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from their other land. This provision in itself shows that the Legislature, in the absence of any statutory bar, allows the State Government to acquire a part of the holding of a land-owner entitling him to claim damages arising out of the 'fragmentation' of his total holding in the ordinary sense of the word.

(12) No other point was argued before the learned Single Judge and the writ petition was not allowed on any other ground.

(13) The solitary ground, on which the petition was allowed, having been found to be erroneous, we allow this appeal, set aside and reverse the judgment and order of the learned Single Judge and dismiss the writ petition of the respondents, though without any order as to costs. This order is *ex parte* against the respondents as they have not put in appearance despite service of notices of this appeal on them.

N. K. S.

CIVIL MISCELLANEOUS

Before Bhopinder Singh Dhillon and Harbans Lal, JJ.

**THE AMERHERI CO-OPERATIVE AGRICULTURAL SERVICE
SOCIETY AND ANOTHER,—Petitioners,
versus
THE STATE OF HARYANA, ETC.,—Respondents.**

Civil Writ No. 518 of 1976.

March 31, 1976.

Punjab Co-operative Societies Act (XXV of 1961) (as amended in Haryana by Act 13 of 1971)—Sections 13(8) to 13(12)—Whether ultra vires—Notice of proposed amalgamation—Whether to be given to the society, its members and creditors—Such notice—Whether should contain necessary information regarding all societies likely to be affected.

Held that a bare reading of sub-section (8) of section 13 of the Punjab Co-operative Societies Act, 1961 would show that the Legislature has given sufficient guide-lines to the Registrar, Co-operative

Societies, for passing an order of amalgamation or division of co-operative societies or a co-operative society. Under section 8 of the Act, the Registrar has been given powers to register a co-operative society and while considering whether a co-operative society should be ordered to be registered or not, he is to take into consideration whether the proposed society has reasonable chances of success or not. Section 13 has been enacted by the Legislature with a view to find out remedial measures for reshaping the co-operative societies to which the provisions of that section may apply. Sub-sections (1) to (7) of section 13 deal with the voluntary amalgamation, transfer of assets and liabilities and division of co-operative societies; whereas the Legislature by enacting sub-sections (8) to (12) of section 13 has given power to the Registrar for achieving the same object which the members of a society can themselves achieve according to the provisions of sub-section (1) to section (7) of section 13. In the nature of things, the Legislature cannot provide any more guidelines than the one which have been provided in sub-section (8) of section 13 of the Act. Before passing any order under this section the Registrar has to be satisfied that it is essential or desirable in the interest of the society or societies, that two or more societies be amalgamated or any society should be divided to form two or more societies. While taking into consideration the constitution, property, rights, interest, liabilities, duties and obligations of the societies concerned, and the above mentioned guide-lines, the Registrar can form an opinion in a particular case whether to proceed under this sub-section or not. Again, the said provisions are not arbitrary merely because no appeal has been provided against the order of the Registrar passed under sub-section (8) of section 13 of the Act. It is well settled that right of an appeal is a statutory right and the Legislature, in its wisdom, may in the circumstances of a given case, provide for an appeal against an order of a quasi-judicial nature and in another given case, the said remedy of appeal may not be available. Thus the provisions of sections 13(8) to 13(12) of the Act are not *ultra vires*.

(Paras 13 and 14).

Held that under sub-clause (a) of sub-section (9) of Section 13 of the Act, a copy of the proposed order has to be sent in draft to the society or each of the societies concerned, but sub-clause (b) of this section gives right to a member or a class of members of society, or to creditor or class of creditors of a society to raise objections to the proposed amalgamation or division of the Society, as the case may be. Sub-section (11) of Section 13 of the Act further gives a right to every member or creditor of the society concerned, who had objected to the **scheme of amalgamation** or division as the case may be within the period specified, to receive within the period prescribed, on the issue of the order of amalgamation or division, his share or interest if he be a member, and the amount in satisfaction of his dues, if he be a creditor. Sub-clause (b) of sub-section (9) of

