 was allowed by respondent No. 1, vide impugned order dated 3.10.2011 (Annexure P-5). Hence, the present writ petition.

2. On 22.2.2012, notice of motion was issued by this Court, by passing the following order:-

Contents that late father of the petitioner was in possession of the plot in question since 1983. Learned counsel further contends that the Financial Commissioner may not be correct in holding that arbitration proceedings were not maintainable u/s 102 of the Haryana Cooperative Societies Act, 1984.

Notice of motion for 24.5.2012.

Notice Re: stay as well.

In the meantime, the petitioner will not be dispossessed from the plot in question.

3. In compliance of the above-said order passed by this Court, a short reply by way of affidavit dated 27.11.2012 of Kavita Dhankar, Deputy Registrar, Cooperative Societies, Hisar, was filed on behalf of respondent No. 2. Another short reply by way of affidavit dated 18.5.2012 of Balraj Singh Siwach, Assistant Registrar, Cooperative Societies, Hisar, was filed on behalf of respondent No. 3, whereas a separate written statement was filed on behalf of respondent No. 4.

4. Learned counsel for the petitioners submits that the revision petition of respondent No. 4-Society was not maintainable before respondent No. 1 in view of the provisions of Section 102(3) of the Act. He further submits that jurisdiction of the Civil Court was barred u/s 128 of the Act. He next contended that petitioners are in possession of the plot in question, have got electricity connection and have also raised construction thereon. Respondent-Society never produced any record to the contrary either before respondent No. 3 or respondent No. 2. Since the name of late Shri Ishwar Singh son of Shri Ramji Lal was still recorded in the record of respondent-Society as its member and he was recorded as such in the voter list of the respondent- Society for the purpose of elections held in the year 2011, the petitioners were entitled for the statutory presumption to be drawn in their favour as envisaged u/s 40 of the Act. He also submits that a specific averment taken in para 3 of the writ petition in this regard has not been denied by the respondent Society in the corresponding para 3 of its written statement, which leaves no room for doubt about the established entitlement of the petitioners for plot No. 49-A measuring 160 sq. yards. He finally prays for setting aside the impugned order by allowing the writ petition. In

support of his contentions, learned counsel for the petitioners relies upon the judgment of this Court in Suraj Bhan Tayagi Vs. The State of Haryana and others .

5. Per contra, learned counsel for respondent No. 4 submits that petitioners were pursuing the claim which was barred by delay and laches. He further submits that the plot in question was transferred in the name of Smt. Meenakshi, who has transferred it further. However, no relevant document has been placed on record of this Court by the respondent-Society nor any such record has been supplied to its counsel, as submitted by the learned counsel for respondent-Society. Learned counsel for the Society concluded by submitting that the writ petition was devoid of any merit and may be dismissed.

6. Having heard the learned counsel for the parties, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the present writ petition deserves to be allowed for the following more than one reasons.

7. It has gone undisputed on the record that the entire relevant record was in the possession of the respondent-Society. The respondent- Society has neither placed relevant record before the authorities nor any such relevant documents have been placed on the file of the present case. Even during the course of arguments, learned counsel for respondent No. 4 could not point out any reason in this regard. However, he submits that no such record has been supplied to him by the respondent-Society so as to enable him to substantiate his arguments. No reasons are forthcoming for not supplying the relevant record for the reasons best known to the respondent-Society.

8. It is neither pleaded case of the respondent-Society nor it was argued on its behalf that either of the orders passed by respondents Nos. 2 and 3 were suffering from any patent illegality, or any of them was without jurisdiction. Neither the orders passed by respondents Nos. 2 and 3 were ever challenged by Smt. Meenakshi nor she has come forward at any such of the litigation to raise her grievance, if any, regarding the plot in question. On the other hand, late Shri Ishwar Singh was recorded as a member of the Society and it were only the petitioners who have come forward to claim the plot in question. Further respondents Nos. 2 and 3 have deliberated on each and every aspect of the matter and came to judicious conclusion while passing their respective orders, Annexures P-3 and P-4.

9. While deciding the appeal of the respondent-Society, respondent No. 3 after discussing every issue in detail recorded cogent findings in favour of the petitioners. The relevant observations made in the operative part of the order dated 16.6.2008 (Annexure P-4), read as under:-

The society has neither produced any record before the arbitrator nor have produced the record before this Court, from this it is clear that, the society has initiated the process to take away and usurp the rights of respondents and the respondents are having legitimate right over the share of deceased Ishwar Singh,

which has to be given to them. Therefore, the order passed by the Assistant Registrar Cooperative Societies Hisar dated 15.02.2008 is hereby accepted and the appeal filed by the society is hereby rejected for lack of proof and being baseless. The decision of case was reserved on 26.05.08 and the same is pronounced on 16.06.08. The parties be informed separately.

