***LIST OF DATES AND EVENTS***

- Residents Welfare Association, Sector-10, Gurgaon is a duly Registered Society under the Registration of Societies Act, 2012 with the registration No.900145 dated 24.12.2012.

- The function of the society is to look after the general issues such as Civil Engineering, Electrical, Horticulture, Telecommunication and provide Civil Facilities and Amenities to the residents and all other works as described in the Memorandum of Resident Welfare Association, Sector-10, Gurgaon.

- The said Association was earlier registered under the Old Act and thereafter revised certificate of Registration of Society was issued on dated 24th December, 2012 under the new Act and a revised Registration was also issued to the Society, hence the Association has been duly registered under the Societies Registration Act, 2012.

18.5.2014 There are approximately 900 members of the Residents Welfare Association, Sector 10, Gurgaon and out of which 646 members have exercised their right of vote in the election held on 18.05.2014 to elect the Governing Body of Residents Welfare Association for 2014 -2016.

- In the election held on 18.5.2014, present petitioner was elected as President, Vinod Sharma as General Secretary, Nikesh Raj Yadav as Sr. Vice President, Viresh Kumar Jangra as Vice President, Smt. Santosh Sharma as Joint Secretary and Shri Dharam Bir Yadav as Cashier.

21.5.2014 In this regard, intimation was sent to the Registrar, Societies and Welfare, Gurgaon on 21.5.2014.

26.5.2014 Respondents No.4 and 5 alleged to have made a complaint to the Respondent No.3 to the effect that the Management of Association is conducting the election without adopting the procedure as provided under the Act, especially violating the clause of Collegium and the respondent No.3 recommended the same to the respondent No.2 to take decision in this regard, vide letter dated 26.05.2014.

- Respondent No.4 and 5 without waiting the decision of respondent No.2 on the recommendation made by respondent No.3, filed a petition U/s 40 of the Haryana Registration and Regulation of Societies Act, 2012 (hereinafter referred to as the Act) befor respondent no.2 for declaring the election of Association held on 18.5.2014 as null and void.

- In the said petition, except the present petitioner who has been elected as President, none of other elected members have been arrayed parties.

6.11.2014 Respondent No.2 without application of mind and without granting opportunity of being heard to other elected members of the Governing Body , passed the Impugned order dated 06.11.2014 whereby the election of Society held on 18.05.2014 has been held as null and void.

- Feeling dis-satisfied with the order dated 06.11.2014, the present petitioner preferred an appeal before the respondent No.1.

8.5.2015 Respondent No.1 without touching the submissions made by the petitioner and without taking into consideration the relevant provisions of law, dismissed the said appeal vide its order dated 08.05.2015.

- As per section 40 of the Haryana Registration and Regulation of Societies Act, 2010, there must be atleast 1/4th of the members of the Governing Body or the collegium for filing election petition against the process of election held on 18.05.2014 before the District Registrar or State Registrar as the case may be. In the present case, the election has been challenged by only two persons whereas 1/4th members are required to do so. Moreover, there is no allegation or mala fide or malpractice rather the respondents No.4 and 5 have duly participated in the election held on 18.5.2014 and they have exercised their right of vote and hence they are estopped from challenging the election held on 18.5.2014.

- Respondents No.4 and 5 themselves have participated in the election and have exercised their right of votes but when their close contestant lost the election, they have filed the petition on totally vague and baseless allegation.

- In the present case, only two members of the association i.e. one Sanjay Kumar, Vipin Malhotra have filed the above said election petition before the State Registrar. Meaning thereby the requirement of the Act have not been fulfilled by raising the such issue regarding election, hence the petition itself is barred by law under the Act.

- The State Registrar have no right to entertain such petition which was not even filed by the 1/4th members of the association and the same was liable to be dismissed at initial stage as the petition was not supported by the 1/4th members of the Association, otherwise also Sanjay Kumar who pertain himself to be resident of House No.305, Sector-10, Gurgaon has already sold the above said house to somebody else and seizes to reside over for the last more than two years and in such a situation his membership in the above said association automatically seizes as he sold the residential house from Section 10. Now only one member left i.e. Vipin Malhotra who filed the above said petition regarding election and the same is not maintainable as per law.

- The petition filed by respondents No.4 and 5 was itself not maintainable because except the present petitioner, none of other elected members have been arrayed as party in the election. As per law, no one should be condemned unheard. In this case, the election held on 18.5.2014 has been declared null and void, meaning thereby the election of Sr. Vice President, Vice President, General Secretary, Joint Secretary and Cashier has also been set aside but they have never been granted an opportunity of hearing at any point of time.

- The petition filed by the respondents No.4 and 5 is also not maintainable on account of non joinder of necessary parties because in the petition, the Society i.e. Residents Welfare Association has not been arrayed as party. In the absence of Society or its officer bearers, the Impugned orders could not have been passed by the respondents No.1 and 2.

- There is no allegation of mala fide or mal practice in the election held on 18.5.2014 and in the absence thereof, election held on 18.5.2014 could not have been set aside.

- Hence this writ petition.

***CHANDIGARH (SURESH AHLAWAT)***

***DT:25.6.2015 ADVOCATE***

***COUNSEL FOR THE PETITIONER***

***IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.***

***\*\*\****

C.W.P.NO.--------OF 2015

***MEMO OF PARTIES***

Dharambir Dalal son of Shri Kehar Singh, resident of House NO.726, Sector-10, Gurgaon, (President of Residents Welfare Association, Sector-10, Gurgaon).

-Petitioner

V/s

1. Director of Industries and Commerce-cum-Registrar General of Societies, Haryana, 30 Bays Building, Sector 17, Chandigarh.