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Section 13 and Sub-section (11) of Section 13 are mandatory provisions which bestow a valuable right to the members and creditors of the societies to be affected by the order to be passed under sub-section (8) of section 13 of the Act and the said right cannot be exercised if the members and the creditors are not served with the copy of the proposed order sent in draft so that they are in a position to raise objections within the period specified in sub-clause (b) of sub-section (9) of section 13 of the Act. Sub-clause (b) of sub-section 9 of section 13 enjoins upon the Registrar to make such modifications in the draft or as may seem to him desirable in the light of any suggestions and objections which may be received by him within the period prescribed, from the society or from any such member or class of members thereof, or from any creditor or class of creditors. The proceedings under sub-sections (8) to (12) of Section 13 of the Act are of quasi-judicial nature and the provisions of sub-clause (b) of sub-section (9) and sub-section 11 of section 13 of the Act, enable the members and the creditors to raise objections and also to make up their minds to withdraw from the society as members or to withdraw the amounts deposited as creditors. The same right has been made available to the members and creditors in case the society itself decides for amalgamation or division, as is clear from the provisions of sub-section (1) to (7) of section 13 of the Act. Thus, in order to enable the society, its members and creditors to avail of the right so bestowed, a notice of the proposed order has to be given to the society, its members and creditors. (Para 15).

Held that the object of serving the copy of the proposed order in draft on the society, its members or creditors, is to provide them an effective opportunity to raise objections or suggestions after taking into consideration various matters concerning the society with which the society is proposed to be amalgamated and such other relevant matters concerning the society which is going to be amalgamated or divided. The order passed under sub-section (8) of section 13 of the Act has to provide for the constitution, property, rights, interests, liabilities, duties and obligations of the society or societies—coming into existence. A copy of the proposed order has also to contain all this information regarding the society or societies to be affected by the order. It is only after these matters are made known to the society or its members or creditors that they can be in a position to raise objections and also to make suggestions and make up their minds to withdraw from the membership or to withdraw their deposits. If the relevant material concerning the constitution, property, rights, interests, liabilities, duties and obligations of the concerned society or societies as the case may be is not made known the purposes of the provisions cannot be achieved as no effective objections and suggestions can be made by the society, its members or creditors. (Para 16).

Petition under Articles 226/227 of the Constitution of India praying that :—

- (i) *the impugned notice (Annexure P/3) and the final order (Annexure P/5) be quashed by means of a writ in the nature of certiorari, mandamus, prohibition or any other appropriate writ, order or direction;*
- (ii) *provisions of section 13(8) to Section 13(12) be struck down as ultra vires the Statute ;*
- (iii) *the operation of the impugned order be stayed and the respondents be directed not to take any step towards transferring the assets and liabilities of the Society with the Ahirka Co-operative Agricultural Service Society and their registration of the Society may not be cancelled till the final decision of this writ petition.*
- (iv) *any other appropriate relief to which the petitioner is found entitled by this Hon'ble High Court in the circumstances of the case, be also granted ;*
- (v) *costs of the petition be awarded to the petitioner.*

Prem Singh, Advocate with N. S. Ahlawat, Advocate, for the Petitioner.

C. D. Dewan, Additional Advocate-General, Haryana with H. N. Mehtani, Senior Deputy Advocate-General, Haryana, for the Respondents.

JUDGMENT

B. S. Dhillon, J.

(1) In this petition under Articles 226/227 of Constitution of India, following prayers have been made :—

- (i) That the impugned notice dated December 5, 1975, copy of which is Annexure 'P-3'; and the final order dated January 2, 1976, copy of which is Annexure 'P-5' to the writ petition be quashed.
- (ii) That the provisions of Section 13(8) to Section 13(12) of the Punjab Cooperative Societies Act, 1961 (as amended by the Haryana State) be struck down as *ultra vires* to the Statute.

