
(2010) 07 P&H CK 0184
In the Punjab And Haryana At Chandigarh

S.P. Gupta

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 3 SLR 432

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Alok Singh, J.—The petitioner by way of present petition has invoked jurisdiction of this Court under Article 226/227 of the Constitution of India impugning the order dated 24.12.2008 (Annexure P-1) passed by Financial Commissioner and Principal Secretary to Cooperation Department, Govt. of Haryana.

2. The brief facts of the present case are that a reference was made by the petitioner herein u/s 102 of the Haryana Cooperative Societies Act to decide as to whether petitioner is a valid existing member of the Alaknanda Cooperative Housing Society Limited. Learned Assistant Registrar Cooperative Societies, Gurgaon having heard both the parties vide order dated 23.4.2008 held that petitioner herein is a valid existing member of the Society and directed a plot may be allotted to Mr. S.K. Gupta, the petitioner. Order of the Assistant Registrar dated 23.4.2008 was challenged before the State u/s 115 of the Haryana Cooperative Societies Act. Learned Financial Commissioner - respondent No. 1 allowed the revision and set aside the award/order passed by Assistant Registrar dated 23.4.2008 vide impugned judgment dated 24.12.2008. Feeling aggrieved from order dated 24.12.2008, the present petition is filed.

3. Learned Counsel for the petitioner vehemently argued that an order passed by Assistant Registrar u/s 103 of the Act can be assailed by way of an appeal before the Deputy Registrar u/s 114(2)(a). Learned Counsel for the petitioner further

argued that since appeal is maintainable before the Deputy Registrar, hence revision was not maintainable before the State Government and Financial Commissioner has committed jurisdictional error by entertaining and allowing the revision vide impugned order.

4. Learned Sr. Counsel for respondents No. 4 and 5 argued that revision before the State Government against the award passed u/s 103 of the Act is very well maintainable despite of availability of the appeal u/s 114(2)(a) of the Act. Learned Sr. Counsel further argued that revision u/s 115 of the Act against the award passed u/s 103 of the Act is not maintainable only when appeal lies to the State Government. He states that in the present matter, appeal does not lie to the State Government, hence, revision was rightly entertained and decided by the Financial Commissioner vide impugned judgment.

5. To appreciate rival contentions of learned Counsel for the parties, it would be just and proper to reproduce Sections 102, 103, 114 and 115 of the Haryana Cooperative Societies Act, 1984:

102. Dispute for arbitration- (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, establishment management or the business of a co-operative Society arises:

(a) among members, past members and persons claiming through a member or deceased members; or

(b) between a member, past member or persons claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or

(c) between the Society or its committee and any past committee, any officer, agent or employee or any past officer, agent or employee or the nominee, heirs or legal representatives of any deceased officer, agent or employee of the Society; or

(d) between the Society and any other society, between a Society and liquidator of another Society or between the liquidator of one Society and the liquidator of another Society;

such disputes shall be referred to the arbitration of the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(2) For the purpose of Sub-section (1) the following shall be deemed to be dispute touching the constitution, management or the business of a cooperative society, namely:

(a) 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.

(3) 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 co-operative society, the decision thereon of the Registrar shall be final and shall not be called in any court.

(4) No dispute arising in connection with the election of committee member or officer of the society shall be entertained by the Registrar unless it is referred to him within thirty day from the date of the declaration of the result of election.

103. Reference of dispute to arbitration - (1) The Registrar may, on receipt of the reference of dispute for arbitration u/s 102:

(a) decide the dispute himself;

(b) transfer it for disposal to any person who has been vested by the Government with powers in that behalf; or

(c) refer it for disposal to any other person as arbitrator.

(2) The Registrar may withdraw any reference from an officer who is exercising the powers of Registrar and entrust it for disposal to any other officer who has been vested with the powers of the Registrar.

(3) The Registrar may withdraw any reference transferred under Clause (b) of Sub-section (1) or referred under Clause (c) of that Sub-section and decide it himself or refer the same to another arbitrator for decision.

(4) The Registrar or any other person to whom a dispute is referred for decision u/s may, pending the decision of this dispute, make such interlocutory order as he may deem necessary in the interest of justice.