2. State Registrar of Societies, Haryana, Dept. of Industries and Commerce, 30 Bays Building, Sector 17, Chandigarh.

3. District Registrar of Societies, Near Commissioner’s Residence, Civil Lines, Gurgaon.

4. Sanjay Kumar Madan son of Shri Ramesh Chand r/o H.No.305, Sector 10, Gurgaon.

5. Vipin Malhotra son of Shri Ramesh Malhotra, r/o H.No.944, Sector 10, Gurgaon.

-Respondents

Civil writ petition under Articles 226/227 of the Constitution of India praying for issuance of a writ in the nature of Certiorari for quashing the Impugned order dated 08.05.2015 (Annexure P-7) passed by respondent No.1 as well as Order dated 06.11.2014 (Annexure P-5) passed by Respondent No.2 whereby the election of Residents Welfare Association, Sector 10, Gurgaon, held on 18.05.2014 has been held to be null and void, which is contrary to Provisions of Section 40(1) of the Haryana Registration and Regulation of Societies Act, 2012;

AND

It is further prayed that operation of the Impugned order dated 08.05.2015 (Annexure P-7) passed by respondent No.1 as well as Order dated 06.11.2014 (Annexure P-5) passed by Respondent No.2 may kindly be stayed, during the pendency of this writ petition;

AND/OR

Issue any other appropriate writ, order or direction which this Hon’ble court may deem fit and proper in the facts and circumstances of this case.

***RESPECTFULLY SHOWETH:-***

1. That the petitioner is resident of District Gurgaon, Haryana and hence being the citizen of India is competent to invoke extra ordinary writ jurisdiction of this Hon’ble court under Articles 226/227 of the Constitution of India.
2. That as a matter of fact, Residents Welfare Association, Sector-10, Gurgaon is a duly Registered Society under the Registration of Societies Act, 2012 with the registration No.000145 dated 24.12.2012. The function of the society is to look after the general issues such as Civil Engineering, Electrical, Horticulture, Telecommunication and provide Civil Facilities and Amenities to the residents and all other works as described in the Memorandum of Resident Welfare Association, Sector-10, Gurgaon.
3. That the said Association was earlier registered under the Old Act and thereafter revised certificate of Registration of Society was issued on dated 24th December, 2012 under the new Act and a revised Registration was also issued to the Society, hence the Association has been duly registered under the Societies Registration Act, 2012.
4. That there are approximately 900 members of the Residents Welfare Association, Sector 10, Gurgaon and out of which 646 members have exercised their right of vote in the election held on 18.05.2014 to elect the Governing Body of Residents Welfare Association. In the election held on 18.5.2014, present petitioner was elected as President, Vinod Sharma as General Secretary, Nikesh Raj Yadav as Sr. Vice President, Viresh Kumar Jangra as Vice President, Smt. Santosh Sharma as Joint Secretary and Shri Dharam Bir Yadav as Cashier. A copy of Election result dated 18.5.2014 is appended as **ANNEXURE P1**. In this regard, intimation was sent to the Registrar, Societies and Welfare, Gurgaon on 21.5.2014, copy enclosed as **ANNEXURE P2**.
5. That the some members of the Society along with respondents No.4 and 5 alleged to have made a complaint dt. 12.5.2014 to the Respondent No.3 to the effect that the Management of Association is conducting the election without adopting the procedure as provided under the Act, especially violating the clause of Collegium and the respondent No.3 recommended the same to the respondent No.2 to take decision in this regard, vide letter dated 26.05.2014, copy enclosed herewith as **ANNEXURE P3**.
6. That the respondent No.4 and 5 without waiting the decision of respondent No.2 on the recommendation made by respondent No.3, filed a petition U/s 40(i) of the Haryana Registration and Regulation of Societies Act, 2012 (hereinafter referred to as the Act) for declaring the election of Association held on 18.5.2014 as null and void. In the said petition, except the present petitioner who has been elected as President, none of other elected members of Governing Body have been arrayed parties. A copy of said petition is appended as **ANNEXURE P4**.
7. That the respondent No.2 without application of mind and without granting opportunity of being heard to other elected members, passed the Impugned order dated 06.11.2014 whereby the election of Society held on 18.05.2014 has been held as null and void. A copy of Impugned order dated 06.11.2014 is appended as **ANNEXURE P5**.
8. That feeling dis-satisfied with the order dated 06.11.2014, the present petitioner preferred an appeal before the respondent No.1, and respondent no.1 on dated 24.3.2015 granted the stay on the order passed by the respondent no.2 copy of appeal enclosed as **ANNEXURE P-6** but the respondent No.1 without touching the submissions made by the appellant and without taking into consideration the relevant provisions of law, dismissed the said appeal vide its order dated 08.05.2015, copy enclosed as **ANNEXURE P7**.
9. That the Impugned orders dated 08.05.2015 and 06.11.2014 are illegal, whimsical, contrary to law as well as provisions of the Haryana Registration and Regulation of Societies Act, 2012 and the same are liable to be quashed inter-alia on the following amongst the others:-

***G R O U N D S***

1. Because as per section 40(i) of the Haryana Registration and Regulation of Societies Act, 2010, there must be atleast 1/4th of the members of the General Body or the collegium for filing petition before State Registrar, where as , petition filled by the only two members i.e. respondent no.5 & 6 which is not maintainable **The Section 40 of the Act is reproduced as under:-**

**“40. Settlement of dispute arising from election of Collegium or Governing body and its office-bearers** (i) The Registrar, on a reference made to him by the District Registrar or by at least one-fourth of the members of the General Body or the Collegium, as the case may be, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of any elected member or office-bearer to the collegium or governing body as the case may be, and may pass such orders in respect thereof, as he deems appropriate:

**Provided that the election of any or all the members of the Collegium or the office bearer of the Governing Body shall be set aside where the Registrar is satisfied:-**

1. **That any corrupt practice has been committed by such officer bearer(s); or**
2. **that the nomination of any candidate has been improperly rejected; or**
3. **that the result of the election, in so far as it concerns such officer bearer, has been materially affected by the improper acceptance o any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or does not comply with the provisions of any Bye-law.**”

In the present case, petition has been filled before the State Registrar i.e respondent 2 by only two persons i.e respondent no.4 & 5 whereas 1/4th members are required to do so. where in this case ,there are approximately 900 members of the Resident Welfare Association and out of which 646 members have exercise their vote on dated 18.05.2014 to elect the Governing Body of Resident Welfare Association. Moreover, the respondents No.4 and 5 have duly participated in the election and have exercised their right of vote then both the orders passed by the respondent no.1 & 2 liable to be set-aside on this ground alone .