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(2) Brief facts of the case may now be stated. Petitioner No. 1 is a Cooperative Society registered under the Punjab Cooperative Societies Act, 1961, as amended by the Haryana State Legislature (hereinafter referred to as the Act). Petitioner No. 2 is its Committee Member. It is alleged in the petition that the said Society was organised about 40 years back to boost up the economic interests of its member on cooperative principles. The petitioner-Society was showing excellent progress year after year and was financially self-sufficient, a viable unit and was thus fulfilling the requirements of all its members numbering about 235 alongwith other residents in the area of operation of the Society. The society was free from all types of internal and external difficulties and was running smoothly. On December 7, 1975, the petitioner-Society received a notice from respondent No. 3, Assistant Registrar, Cooperative Societies, Jind proposing amalgamation of the petitioner-Society alongwith two other Societies, namely, the Kair Kheri Cooperative Agricultural Service Society and the Jhamj Khurd Cooperative Agricultural Society, with Ahirka Cooperative Agricultural Service Society. Copy of the said notice is Annexure 'P-3' to the writ petition.

(3) The Managing Committee of the petitioner-society held a meeting on December 8, 1975, and resolved to object to the proposal of amalgamation. The Committee incorporated a number of points in the resolution with a view to show that the petitioner-Society was running efficiently and was viable Society therefore, may not be amalgamated. Copy of this resolution is Annexure 'P-4' to the writ petition. The Assistant Registrar, Cooperative Societies, Jind (respondent No. 3) then issued final orders ordering the amalgamation of the petitioner-Society and two other Societies mentioned above with Ahirka Co-operative Agricultural Service Society,—*vide* order dated January 2, 1976. Copy of this order is Annexure 'P-3' to the writ petition.

(4) It has been alleged in the petition that respondent No. 1, State Government and respondent No. 2 Registrar Cooperative Societies, Haryana, Chandigarh, decided to reduce the number of Agricultural Service Societies in the State of Haryana from about 6,600 to about 2,000 Agricultural Service Societies. According to the petitioners, the impugned amalgamation order has been passed in pursuance of the above mentioned policy drawn out by the State Government and the Registrar, Cooperative Societies, Haryana, Chandigarh.

(5) Return has been filed on behalf of the Assistant Registrar, Cooperative Societies, Jind, (respondent No. 3). It has been alleged in the return that according to the inspection note available in the records of the office of respondent No. 3, the majority of the members of the Society, who were advanced loans, had not repaid the same by the due date. It was, therefore, denied that the Society was showing excellent progress. It has been further averred that in 1969, the Government of India formulated a policy regarding the reorganisation of the Primary Agricultural Service Societies to form viable units based on the recommendations of the Committee on Cooperative credit. Under this policy the Government of India suggested the following criteria for adjudging the viability of the Society :—

- (i) Appointment of a full time paid Secretary.
- (ii) A regular office in a building owned or hired.
- (iii) Capacity to contribute to statutory and other reserves on the scale considered necessary.
- (iv) Capacity to pay a reasonable dividend.
- (v) Quantum of business, considered necessary.
- (vi) Provision of a Godown.

It has further been averred that the aforesaid recommendations have been engaging the attention of the State Government and the Cooperative Department for a period of six years and the matter was discussed in various meetings of the officers of the Department and it was proposed that the Agricultural Service Societies having the potential to increase the loaning business to rupees three lacs in a year and fulfilling the aforesaid requirements, proposed by the Government of India should be considered as viable units. It was further suggested that to facilitate the preparation of Maximum Credit Limit cases, the area of operation of the Societies should be coterminous with the patwar circles as Maximum Credit Limit cases are prepared on the basis of Revenue Record available with the Patwaris. It has thus been alleged that the entire Scheme has been chalked out in the interest of the members of the Cooperative Societies in order to keep pace with the changing socio-economic

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structure of the State. It has been further averred that the meeting of the Deputy Registrars and Assistant Registrar was summoned on December 1, 1975, to explain the objects of the Scheme mentioned above and the procedure which was required to be followed. It has been averred that the representatives of the petitioner-Society were heard before passing the final orders and during the discussion they felt satisfied about the validity of the amalgamation order.

