

(2023-3)211 PLR 633
PUNJAB AND HARYANA HIGH COURT
Before: Mr. Justice Fateh Deep Singh.
BASANT KUMAR and others – Petitioners,
Versus

STATE OF HARYANA and others – Respondents.
CWP 23954 of 2021 (O&M)

Haryana Cooperative Societies Act, 1984 (22 of 1984) Section 115, 114 - Ensures that in a revision a finding has to be given to the effect that the order under challenge was either illegal or improper and where no such exercise has been undertaken necessitates setting aside of the same - More so, under the Act provisions under Section 114 of the Act there is a provision of appeal before the State Government and unless and until it is necessitated the revisional Court order cannot be enforced and statutory remedy so provided needs to be exhausted in totality. [Para 9]

Cases referred to:-

1. Revision Petition No. 16 of 2017 decided on 29th September, 2021, *Amit Matta v. Deputy Registrar, Cooperative Societies, Gurugram.*

Mr. Pardeep Solath, for the petitioners. *Mr. Amit Aggarwal, DAG, Haryana* for respondents No. 1 and 2. *Ms. Indu Kaul*, respondent No. 11 in person. *Mr. Munish K. Garg*, for respondents No. 7 to 10, 12 to 28.

Fateh Deep Singh, J. (Oral) - (6th July, 2022) - The petitioners through this civil writ petition by virtue of Articles 226/227 of the Constitution of India seeks quashing of orders dated 29.09.2021 (Annexures P-13 and P-14) passed by the State of Haryana claiming it to be arbitrary, discriminatory and unsustainable in the eyes of law. The claim is based on the averments that Shanti Niketan Group Housing Society, Sector 52, Gurugram (respondent No.6) is a registered society under the Haryana Cooperative Societies Act, 1984 (in short, 'the Act') bearing registration No. 113 dated 23.05.2003. The primary object of the Society is construction and development of group housing flats for its members. The Society was allotted plot bearing No. GH-01, Sector 52, Gurugram. Initially there were 77 members of the Society whose strength subsequently was increased to 98. As per the bye laws of the Society, the Managing Committee is competent to enrol new members in the Society. It is alleged that on account of certain acts of misconduct of the members, the committee vanished and vide order dated 04.12.2015 the Assistant Registrar Cooperative Societies Gurugram appointed an Administrator of the Society. The crux of the dispute is over enrollment of certain members after 31.03.2011 other than the so claimed original members numbering 98. The respondents No. 6 to 11 have opposed enrollment of the new members and on account of wrangling between the members a general body meeting of the Society was held on 26.03.2017 after due notice by the Inspector, Cooperative Societies, Gurugram.

2. Disgruntled members had perused legal recourse through revision petition No. 16 of 2017 and which as per the claim of the present petitioners they were not made a party and the proceedings were initiated at their back. It is worthwhile to refer here that the general body meeting resolution dated 26.03.2017 was upheld vide meeting of the Society held on 07.05.2017. The primary grouse of the petitioners is over the orders dated 29.09.2021 (Annexures P13 and P14) which are sought to be challenged on account of illegality, perversity and unsustainability in view of the provisions of the Act.

3. The respondents in their replies to the petition besides taking preliminary objections of non-maintainability of the petition as all persons interested in the dispute were not made parties and contending that general body meeting had ensured and held the earlier resolution of the Society which cannot be challenged by way of instant revision petition and

taking the plea such a challenge through civil writ petition is not permissible beyond the scope of the Act and that the strength of the members of the Society cannot be more than the number of the flats.

4. On merits, though admitted the constitution of the Committee and have claimed that the private respondents were enrolled as new members by conducting due process of law but all have paid the requisite charges for being enrolled as members and which fact cannot be challenged at this juncture especially when statutory remedy has been provided under the Act and which has not been put to use had sought dismissal of the writ petition.