1. Because the petition filed by respondents No.4 and 5 was itself not maintainable because except the President, none of other elected members of the Governing Body have been arrayed as party in the petition. As per law, no one should be condemned unheard. In this case, the election held on 18.5.2014 has been declared null and void, meaning thereby the election of Sr. Vice President, Vice President, General Secretary, Joint Secretary and Cashier has also been set aside but they have never been granted an opportunity of hearing at any point of time.
2. Because the petition filed by the respondents No.4 and 5 is also not maintainable on account of non joinder of necessary parties because in the petition, the Society i.e. Residents Welfare Association and other office bearers of Governing Body have not been arrayed as parties . In the absence of Society and its office bearers, the Impugned orders could not have been passed by the respondents No.1 and 2. Hence the Impugned orders are illegal, arbitrary, whimsical and without jurisdiction.
3. Because the election of Residents Welfare Association was scheduled to be held on 18.5.2014 as the time of the existing governing body was came to an end and election for new governing body was to be held on 18.05.2014 and it was the responsibility of the outgoing office bearers of the Residents Welfare Association to conduct the election after compliance of the provisions of the new Act. The outgoing office bearers has issued the notification which was circulated within the society of Sector-10, Gurgaon. It was the duty of the office bearer to disclose any letter received from the District Registrar before commencement of election process, but the letter as find mentioned in the orders was never disclosed to the members of the society at any point of time before of the commencement of the election.
4. Because neither the letter dated 13.05.2014 was ever received by the Resident Welfare Association as the same has not been mentioned in the daily diary register nor the same was found to be issued by the District Registrar, Gurgaon as there is no dispatch number or issuance of the said letter to the Resident Welfare Association, Sector-10, Gurgaon. Hence it is clear that no such letter was either received at any point of time by the association and the same can be verified from the record. The District Registrar never issued any letter to the Resident Welfare Association, Sector-10, Gurgaon regarding the election as per collegium. It is also pertinent to mention here that the outgoing office bearers has duly informed the District Registrar and the local police regarding conducting of election on dated 18.05.2014 even then the District Registrar never objected or informed at any point of time that the election should have been conducted as per collegium under the new Act.
5. Because the outgoing office bearers of the Resident Welfare Association, Sector-10, Gurgaon were acting illegally as wife of Yogesh Kaushik (Meena Kaushik) and elder brother of respondent no.5 Vipin Malhotra (Nitin Malhotra) were contesting election to be held on 18.05.2014 and on other side they were himself liable for conducting fair election in the society. It is only after Meena Kaushik and Nitin Malhorta lost the election, the respondents No.4 and 5 have filed the petition challenging the election. Moreover, the respondents No.4 and 5 have duly participated in the election and have exercised their right of vote and also made the complaint before the election to the Distt. Registrar and hence they are estopped from challenging the election. If the election was not being held as per new Act, the respondents No.4 and 5 should not have participated in the election but once they have participated in the election and have exercised their right of vote, they are estopped from challenging the election held on 18.5.2014.
6. Because the elected body i.e. the outgoing office bearer have conducted the said election and as per the definition of the collegium the elected body have a right to conduct the election, meaning thereby the election was conducted by the elected members of the association being collegium of the association and there is no allegation that the election were held with using of unfair means either the election were held by the returning officer in a free and fair manner. The videography was also conducted and the police officials of the local police station were also present during the election process. The entire election were duly supported by all the residents of society, except the above said technical issue regarding collegium there is no allegation regarding the election process. The elections were held in a free and fair manner and fully supported by all the members of the Resident Welfare Association.
7. Because as stated above, there are approximately 900 members of the Resident Welfare Association, Section 10, Gurgaon and out of which 646 members have exercise their vote on dated 18.05.2014 to elect the Governing Body of Resident Welfare Association and no non-member participated in the election. As per section 40 of the Haryana Registration and Regulation of Societies Act, 2010, there must be atleast 1/4th of the members of the Governing Body or the collegium for filing petition against the process of election held on 18.05.2014 before State Registrar .
8. Because the State Registrar have no right to entertain such petition which was not even filed by the 1/4th members of the association and the same was liable to be dismissed at initial stage as the petition was not supported by the 1/4th members of the Association, otherwise also Sanjay Kumar who pertain himself to be resident of House No.305, Sector-10, Gurgaon has already sold the above said house to somebody else and seizes to reside over for the last more than two years and in such a situation his membership in the above said association automatically ceases as he sold the residential house from Section 10. Now only one member left i.e. Vipin Malhotra who is the real brother of Nitin Malhotra who contested the election for the post of Sr. Vice President, filed the above said petition regarding election and the same is not maintainable as per law.
9. Because there is no allegation of mala fide or mal practice in the election held on 18.5.2014 and in the absence thereof, election held on 18.5.2014 could not have been set aside. But the respondents No.1 and 2 have exceeded their jurisdiction not vested with them.
10. Because the election held on 18.5.2014 is for two years i.e. 2014 to 2016. The Association has already completed one year and only one year remains. In such situation, it is not appropriate to set aside the election of society in mid term. Moreover, during the last one year, there has been no complaint or any sort against any of the elected members, meaning thereby, the majority/mandate is with the elected members.
11. That the Appellant Authority i.e. respondent no.1 has been appointed the Administrator only on the ground that as per order of the State Registrar dt. 6.11.2014 the present Governing Body has to conduct the election within 3 months but same has not taken any action for conducting the election even after lapse of more then six months.