(6) Additional affidavit of respondent No. 3 was filed with the permission of the Court. In the additional affidavit it has been averred that respondent No. 2, Registrar, Cooperative Societies, Haryana, Chandigarh,—*vide* letter No. Credit/BA3/27-H/52959-52959-53000 dated September 16, 1975, sent the guidelines to the answering respondent for the reorganisation of the Primary Agricultural Credit Societies on the basis of the recommendations of the Committee on Cooperative Credit constituted by the Government of India. It has been reiterated in the Additional affidavit that broadly the following criteria was suggested for a viable cooperative Agricultural Service Society :—

- (i) The Block Administrative Unit should be kept in tact i.e. on Society should not cover the villages outside the Block.
- (ii) One viable or potentially viable society should be selected in which adjoining weaker societies are to be amalgamated.
- (iii) The area of operation should be so chosen that there is a potential of at least of Rs. three Lacs loan business in one year or so.
- (iv) Local homogeneity should also be kept in view.
- (v) The societies having their own godowns or offices can be given preference.
- (vi) Advancement of loans to the weaker Societies to be amalgamated or liquidated should be discouraged.
- (vii) In big village, there may be more than one Patwar Circle, but there should not be more than one viable Society.

(7) The Assistant Registrar then sent letter dated September 17, 1975, with the said guidelines to the Inspectors, Cooperative Societies for submitting the proposals regarding the formation of the viable Cooperative Agricultural Service Societies. Consequently, the Inspector Cooperative Societies, Jind, submitted the proposal for the amalgamation of the following Societies with the Ahirka Cooperative Agricultural Service Society :—

- (i) Kair Kheri Cooperative Agricultural Service Society.
- (ii) Amar Heri Cooperative Agricultural Service Society.
(petitioner Society).
- (iii) Jhanj Khurd Cooperative Agricultural Service Society.

(8) The Assistance Registrar, respondent No. 3, served the impugned notice, copy of which is Annexure 'P-3' to the writ petition, inviting objections/suggestions from the petitioner-Society and also from the other two Societies, which were proposed to be merged with Ahirk Cooperative Agricultural Service Society. It has been averred that the petitioner Society first sent a copy of the resolution dated December 7, 1975, accepting the proposal of amalgamation and then passed another resolution dated December 8, 1975, by which it decided to file objections against the proposed amalgamation. Respondent No. 3 considered it necessary to have a personal talk with the representatives of the petitioner Society and sent for them through Inspector Cooperative Societies, Jind, representatives of the Society raised a number of objections which were considered by the Assistant Registrar, respondent No. 3, and then final impugned order, copy of which is Annexure 'P-5' to the writ petition, was passed. Briefly stated the objections raised by the petitioner-Society before the Assistant Registrar were as follows :—

- (i) That the working capital of the petitioner-Society was about Rs. 50,000 including shares, security and profits and the petitioner-Society did not know about the working capital of the Ahirka Cooperative Agricultural Service Society with which it was proposed to be amalgamated.
- (ii) That the petitioner-Society had 235 members on its roll whereas the number of members of the Ahirka Cooperative Agricultural Service Society was not known.

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- (iii) That the petitioner-Society had in deposit funds to the tune of Rs. 4,000 belonging to the local institutions such as Maru Rajput Sabha Dharamsala and Laxmi Narain Temple etc.
- (iv) That the petitioner-Society had a profit of Rs. 27,000 on June 30, 1975.
- (v) That the petitioner-Society had almost one member of each of the family of the village, as its member and was thus serving the whole village.
- (vi) That the office of the petitioner-Society was situate at a distance of half kilometre from Jind.
- (vii) That the petitioner-Society agreed to construct a godown of its own.
- (viii) That the petitioner-Society was ready to undertake the work relating to the supply of articles of daily use such as flour, controlled cloth and kerosene oil to its members.
- (ix) That the petitioner-Society had been constituted in the year 1935 and being an old Society, its members believed in the principles of cooperation and had deep faith in the policy of the Government.
- (x) That the petitioner-Society had donated funds in the National Defence Fund in the year 1962.
- (xi) That the petitioner-Society had purchased shares of the Central Cooperative Bank to the tune of Rs. 2,600 and also had a sum of Rs. 5,000 in the Savings Bank Account.
- (xii) That the petitioner-Society had purchased shares of the Cooperative Marketing-cum-Processing Society, Jind, and was taking advantages of the facilities of selling their produce through the Marketing Society.
- (xiii) That the petitioner-Society had purchased shares of Indian Farmers Fertilizer Cooperative.