10. Respondent No. 1 has set aside the orders passed by respondents Nos. 2 and 3 primarily for the reason that application of the petitioners (Annexure P-2) was not maintainable before respondent No. 3. He has further held that in the circumstances of the case, it was the Civil Court only, which could have taken cognizance of the matter under the provisions of CPC and respondent No. 3 was not competent to decide the matter under the provisions of Section 102 of the Act. However, when examined in depth, the reasons given by respondent No. 1 have been found to be wholly misplaced. He has passed the impugned order, contrary to the law laid down by this Court in Suraj Bhan's case (supra). Further, learned counsel for the petitioners has ably contended that the jurisdiction of the Civil Court was barred u/s 128 of the Act. Respondent No. 1 has failed to appreciate both these aspects, which go to the root of the case. Thus, the impugned orders cannot be sustained.

11. The pivotal question that falls for consideration of this Court is that whether the application (Annexure P-2) moved on behalf of the petitioners was maintainable before respondent No. 3 in view of the provisions of Section 102(2) of the Act. Before proceeding further in this regard, it would be appropriate to reproduce the provisions of Section 102(2) of the Act and the same read as under:-

(2) For the purpose of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely:-

(a) Claim by the society for any debt or demand due to it from a member, or nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) A claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) Any dispute arising in connection with the election of any officer of the society.

12. The provisions of Section 55(2) of the Punjab Cooperative Society Act, 1961, which were *pari materia* with the provisions of Section 102(2) of the Act, reproduced above, came up for consideration before this Court in Suraj Bhan(s) case supra. After reproducing and discussing the relevant provisions of law in para 5 of the judgment, this Court held in para 6 thereof, as under:-

After giving my thoughtful consideration to the entire matter, I find myself

unable to agree with the contention of Mr. Mittal. Under clause (3) of section 55 it is provided that if any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court. If the disputes referred to in clauses (a), (b) and (c) of sub-section (2) of section 55 are the only disputes touching the constitution, management or the business of a society which could be referred for decision, then there was no need for the legislature to have invested the Registrar with the power of deciding the question whether a dispute referred to is or is not a dispute touching the constitution, management or the business of a co-operative society. The purpose of specifying some disputes in sub-section (2) seems to be that so far as those disputes are concerned, they must be referred to the Registrar for decision as they shall be deemed to be the disputes touching the constitution, management, or the business of a co-operative society; but this does not mean that there can be no other dispute touching the constitution, management or the business of a co-operative society. If this interpretation is put then clause (e) of sub-section (i) of section 55 shall become redundant and meaningless. The scope of sub-section (2) is not to limit the scope of the disputes touching the constitution, management or the business of a co-operative society. Thus I have no hesitation in holding that it is not only the disputes which are mentioned in clauses (a), (b) and (c) of sub-section (2) that can be referred to the Registrar for decision but there may be many other disputes which could be referred to the Registrar for decision, but they should be touching the constitution, management or the business of a co-operative society.

13. A bare combined reading of the orders Annexures P-3, P-4 and P-5 would show that respondent No. 1 has committed serious error of law while passing the impugned order, which is clearly in violation of the law laid down by this Court. Having said that, this Court feels no hesitation to conclude that the impugned order is contrary to the true facts of the case and also against the law laid down by this Court, because of the same cannot be sustained.

14. During the course of arguments, learned counsel for respondent-Society failed to substantiate any of his arguments. Further, since the name of predecessor-in-interest of the petitioners was recorded in the record of the respondent-Society, i.e. in the voter-list prepared for the elections in the year 2011, which has not been denied by the respondent-Society, the statutory inference is to be drawn in favour of the petitioners in view of the provisions of Section 40 of the Act. The record was in possession of the respondent-Society. Why the relevant record was being withheld at every stage of this litigation, is best known to the respondent-Society. In this view of the matter, this can also be reasonably inferred that the respondent-Society was trying to conceal the relevant factual aspect of the matter from the notice of this Court. Besides, petitioners have successfully made out a strong case in their favour. The facts of the case and also the relevant provisions of law were rightly discussed and

appreciated by respondents Nos. 2 and 3 while deciding the matter in favour of the petitioners. However, respondent No. 1 has proceeded on an erroneous approach while passing the impugned order dated 3.10.2011 (Annexure P-5), misdirecting himself on facts as well as in law. Thus, the impugned order cannot be maintained.

15. As a sequel to the above-said discussion, the question posed here-in-above is answered in the affirmative and in favour of the petitioners. Respectfully following the law laid down by this Court in Suraj Bhan's case (supra), it is held that the application moved by the petitioners vide Annexure P-2 was maintainable before respondent No. 3, who has rightly accepted the genuine claim of the petitioners and the appeal of respondent-Society was rightly dismissed by respondent No. 2, by way of his appellate order dated 16.6.2008 (Annexure P-4).

16. No other argument was raised.

17. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned order dated 3.10.2011 (Annexure P-5) passed by respondent No. 1 cannot be sustained and the same is hereby set aside. The orders dated 15.2.2008 (Annexure P-3) and order dated 16.6.2008 (Annexure P-4) are ordered to be restored.

18. A writ in the nature of mandamus is also issued in favour of the petitioners, directing respondent No. 4 to implement the orders dated 15.2.2008 (Annexure P-3) and 16.6.2008 (Annexure P-4) in favour of the petitioners, without any further loss of time and in any case within a period of two months from the date of receipt of a certified copy of this order. Resultantly, the present writ petition stands allowed, however, with no order as to costs.