Here, it is pertinent to mention , in the appeal filled by the petitioner before the Registrar –General of Societies i.e respondent no.1 , stay has been granted on dt. 24.3.2015 and due to stay the office of the petitioner is going continuously and appointment of Administrator is liable to be set-aside on this ground .Now as per rule it is the duty of the out- going governing body to conclude all the formalities as per Rule 32 , which is reproduced below:-

**Rule-32,**

**Constitution of the General Body/Collegiam of existing Societies.**

1. Where a Society, registered prior to the coming into force of the Act , consists of more then three handered members , it shall convene a meeting of its members to consider and resolve through a special resolution at least six months before the date for election of Governing Body:-

(i) to continue with the present number of members, or

(ii) re- determined the number of members of the General Body by prescription of a revised criteria, including member ship fee and annual subscription or special additional charges:

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1. That now the complete these formalities ad-hoc committee has to required at least six months period because first the list of members has to be finalized then as per rule -39 for the constitution of the collegium electoral colleges has to be determined and then if any body have any objection regarding the same has to be approached to District Registrar.

10. That the main law points involved in the present writ petition are :-

i) Whether the Impugned orders dated 8.5.2015 and 6.11.2014 are illegal and without jurisdiction ?

ii) Whether the Impugned orders have been passed in violation of Section 40 of the Act ?

iii) Whether the respondents authorities have exceeded their jurisdiction while passing the Impugned orders?

iv) Whether in the absence of the society as well as its officer bearer, impugned orders could have been passed by the respondents authorities ?

v) Whether the Impugned orders have been passed in violation of principle of natural justice ?

vi) Whether in the absence of any allegation of mala fide or mal practice, election of the petitioner can be set aside ?

vii) Whether the private respondents No.4 and 5 are estopped from challenging the election held on 18.5.2014 especially when they have participated in the election and have exercised their right of vote?

viii) Whether a grave and manifest injustice has been done to the petitioner ?

11. That no such or similar writ petition has earlier been filed by the petitioner either in this Hon’ble court or in the Hon’ble Apex court nor pending before any Sessions Court.

12. That the petitioner has been left with no other alternative remedy of appeal or revision except to approach this Hon’ble court by way of present writ petition.

In view of the submissions made above, it is respectfully prayed that this Hon’ble court may be pleased summon the whole record and after scrutnising the same, this Hon’ble court may be pleased to issue:-

1. *Issue a writ in the nature of* Certiorari for quashing the Impugned order dated 08.05.2015 (Annexure P-7) passed by respondent No.1 as well as Order dated 06.11.2014 (Annexure P-5) passed by Respondent No.2 whereby the election of Residents Welfare Association, Sector 10, Gurgaon, held on 18.05.2014 has been held to be null and void, which is contrary to Provisions of Section 40(1) of the Haryana Registration and Regulation of Societies Act, 2012;
2. It is further prayed that operation of the Impugned order dated 08.05.2015 (Annexure P-7) passed by respondent No.1 as well as Order dated 06.11.2014 (Annexure P-5) passed by Respondent No.2 may kindly be stayed, during the pendency of this writ petition;
3. Appointment of the Administrator of the Resident Society by the respondent no.1 be restraint.
4. *Issue any other appropriate writ, order or direction which this Hon’ble court may deem fit and proper in the facts and circumstances of this case;*
5. *Filing of certified/true typed copies of the Annexures be dispensed with and petitioner be permitted to file photostat copies of Annexures P5 and P7;*
6. *Advance notices upon the respondents may kindly be dispensed with;*

It is further prayed that operation of the Impugned order dated 08.05.2015 (Annexure P-7) passed by respondent No.1 as well as Order dated 06.11.2014 (Annexure P-5) passed by Respondent No.2 may kindly be stayed, during the pendency of this writ petition.

CHANDIGARH

DT:25.6.2015

THROUGH COUNSEL

***( SURESH AHLAWAT )***

***ADVOCATE***

***COUNSEL FOR THE PETITIONER***

***VERIFICATION:-***

Verified that the contents of paras 1 to 9, 11 and 12 of the writ petition are true and correct to my knowledge while the submissions made in para No.10 of the writ petition are believed to be correct as per legal advice of my counsel. No part of it is false and nothing has been concealed therefrom.

CHANDIGARH

DT:25.6.2015

***IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.***

C.W.P.No.---------OF 2015

Dharambir Dalal -Petitioner

V/s

Director of Industries and Commerce-cum-Registrar General of Societies, Haryana and ors. .Respodents

Affidavit of Dharambir Dalal son of Shri Kehar Singh, resident of House NO.726, Sector-10, Gurgaon, (President of Residents Welfare Association, Sector-10, Gurgaon)

I, the above named deponent do hereby solemnly affirm and declare on oath as under:-

1. That the contents of paras 1 to 9, 11 and 12 of the writ petition are true and correct to my knowledge while the submissions made in para No.10 of the writ petition are believed to be correct as per legal advice of my counsel. No part of it is false and nothing has been concealed therefrom.

CHANDIGARH

DT:29.6.2015

VERIFICATION:

Verified that the contents of para 1 of my above affidavit are true and correct to my knowledge. No part of it is false and nothing has been concealed therefrom.