(9) By submitting the above-mentioned objections, the representatives of the petitioner-Society in fact wanted to emphasise that the Society was well-based and was a viable unit. Since the impugned notice did not contain the necessary particulars about the Ahirka Cooperative Agricultural Service Society with which the petitioner-Society was going to be merged, therefore, it is clear from the additional affidavit of the Assistant Registrar that he gave the necessary information regarding all the above-mentioned points to the alleged representatives of the petitioner-Society about the Ahirka Cooperative Agricultural Service Society. It has further been averred in the additional affidavit of the Assistant Registrar that the representatives of the petitioner-Society felt satisfied. However, the names of the alleged representatives of the petitioner-Society have not been disclosed in the additional affidavit, nor the same could be disclosed when we pointedly asked Shri C. D. Dewan the learned Additional Advocate General, appearing for the State of Haryana.

(10) The following points have been argued by Shri Prem Singh the learned counsel for the petitioners :—

- (1) That the provisions of sub-sections (8) to (12) of Section 13 of the Act, as amended by the Haryana State Legislature upto date, are *ultra vires* as they suffer from the vice of excession delegation.
2. That even if the amended provision of the Act referred to above, are *intra vires*, the said provisions have not been complied with inasmuch a notice for the proposed amalgamation, should have been given to the Society, to all its members, to its creditors and that the financing institutions financing the Society should have also been consulted.
- (3) That the impugned orders, copies of which are Annexures 'P-3' and 'P-5' to the writ petition are not in conformity with the provisions of the Act inasmuch as the proposed order of amalgamation should have mentioned about the constitution, property, rights, interests, liabilities, duties and obligations of the Societies involved in the amalgamation order, so that the petitioner Society, its members and its creditors were able to know about the necessary particulars of the Societies involved in the amalgamation order.

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4. That the impugned orders suffer from the vice of legal *mala fide* as they have been passed not keeping in view the guideline as brought out in sub-section (8) of section 13 of the Act, but instead the same has been passed because of the decision of the higher authorities giving directions on various points, which are not germane to the guidelines given in sub-section (8) of section 13 of the Act.

(11) There is no merit in the first contention of the learned counsel for the petitioner. It would be seen that sub-sections (1) to (7) of section 13 of the Act provide for amalgamation or division of a co-operative society with the previous approval of the Registrar if the general body of the Society passes a resolution by two-third majority to that effect. The said resolution under sub-section (3) of the section 13 has to contain all particulars of the transfer, division or amalgamation, as the case may be. Sub-section (4) provides that when a co-operative society has passed any such resolution, it shall give notice thereof in writing to all its members and creditors and, notwithstanding any by-laws or contracts to the contrary, any member or creditor shall, during the period of one month of the date of service of the notice upon him, have the option of withdrawing his shares, deposits or loans, as the case may be. Sub-section (5) provides that any member or creditor, who does not exercise his option within the period specified in sub-section (4), shall be deemed to have assented to the proposal contained in the resolution. Sub-section (6) provides time when the said resolution becomes effective. Sub-section (7) further provides that a resolution passed by a co-operative society in compliance with the earlier sub-section, will be sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance.

(12) Haryana State Legislature, by Act No. 13 of 1971, enacted sub-sections (8) to (12) of section 13 of the Act, which are as follows:—

- “13. (8) Where Registrar is satisfied that it is essential or desirable in the interest of the society or societies, that two or more societies be amalgamated or any society should be divided to form two or more societies, then, notwithstanding anything hereinbefore contained, the Registrar may, after consulting the financing institution, if any,

provide for the amalgamation or division of those societies into single society, or into societies with such constitution, property, rights, interests, liabilities, duties and obligations, as may be specified in the order:—