5. Upon hearing Mr. Pardeep Solath, Advocate for the petitioner, Mr. Amit Aggarwal, DAG, Haryana for respondents No. 1 and 2 and Mr. Munish K. Garg, Advocate for respondents No. 7 to 10, 12 to 28 and perusal of the records.

6. The many arguments of the two sides narrows down to the enforceability and legality of orders (Annexures P13-P14). Annexure P13 is an order dated 29.09.2021 passed in revision petition No. 16 of 2017 titled as *Amit Matta and others v. Deputy Registrar, Cooperative Societies, Gurugram and others*¹ of the Court of Additional Chief Secretary to Government of Haryana, Cooperation Department where following observations have been made:-

“Keeping in mind the averments made before me, the members of the respondent No. 5 Society need to meet again to decide about election of the management committee and the freshly elected management committee needs to decide about the addition or otherwise of more members in the Society followed by the process of seeking approval of the Director, Town and Country Planning, if found feasible. This is the only way forward for preventing multiple litigation and acrimony that this Society is facing. As such, the Registrar Cooperative Societies needs to issue suitable directions for holding the meeting of the General Body of the original members of the Society for taking a view in the matter. If an audit is required to find out whether money was collected or not from some prospective members, that should also be brought out in a report before the Registrar Cooperative Societies and necessary legal action taken by the Society/Registrar Cooperative Societies. Disposed of accordingly.

While Annexure P-14 also is an order of even dated passed by the same authority but in different revision petition No. 79 of 2020 titled as *Dr. Anil Chaudhary and others v. Registrar, Cooperative Societies, Haryana and others* and which order is reproduced as under:-

“*The facts of the present revision petition are same and identical with Revision Petition No. 16 of 2017. Therefore, both these revision petitions are decided by a common order. For details copy of order passed in Revision Petition No. 16 of 2017 titled as Amit Matta and others v. Deputy Registrar Cooperative Societies, Gurugram may be read as order passed in the aforesaid revision petition also*”.

7. It is not displaced that both these revision petitions have been filed by different parties in different capacities and have been registered separately. At no point of time these two different revision petitions have been ordered to be consolidated and disposed off together. The main operative order Annexure P13 nowhere suggests even remedy that both these revisions are being consolidated and tried together. How a subsequent order Annexure P14 though of same very date could be passed by stating that the order passed in civil revision No. 16 of 2017 be read as order in this revision as well, i.e. 79 of 2020, when earlier there is no such order for consolidating both these matters renders this order Annexure P-14 illegal, void, inoperative and nonest in the eyes of law.

8. More so, revision petition No. 16 of 2017 has been filed under the provisions of Section 115 of the Act challenging orders dated 06.03.2017 of Deputy Registrar, Cooperative Societies, Gurugram dismissing the complaint of the petitioners and order being of fresh

general body meeting of the members of the Society to decide about the election of the Management Committee, it is supposed to decide about addition or otherwise or more members of the Society. How such a recourse could be adopted without having recourse to the procedure prescribed in the bye laws of the Society as well as the provisions of Cooperation and Rules framed thereunder.

9. What one could come across that there is a valiant effort by the authorities who passed orders Annexure P13 and P14 but rather than putting to an end to this imbroglio prior to reviving the same by again convening meeting of the general body of the Society. More so, a plain reading of Section 115 of the Haryana Cooperative Society Act ensures that in a revision a finding has to be given to the effect that the order under challenge was either illegal or improper and where no such exercise has been undertaken necessitates setting aside of the same. More so, under the Act provisions under Section 114 of the Act there is a provision of appeal before the State Government and unless and until it is necessitated the revisional Court order cannot be enforced and statutory remedy so provided needs to be exhausted in totality.

Thus, in the light of the foregoing discussion the authorities have erred in passing orders Annexure P13 and P14 and which needs to be set aside by way of acceptance of the instant writ petition.

Disposed off accordingly.

R.M.S. - Petition disposed of.