CHANDIGARH

DT:29.6.2015

Annexure P-1

***RWA SEC-10 (ELECTION RESULT DATED 18/05/2014)***

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **SR. NO.** | **NAME OF CANDIDATE** | **POST** | **OBTAINED VOTES** | **CANCELLED VOTES** | **WINNER’S NAME** |
| 1. | SH. DHARMBIR DALAL | PRESIDENT | 329 | 43 | SH. DHARMBIR DALAL |
| 2. | SH. SUMER SINGH YADAV | PRESIDENT | 274 | -------- |
| 3. | SH. VINOD SHARMA | GENERAL SECRETARY | 371 | 47 | SH. VINOD SHARMA |
| 4. | SMT. MEENA KAUSHIK | GENERAL SECRETARY | 228 | --------- |
| 5. | SH. NIKESH RAJ YADAV | SR. VICE PRESIDENT | 351 | 45 | SH. NIKESH RAJ YADAV |
| 6. | SH. NITIN MALHOTRA | SR. VICE PRESIDENT | 250 | --------- |
| 7. | SH. VIRESH KUMAR JANGRA | VICE PRESIDENT | 345 | 46 | SH. VIRESH KUMAR JANGRA |
| 8. | SMT. SOMA KATIYAR | VICE PRESIDENT | 255 | --------- |
| 9. | SMT. SANTOSH SHARMA | JOINT SECRETARY | 337 | 54 | SMT. SANTOSH SHARMA |
| 10. | SH. YOGENDER SINGH | JOINT SECRETARY | 255 | --------- |
| 11. | SH. DHARAM BIR YADAV | CASHIER | 360 | 45 | SH. DHARAM BIR YADAV |
| 12. | SMT. SAVITA JANGRA | CASHIER | 241 | --------- |
|  | TOTAL VOTE POLLED | = | 646 |  |  |

A.P.O. NO.-1 A.P.O. NO.-2

A.P.O. NO.-3 A.P.O. NO.-4

A.P.O. NO.-5 P.O-

True Copy

ADVOCATE

Annexure P-2

21st May, 2014

To

The Registrar,

Societies & Welfare,

Gurgaon.

Subject: Intimation and documents submission for New RWA Elected for 2014-2016.

Respected Sir,

This is to inform you that, to complete the election formalities for Resident Welfare Association for the year 2014-2016, General Body Meeting was called on 27.04.2014 and the decision has been taken to constitute the election committee in General Body Meeting and six members have been selected to conduct the election as One Returning Officer and the five Assistant Returning Officers. The election committee decided the dates for Nomination, Withdrawal and election as 04.05.2014, 11.05.2014 and 18.05.2014 respectively. The election has been conducted by the election committee with the agents of the both party candidates and the videography has been done for the complete election process up to the declaration of the result. For the security and safety the concerned police station has been inform and taken their help to avoid any type of dispute.

We are submitting photocopy of the documents to update the record of your office. May please register the same and provide the certificate. We can submit the CD of videography if required by you.

Thanking you.

Yours truly,

President, RWA, Sector-10, Gurgaon

General Secretary, RWA, Sector-10, Gurgaon

Encl: 1. Form XVII - A & B Duly completed

2. Fee-Challan-Form

3. Returning Officer Forwarding Letter for committee and result

4. Election Result Copy

5. Voter List copy

6. Dummy Ballot Paper copy

7. General Body Meeting Notice

8. Notice issued by the election committee

9. Copy of hording and the convincing material distributed by both the parties.

True Copy

ADVOCATE

ANNEXURE P-3

From

District Registrar

Firms and Societies

Gurgaon.

To

The State Registrar of Societies, Haryana

Department of Industries & Commerce, Haryana

Chandigarh.

Memo No GGN.DIC.DRI/107 Dated 26.5.2014

Sub: Election of RWA Sector 10, Gurgaon and Implementation of Haryana Registration & Regulation of Societies Act/Rules, 2012 as amended.

This office had received a complaint on 12.5.2014 from some members of RWA Sector 10 Gurgaon vide which they had claimed that the members of the association are more than 900 and management of association is conducting the election without adopting the procedure under the provisions of Haryana Registration & Regulation of Societies Act, 2012 as amended, especially violating the clause of COLLEGIUM i.e. Section 30(1) of HRRS Act, 2012. A copy each of the complaint & Section 30(1) of HRRS Act, 2012 were sent to the management of Association with the direction issued vide this office letter No.75 dated 13-5-2014 to conduct the election of association strictly under the provisions of the Haryana Registration & Regulation of Societies Act, 2012 as amended.

This office has now received following documents (Copies enclosed) for the approval of new elected Committee for which election were stated to have been held on 18-5-2014 without following the procedure of Collegiums(s) since the number of members of the Society are more than 300 as per voter list received alongwith documents, even after direction issued by this office on 13-05-2014 to constitute the Collegiums(s) under Section 30(1) of HRRS Act, 2012:-

(a) Form XVII-A & B duly completed

(b) Fee Challan form

(c) Returning Officer Forwarding letter for committee and result

(d) Election Result Copy

(e) Voter list Copy

(f) Dummy Ballot Paper Copy.

(g) General body meeting notice.

(h) Notice issued by election committee.

(i) Copy of hording and convincing material distributed by both the parties.

Sh. Sanjay Kumar Madan R/o H.No.305, Sector-10, Gurgaon & others on 21-5-2014 have petitioned the State Registrar of Societies, Haryana, Chandigarh and a copy of the same has been delivered at this office, vide which they have claimed that election of Management Committee were conducted without carving the collegiums(s) as the number of members are more than 300 without following the provisions contained in Section 30(1) of Haryana Registration & Regulation of Societies Act, 2012 as amended.

In view of the position explained above the case of the Residents Welfare Association Sector 10, Gurgaon is recommended to the State Registrar of Societies, Haryana, Chandigarh to take decision on the petition as per provisions contained in Section 40 of Haryana Registration & Regulation of Societies Act, 2012 as amended.