- (9) No order shall be made under this section, unless—
- (a) a copy of the proposed order has been sent in draft to the society or each of the societies concerned;
 - (b) the Registrar has considered and made such modifications in the draft order as may seem to him desirable in the light of any suggestions and objections which may be received by him within such period, being not less than two months from the date on which the copy of the order as aforesaid was received by the society, as the Registrar may fix in that behalf, either from the society or from any member or class of members thereof, or from any creditor or class of creditors.
- (10) The order referred to in sub-section (8) may contain such incidental, consequential and supplemental provisions as may, in the opinion of the Registrar, be necessary to give effect to the amalgamation or the division.
- (11) Every member or creditor of each of the societies to be amalgamated or divided, who has objected to the scheme of amalgamation or division, within the period specified, shall be entitled to receive, within the period prescribed, on the issue of the order of amalgamation or division, his share or interest if he be a member; and the amount in satisfaction of his dues, if he be a creditor.
- (12) On the issue of an order, under sub-section (8), the provisions, hereinbefore contained in this section, shall apply to the societies so amalgamated or divided as if they were amalgamated or divided under these provisions, and to the society amalgamated or divided.”
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(13) The bare reading of sub-section (8) of section 13 of the Act would show that the Legislature has given sufficient guide-lines to the Registrar, Co-operative Societies, for passing an order of amalgamation or division of co-operative societies or a co-operative society. It is further to be noticed that under section 8 of the Act, the Registrar has been given powers to register a co-operative society and while considering whether a co-operative society should be ordered to be registered or not, he is to take into consideration whether the proposed society has reasonable chances of success or not. Section 13 has been enacted by the Legislature with a view to find out remedial measures for reshaping the co-operative societies to which the provisions of that section may apply. Sub-sections (1) to (7) of section 13 deal with the voluntary amalgamation, transfer of assets and liabilities and division of co-operative societies, whereas the Haryana State Legislature by enacting sub-sections (8) to (12) of section 13 has given power to the Registrar for achieving the same object which the members of a society can themselves achieve according to the provisions of sub-section (1) to (7) of section 13. In the nature of things, the Legislature cannot provide any more guide-lines than the one which have been provided in sub-section (8) of section 13 of the Act. Before passing any order under this section the Registrar has to be satisfied that it is essential or desirable in the interest of the society or societies, that two or more societies be amalgamated or any society should be divided to form two or more societies. In our considered opinion, sufficient guide-lines have been given by the Legislature, and while taking into consideration the constitution, property, rights, interests, liabilities, duties and obligations, of the societies concerned, and the above mentioned guide-lines, the Registrar can form an opinion in a particular case whether to proceed under this sub-section or not.

(14) The contention of the learned counsel that since no appeal has been provided against the order of the Registrar passed under sub-section (8) of section 13 of the Act, therefore, the said provisions are arbitrary, is again without any merit. It is well settled that right of an appeal is a statutory right and the Legislature, in its wisdom may in the circumstances of a given case, provide for an appeal against an order of a quasi-judicial nature and in another given case, the said remedy of appeal may not be available. If any authority is needed in this regard, reference may be made to

Sarwan Singh, etc. v. The State of Punjab and others (1). The first contention of the learned counsel is, therefore, without any merit.

(15) The second contention of the learned counsel deserves to be accepted. It is no doubt true that under sub-clause (a) of sub-Section (9) of Section 13 of the Act, a copy of the proposed order has to be sent in draft to the Society or each of the societies concerned, but sub-clause (b) of this section gives right to a member or a class of members of society, or to creditor or class of creditors of a society to raise objections to the proposed amalgamation or division of the Society, as the case may be. Sub-section (11) of Section 13 of the Act further gives a right to every member or creditor of the society concerned, who had objected to the scheme of amalgamation or division, as the case may be within the period specified, to receive within the period prescribed, on the issue of the order of amalgamation or division, his share or interest if he be a member, and the amount in satisfaction of his dues, if he be a creditor. Sub-clause (b) of sub-Section (9) of Section 13 and sub-Section (1) of Section 13 are mandatory provisions which bestow a valuable right to the members and creditors of the societies to be affected by the order to be passed under sub-section (8) of section 13 of the Act and the said right cannot be exercised if the members and the creditors are not served with the copy of the proposed order sent in draft so that they are in a position to raise objections within the period specified in sub-clause (b) of sub-section (9) of section 13 of the Act. By Haryana Ordinance No. 7 of 1975, the minimum period of notice has been decreased from two months to fifteen days but the fact remains that this is a minimum period which has been given to the Society, its members and its creditors to raise objections to the proposed amalgamation or division of the Society. In addition to this, the Legislature has further provided under sub-section (8) of section 13 of the Act, for consultation of the financing institutions of the societies to be affected by an order passed under this sub-section. Sub-section (11) of section 13 has given an option to a member or a creditor of a society to withdraw from its membership or to withdraw his deposits, as the case may be, only if the said member or creditor had filed the objections within the time prescribed under clause (b) of sub-section (9) of section 13 of the Act. Sub-clause (b) of this

(1) A.I.R. 1975 Supreme Court 394.