114. Appeals - (1) An appeal shall lie under this Section against:

(a) an order of the Registrar made under Sub-section (2) of Section 8 refusing to register a society;

(b) an order of the Registrar made under Sub-section (4) of Section 10 refusing to Registrar an amendment of the bye-laws of a co-operative society;

(c) a decision of a co-operative society, other than a producer society, refusing to admit any person as a member of the society who is otherwise duly qualified for membership under the bye-laws of the Society;

(d) a decision of a co-operative society expelling any of its members;

- (e) an order of the Registrar rescinding a resolution u/s 27;
- (f) an order of the Registrar removing the committee or a member of the committee of a cooperative Society u/s 34 or 35
- (g) an order made by the Registrar regarding compensation u/s 51;
- (h) an order passed by Registrar regarding costs, etc. u/s 95;
- (i) an order made by the Registrar u/s 110 apportioning the costs of an enquiry or an inspection;
- (j) an order of surcharge u/s 101;
- (k) a decision or award made u/s 103;
- (l) an order granting a certificate u/s 104;
- (m) an order of winding up of a co-operative Society u/s 105;
- (n) an order made by the liquidator u/s 107; and
- (o) an order of attachment before award u/s 111.

(2) An appeal against any decision or order under Sub-section (1) shall be made within sixty days from the date of decision or order:

- (a) if the decision or order was made by the Assistant Registrar to the Deputy Registrar;
- (b) if the decision or order was made by the Deputy Registrar or Joint Registrar, to the Registrar or such Additional Registrar, as may be authorized by the Registrar in this behalf;
- (c) if the decision or order was made by the Additional Registrar or Registrar, to the Government; and
- (d) if the decision or order was made by any other persons to the Registrar or such Additional Registrar or Joint Registrar or Deputy Registrar or Assistant Registrar as may be authorized by the Registrar in this behalf;

(3) No appeal shall lie under this Section from any decision or order made by any authority in appeal.

(4) Any appeal under Sub-section (1) pending before any authority, immediately before the commencement of this Act shall stand transferred to the authority to whom such appeal lies under the provisions of this Act.

115. Revision- The Government may suo motu or on an application of a party to a reference u/s 102, call for and examine the record of any proceedings in which no appeal lies to the Government u/s 114 for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case it shall appear to the Government that any such decision or order should be modified,

annulled or revised, the Government may, after giving the persons affected hereby an opportunity of being heard, pass such order thereon as it may deem fit.

6. From the perusal of Section 102, 103, 114 and 115 of the Act, this Court is of the opinion that any dispute involving the question of membership can be referred in the arbitration. Award is passed on the reference u/s 103. An appeal is maintainable u/s 114(k) against an award passed u/s 103 of the Act. An appeal against an award passed u/s 103 of the Act would be maintainable before the Deputy Registrar, if award is passed by the Assistant Registrar. An appeal would be maintainable before the Registrar, if award is passed by Deputy Registrar or Joint Registrar and appeal filed before the Registrar can be heard by Addl. Registrar as authorized by the Registrar. However, if an award is passed u/s 103 of the Act by the Registrar then appeal would be maintainable before the Government.

7. Section 115 provides revision before the State Government, from the perusal of Section 115 of the Act, this Court is of the opinion that Government may exercise revisional power either suo moto or an application moved on behalf of aggrieved party. However, revision would not be maintainable, if appeal lies to the Government. This Court is of the further opinion that if appeal does not lie to the Government u/s 114(2)(c) and lie to any other officer i.e. Registrar, Additional Registrar, Deputy Registrar then power of the Government u/s 115 is not barred. In that eventuality party aggrieved has two alternate remedies either to file appeal u/s 114(2)(a)(b) or to invoke Section 115, the revisional jurisdiction of the State.

8. I find support from the judgment of Single Judge of this Court in the matter of Halwara Cooperative Agricultural Service Socety Ltd. Halwara v. State of Punjab and Ors. reported in 1972 P.L.J. 461. Learned Single Judge of this Court while interpreting Section 69 of the Punjab Co-operative Society Act has held that revisional jurisdiction is taken away only where appeal lies to the Government/Registrar as defines u/s 69 of the Act. From the perusal of Section 69 of the Punjab Act and Section 115 of the Haryana Cooperative Society Act, I find that both deals with revisional power of the Government except that u/s 69 of the Punjab Act, revision is barred when appeal lies to the Registrar/State Government while u/s 115 of Haryana Act, revision is barred only when appeal lies to the State Government.

9. In the present matter, since award was passed by Assistant Registrar vide impugned order dated 24.4.2008, hence revisional jurisdiction u/s 115 of the Act was not at all barred.

10. No other point is raised by learned Counsel for the petitioner.

11. The petition is devoid of merits, hence dismissed.