DA/as above. Sd/- Distt. Registrar

Firm & Societies

Gurgaon

Endst. No.GGN/DIC/DRI/108-111 Dated 26-5-2014

A copy of the above is forwarded to the following for information:-

1. Sh. Sanjay Kumar Madan, H.No.305, Sector-10, Gurgaon – wrt to their petition dated 21.05.2014

2. The President/Secretary, Residents Welfare Association, Sector 10 Gurgaon

3. Shri Muni Ram, Returning Officer, Residents Welfare Association, Sector 10 Gurgaon H.No.265, Sector 10, Gurgaon.

4. Shri Dharamvir Dalal, H.No.726, Sector 10, Gurgaon.

Sd/- Distt. Registrar

Firms & Societies

Gurgaon

True Copy

ADVOCATE

Annexure P-4

***BEFORE THE REGISTRAR, FIRMS AND SOCIETIES, HARYANA, CHANDIGARH.***

PETITION NO. /2014

*IN THE MATTER OF:*

1. Sanjay Kumar Madan

S/o Sh. Ramesh Chand,

R/o H.No.305, Sector-10,

Gurgaon- 122001 (Haryana)

2. Vipin Malhotra

S/o Sh. Ramesh Malhotra,

R/o H.No.944, Sector-10,

Gurgaon- 122001 (Haryana)

-Petitioners

VERSUS

1. Sh. Dharmvir Dalal

S/o Not known

R/o H.NO.726, Sector-10,

Gurgaon- 122001

2. Sh. Hari Prakash Kaushik,

S/o Not known

R/o H.No.598, Sector-10,

Gurgaon

3. Sh. Muni Ram

S/o Not Known

R/o H.No.265, Sector-10,

Gurgaon

4. Distt. Registrar,

Firms & Societies, Gurgaon

-Respondents

PETITION UNDER SECTION 40 OF THE HARYANA REGISTRATION & REGULATION OF SOCIETIES ACT, 2012 ON BEHALF OF PETITIONERS FOR DECLARING THE ELECTIONS NULL AND VOID HELD ON 18.05.2014 OF RESIDENT WELFARE ASSOCIATION, SECTOR-10, GURGAON.

***RESPECTFULLY SHOWETH:***

It is submitted as under:-

1. That Sanjay Kumar Madan & Vipin Malhotra are the petitioner no.1 & 2 and are residing in Sector-10 and are members of the Resident Welfare Association, Sector-10, Gurgaon.

2. That respondent no.1, Dharmvir Dalal, is the newly elected President of RWA, Sector-10, Gurgaon.

3. That respondent no.2, Hari Prakash Kaushik is the Ex-President of RWA, Sector-10, Gurgaon.

4. That respondent no.3, Muni Ram, is the Election-in-charge in whose supervision the latest election of RWA, Sector-10, Gurgaon was conducted on 18-05-2014.

5. That respondent no.4 is the Distt. Registrar an officer U/S 3 of the Act and supervise the activities of the societies in the Distt.

6. That there are approximately 900 members of the RWA, Sector-10, Gurgaon.

7. That as per the provisions contained in Section 30(1) of HRRS Act-2013 the election of societies having more than 300 members should be held through Collegium system.

8. That in RWA, Sector-10, Gurgaon which has approximately 900 members the election was held on 18.05.2014 as per provisions of old rules i.e. direct election for the post of President, General Secretary, Senior Vice President, Vice President, Joint Secretary & Cashier.

9. That on 09-05-2014, some members of the RWA, Sector-10, Gurgaon wrote a letter to the Distt. Registrar, Firms and Societies, Gurgaon for the rescheduling of election of RWA, Sector-10, Gurgaon under the clause of 30(1) of HRRS Act, 2013.

10. That on 13-05-2014, the office of Distt. Registrar, Firms and Societies, Gurgaon was pleased to issue direction to the President/ Secretary, RWA, Sector-10, Gurgaon vide its letter no. GGN.DIC.DRI/75 dated 13-05-2014 for rescheduling the election of RWA, Sector-10, Gurgaon which was to be held on 18-05-2014 thereby directing them to conduct the election under the Collegium vide clause 30(1) of HRRS Act, 2013.

11. That the above mentioned orders of the Distt. Registrar were to be served upon the President i.e. Hari Prakash Kaushik, respondent no.2. But he refused to receive the same saying thereby he is no more the President of RWA, Sector-10, Gurgaon.

12. That on 18-05-2014, the appointed election in charge Sh. Muni Ram got conducted the election of RWA, Sector-10, Gurgaon thereby violating the Collegium required under clause 30(1) of HRRS Act, 2013.

13. That the election conducted on 18-05-2014 of RWA, Sector-10, Gurgaon are clearly in violation of provisions of clause 30(1) of HRRS Act, 2013 and also not caring for the direction issued by the Distt. Registrar, Gurgaon.

***PRAYER:-***

In view of the facts and circumstances mentioned above you are hereby prayed that the election held in RWA, Sector-10, Gurgaon on 18.05.2014 are to be declared null and void in the interest of justice.

CHANDIGARH PETITIONERS

DATED 21-05-2014 1. Sd/- Sanjay

2. Sd/- Vipin

THROUGH COUNSEL

SD/- NARESH GAMBHIR

KRISHAN MUNJAL,

ADVOCATES,

DISTT. COURTS, GURGAON.

True Copy

ADVOCATE

Annexure P-6

***BEFORE THE REGISTRAR GENERAL OF SOCIETIES, HARYANA, CHANDIGARH.***

\*\*\*\*

Appeal No.......... of 2015

Dharambir Dalal son of Kehar Singh, resident of House NO.726, Sector-10, Gurgaon, (President of Residents Welfare Association, Sector-10, Gurgaon).

-Appellant

Versus

1. Sanjay Kumar, resident of house No.305, Sector-10, Gurgaon.

2. Hari Parkash Kaushik son of Sadhu Ram, Ex-President of Residents Welfare Association, Sector-10, Gurgaon, resident of House No.598, Sector-10, Gurgaon.