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sub-section enjoins upon the Registrar to make such modifications in the draft or as may seem to him desirable in the light of any suggestions and objections which may be received by him within the period prescribed, from the Society or from any such member or class of members thereof or from any creditors or class of creditors. It was conceded by the learned Additional Advocate General appearing for the State of Haryana, that the proceedings under sub-sections (8) to (12) of section 13 of the Act are of quasi-judicial nature. It can also not be disputed that the aim of the rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice. These rules can operate only in areas not covered by law validly made. It is thus clear that rules of natural justice do not supplant the law of the land but supplement it. Reference in this connection may be made to a decision of the Supreme Court in *A. K. Kraipak and others v. Union of India and others*, (2). The provisions of sub-clause (b) of sub-section (9) and sub-section 11 of section 13 of the Act, bestow a valuable right on the society, its members and the creditors to raise objections and also to make up their minds to withdraw from the society as members or to withdraw the amounts deposited as creditors. The same right has been made available to the members and creditors in case the society itself decides for amalgamation or division, as is clear from the provisions of sub-sections (1) to (7) of section 13 of the Act. Keeping in view the above referred provisions, it has to be held that in order to enable the society, its members and creditors to avail of the right so bestowed, a notice of the proposed order has to be given to the society, its members and creditors. The view, which we are taking, finds support from a Division Bench decision of the Orissa High Court in *The Govindput Agricultural Credit Cooperative Society and another v. Assistant Registrar, Cooperative Societies, Balasore Circle and another* (3). The provisions of the Orissa Cooperative Societies Act do not provide for a notice to be given to the members or creditors. The learned Judges disposing of the case, came to the conclusion that where a statutory authority has to reach an objective conclusion affecting the rights of others, it has to give an opportunity to those likely to be affected. It was thus held that the members and the creditors are entitled to notice so that they can object to the proposed amalgamation or division of

(2) A.I.R. 1970 Supreme Court 150.

(3) A.I.R. 1973 Orissa 148.

the Society. In this view of the matter, we find that in addition to the consultation with the financing institutions of the societies to be affected by an order passed under sub-section (8) of section 13 of the Act, the society, its members and the creditors are also entitled to be served with the copy of the proposed order sent in draft so that they can raise objections within the time prescribed by law and also they can make up their mind to withdraw from the membership or to withdraw the deposits made by the creditors of the societies as the case may be.

(16) The third contention of the learned counsel for the petitioner is also well-founded. As is clear from the scheme of the provisions of the Act, the whole objective of serving the copy of the proposed order in draft on the society, its members or creditors, is to provide them an effective opportunity to raise objections or suggestions after taking into consideration various matters concerning the society with which the society is proposed to be amalgamated and such other relevant matters concerning the society which is going to be amalgamated or divided. The order passed under sub-section (8) of section 13 of the Act has to provide for the constitution, property, rights, interests, liabilities, duties and obligations of the society or societies-coming into existence. A copy of the proposed order has also to contain all this information regarding the society or societies to be affected by the order. It is only after these matters are made known to the society or its members or creditors that they can be in a position to raise objections and also to make suggestions and make up their minds to withdraw from the membership or to withdraw their deposits. If the relevant material concerning the constitution, property, rights, interests, liabilities, duties and obligations of the concerned society or societies as the case may be is not made known the purposes of the provisions cannot be achieved as no effective objections and suggestions can be made by the society, its members or creditors. We have purposely reproduced the objections mentioned in the written statement allegedly raised by the representatives of the petitioner-society before the Assistant Registrar, with a view to show that the material regarding the constitution, property, rights, interests, liabilities, duties and obligations etc., having not been mentioned in the proposed order regarding the societies involved in the amalgamation order, the said information had to be supplied by the Assistant Registrar to the alleged representatives of the Society, who, according to the Assistant Registrar, felt satisfied when all such information was brought to their notice. We are, therefore, of the

The Amerheri Co-operative Agricultural Service Society, etc., v. The State of Haryana, etc. (Dhillon, J.)

considered opinion that the impugned orders, copies of which are Annexures 'P-3' and 'P-5' to the writ petition, are liable to be quashed, as the same fail to comply with the mandatory provisions of sub-sections (8) and (9) of Section 13 of the Act, as no detailed material has been supplied to the petitioner society so that effective objections and suggestions could be made.