3. Nitin Malhotra, Ex-Vice President of Residents Welfare Association, Sector-10, Gurgaon, resident of House No.944, Sector-10, Gurgaon.

4. Joginder Paul Yadav son of Umed Chand, Ex-General Secretary of Residents Welfare Association, Sector-10, Gurgaon, resident of House No.636, Sector-10, Gurgaon.

5. Mani Ram son of Hazri Lal, r/o House No.265, Sector 10, Gurgaon (Returning Officer, Resident Welfare Association Sector 10, Gurgaon).

6. District Registrar of Societies, Near Commissioner’s Residence, Civil Lines, Gurgaon.

7. State Registrar of Societies, Haryana, Department of Industries and Commerce, 30 Bays Building, Sector-17, Chandigarh.

-Respondents

Appeal under section 41 of Haryana Registration and Regulation of Societies Act, 2012 against the order passed by State Registrar of Societies, Haryana, Chandigarh dated 06.11.2014 received on 15.12.2014.

**Claim in appeal** For setting aside the order dated 06.11.2014 passed by the State Registrar of Societies, Haryana Chandigarh.

***Respectfully Showeth:***

1. That the order dated 06.11.2014 passed by State Registrar of Societies, Haryana, Chandigarh is against the principle of natural justice and deserves to be set aside on the following grounds.

2. That the association of the appellant i.e. Residents Welfare Association Sector-10, Gurgaon is a duly registered society under the Registration of Societies Act, 2012 with the registration No.00145 dated 24.12.2012. The function of the society is to look after the general issues such as civil engineering, electrical, horticulture, telecommunication and provide civil facilities and amenities to the resident and all other work as described in the memorandum of Resident Welfare Association, Sector-10, Gurgaon.

3. That the above said association earlier registered under the Old Act and thereafter revised certificate of registration of society was issued on dated 24th December, 2012 under the new Act and a revised registration was also issued to the society, hence the association have been registered under the Societies Registration Act, 2012. The copy of the bye-laws of the society is attached herewith as ***Annexure A-1.***

4.That the issue involved in the above said is that the election of Resident Welfare Association was to be held on 18.5.2014 as the time of the existing governing body was came to an end and election for new governing body was to be held on 18.05.2014 and it was the responsibility of the outgoing office bearers of the Residents Welfare Association to conduct the election after compliance of the provisions of the new Act. The outgoing office bearers has issued the notification within the society without complying the provisions of the Act for conducting election and the said notification was circulated within the society in sector-10, Gurgaon. The copy of the notification is attached herewith as ***Annexure A-2.***

5. That the act and conduct of the outgoing officer bearers as such that on one side they were organizing the electoral office and on another side they were participating in the election itself as the near relatives such as wife, brother of the office bearer are contesting elections for Resident Welfare Association, Sector-10, Gurgaon. The copy of the pamphlet attached as ***Annexure A-3***.

6. That it is the duty of the office bearer to disclose any letter received from the District Registrar before commencement of election process, but the letter as mentioned by the ex-President Hari Parkash never disclosed to the members of the society at any point of time before the commencement of the election and it was the duty of the outgoing office bearer to conduct the election as per new Act as per collegium, but the outgoing office bearer intentionally not disclosed the above said provision regarding conducting of election with the malafide intention.

7. That it is also pertinent to mention here that neither any letter dated 13.05.2014 even been received by the Resident Welfare Association as the same has not been mentioned in the daily diary register nor the same was found to be issued by the District Registrar, Gurgaon as there is no dispatch or issuance of the said letter to the Resident Welfare Association, Sector-10, Gurgaon. No such letter either received or issued at any point of time by the association, the same can be verified from the record. The District Registrar never issued any letter to the Resident Welfare Association, Sector-10, Gurgaon regarding the election as per collegium. It is also pertinent to mention here that the outgoing office bearers has duly informed the District Registrar and the local police regarding conducting of election on dated 18.05.2014 even then the District Registrar never objected or informed at any point of time that the election should have been conducted as per collegium under the new Act.

8. That the outgoing office bearer of the Resident Welfare Association, Sector-10, Gurgaon were acting illegally as wife of Yogesh Kaushik (Meena Kaushik) and elder brother of Vipin Malhotra (Nitin Malhotra) were contesting election to be held on 18.05.2014 and on other side they were himself liable for conducting fair election in the society.

9. That the elected body i.e. the outgoing office bearer have conducted the said election and as per the definition of the collegium the elected body have a right to conduct the election, meaning thereby the election was conducted by the elected members of the association being collegium of the association and there is no allegation that the election were held with using of unfair means either the election were held by the returning officer in a free and fair manner. The videography was also conducted and the police officials of the local police station were also present during the election process. The entire election were duly supported by all the residents of society, except the above said technical issue regarding collegium there is no allegation regarding the election process. The elections were held in a free and fair manner and fully supported by all the members of the Resident Welfare Association. The copy of the result of election is attached herewith as ***Annexure A-4.***

10. That after the election and constitution of new Governing Body of Resident Welfare Association, the respondent No.1 has filed petition for before the District Registrar for setting aside the election dated 18.05.2014 on the ground of the same was not conducted as per collegium under section 30(1) of HRRS Act, 2012 and the District Registrar referred the same to the State Registrar Societies, Haryana for taking decision on the petition filed by the Sanjay Kumar Madan and Vipin Malhotra which is totally illegal and against the provision of Section 40(1) of the Act as there must be 1/4th members of the association should have filed petition for setting aside the said election. Hence the very petition filed by the both of them is liable to be returned/ dismissed only on this score. But the Ld. District Registrar without going the maintainability of the petition referred the same to the State Registrar on dated 26.05.2015. The copy of the reference is attached herewith as ***Annexure A-5.***

11. That even otherwise also the order of the Ld. District Registrar and the State Registrar of Societies, Haryana is illegal, unjust, and liable to be set aside as the order dated 06.11.2014 passed by State Registrar of Societies, Haryana, Chandigarh on following grounds:-

i. That there are approximately 900 members of the Resident Welfare Association, Section 10, Gurgaon and out of which 646 members have exercise their vote on dated 18.05.2014 to elect the Governing Body of Resident Welfare Association.

ii. That as per section 40 of the Haryana Registration and Regulation of Societies Act, 2010, there must be atleast 1/4th of the members of the Governing Body or the collegium for filing election petition against the process of election held on 18.05.2014 before the District Registrar or State Registrar as the case may be. The Section 40 of the Act is reproduced as under:-

40. Settlement of dispute arising from election of Collegium or Governing body and its office-bearers (i) The Registrar, on a reference made to him by the District Registrar or by at least one-fourth of the members of the General Body or the Collegium, as the case may be, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of any elected member or office-bearer to the collegium or governing body as the case may be, and may pass such orders in respect thereof, as he deems appropriate.

iii. That in the present case, only two members of the association i.e. one Sanjay Kumar, Vipin Malhotra have filed the above said election petition before the State Registrar. Meaning thereby the requirement of the Act have not been fulfilled by raising the such issue regarding election, hence the petition itself is barred by law under the Act.

iv. That the State Registrar have no right to entertain such petition which was not even filed by the 1/4th members of the association and the same was liable to be dismissed at initial stage as the petition was not supported by the 1/4th members of the Association, otherwise also Sanjay Kumar who pertain himself to be resident of House No.305, Sector-10, Gurgaon has already sold the above said house to somebody else and seizes to reside over for the last more than two years and in such a situation his membership in the above said association automatically seizes as he sold the residential house from Section 10. Now only one member left i.e. Vipin Malhotra who filed the above said petition regarding election and the same is not maintainable as per law.

It is therefore respectfully prayed that the appeal may kindly be accepted and the order dated 06.11.2014 passed by Ld. State Registrar Societies, Haryana, Chandigarh may kindly be set aside in the interest of justice.

It is further prayed that the order dated 06.11.2014 passed by Ld. State Registrar Societies, Haryana may kindly be stayed during the pendency of the present appeal.

Note: Affidavit is attached herewith.

***Chandigarh (SANDEEP KOTLA)***

***Dated 06.02.2015 Advocate***

***Counsel for the appellant***

True Copy

ADVOCATE

***IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.***

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C.W.P.No------ OF 2015

Dharambir Dalal ------ -Petitioner

V/s

Director of Industries and Commerce-cum-Registrar General of Societies, Haryana and ors. - ------Respondents

***I N D E X***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Sr.No. | Particulars | Dated | Pages | Court fee |
| 1. | List of dates and events | 25.6.2015 | 1-7 |  |
| 2. | Civil writ petition | 25.6.2015 | 8-29 |  |
| 3. | Affidavit | 25.6.2015 | 30 |  |
| 4. | Annexure P1:  Election result | 18.5.2014 | 31 |  |
| 5. | Annexure P2:  Letter | 21.5.2014 | 32-33 |  |
| 6. | Annexure P3:  Letter | 26.5.2014 | 34-37 |  |
| 7. | Annexure P4:  Petition | 21.5.2014 | 38-42 |  |
| 8. | Annexure P5:  Impugned order | 6.11.2014 | 43-47 |  |
| 9. | Annexure P6:  Appeal | 06.2.2015 | 48-59 |  |
| 10. | Annexure P7:  Impugned order | 08.5.2015 | 60-66 |  |
| 11. | Power of Attorney |  | 67 |  |

Note: The main law points are contained in para At page of the writ petition.

ii) Relevant Rules/Statutes: Constitution of India & The Haryana Registration and Regulation of Societies Act, 2012.

iii) Any other case: Nil

iv) Caveat, if any : No

***CHANDIGARH (SURESH AHLAWAT)***

***DT:25.6.2015 ADVOCATE***

***COUNSEL FOR THE PETITIONER***

***IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.***

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C.W.P.No------OF 2015

Dharambir Dalal -Petitioner

V/s

Director of Industries and Commerce-cum-Registrar General of Societies, Haryana and ors.

.Respondents

TOTAL COURT FEE AFFIXED

Rs.

***CHANDIGARH (SURESH AHLAWAT)***

***DT:25.6.2015 ADVOCATE***

***COUNSEL FOR THE PETITIONER***

That the Appellant Authority has been appointed the Administrator only on the ground that as per order of the State Registrar dt. 6.11.2014 the present governing body has to conduct the election within 3 months but same has no for taken any action for conducting the election even after lapse of more then six months.

here it is pertinent to mention , in the appeal stay has been granted on dt. 24.3.2015 by the Registrar –General of Societies and due to stay the office is going continuously and appointment of Administrator is liable to be set-aside on this ground .Now as per rule it is the duty of the out- going governing body to conclude all the formalities as per Rule 32 , which is reproduced below:-

**Rule-32,**

**Constitution of the General Body/Collegiam of existing Societies.**

1. Where a Society, registered prior to the coming into force of the Act , consists of more then three handered members , it shall convene a meeting of its members to consider and resolve through a special resolution at least six months before the date for election of Governing Body:-

(i) to continue with the present number of members, or

(ii) re- determined the number of members of the General Body by prescription of a revised criteria, including member ship fee and annual subscription or special additional charges:

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4. That now the complete these formalities ad-hoc committee has to required at least six months period because first the list of members has to be finalized then as per rule -39 for the constitution for the collegium electoral colleges has to be determined and then if any body have any objection regarding the same has to be approached to Deputy Registrar.