(17) The impugned orders are also liable to be quashed on another ground. The scheme of the provisions of sub-section (8) of Section 13 of the Act clearly goes to show that the Registrar has to apply his mind to the facts and circumstances of a society or societies with a view to be satisfied that it is essential or desirable in the interest of a society or societies that two or more societies be amalgamated or any society should be divided to form two or more societies. In the present case as is clear, the impugned orders have been passed because of the directions given by the various higher authorities, keeping in view the decision of the Central Committee on Co-operatives and the guidelines mentioned in the earlier part of the judgment were directed to be taken into consideration for ordering the amalgamation. It has been specifically alleged in the petition that the decision has been taken at the Government level to reduce the number of Agricultural Service Societies from about 6600 to about 2000 and in view of the directions given by the Registrar, the impugned orders have been passed. This fact is also clear from the return itself. The Registrar having been vested with authority under sub-section (8) of section 13 of the Act, has to apply his mind keeping in view the guidelines given by the Legislature and is not to be dictated by the higher authorities to exercise such power on consideration which are not germane to the provisions of the Act. No doubt certain guidelines laid down by the Central Committee on Co-operatives are helpful for the better administration of the societies by the hierarchy of the Cooperative Department, but some of the said guidelines are not at all germane to the guidelines given by the Legislature in sub-section (8) of section 13 of the Act. For instance, the guideline that there should be one co-operative society in a Patwar Circle has nothing to do with the guidelines provided in sub-section (8) of section 13. Since the impugned orders have been passed under the directions issued by the higher authorities keeping in view certain guidelines which are not germane to the provisions of sub-section (8) of section 13 of the Act, the said orders are, therefore, liable to be quashed.

(18) For the reasons recorded above, this writ petition is allowed and the impugned orders, copies of which are Annexures 'P-3' and 'P-5' with the writ petition, are hereby quashed. The Registrar may proceed with the matter in accordance with law if he so decides to amalgamate, the petitioner-society. However, there will be no order as to costs.

Harbans Lal, J.—I am in agreement in entirety and have nothing to add.

N. K. S.

CIVIL MISCELLANEOUS.

Before S. S. Sandhwalia and S. C. Mital, JJ.

SADHU RAM AND ANOTHER,—*Petitioners.*

versus

THE STATE OF HARYANA, ETC.,—*Respondents.*

Civil Writ No. 2842 of 1973.

February 3, 1976.

Punjab Co-operative Societies Act (XXV of 1961) (as amended in Haryana)—Sections 19, 23 and 26—Punjab Co-operative Societies Rules, 1963—Rule 23 and Appendix 'C' (as it stood in May, 1973)—Bye-laws of a Co-operative Society providing for indirect election through delegates only—Whether violate Appendix 'C'—Election held in accordance with such bye-laws—Whether invalid

Held. that from a reading of the two definitions of 'candidate' and 'voter' given in rules 1(a) and (g) of Appendix 'C' framed under Rule 23 of the Punjab Co-operative Societies Rules 1963, it is clear that a person cannot be a candidate unless he is first a voter. To qualify for being a voter, two conditions are prescribed, namely, that he is either to be a shareholder of a Society or an authorised representative of a member Co-operative Society. It is evident that either of the persons satisfying these two qualifications is intended to and has been vested by the law with the right to vote. The statutory provisions make no mention either expressly or by necessary implication of an election through the media of delegates only or further that a member will not have a vote of his own and shall exercise the same only through an indirect manner. The definitions do not countenance in theory, an election through delegates only, or what may be called as a strictly indirect mode of election. Part II of Appendix 'C', which