

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-23455-2025
Date of Decision: August 13, 2025**

Mrs. Veena Devi

.....Petitioner

Vs

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present : Mr. Rajesh Kumar Kadian, Advocate for the petitioner.

ROHIT KAPOOR, J.

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India, for issuance of a writ in the nature of Certiorari to quash Rule 33 of the Haryana Registrations and Regulations of Societies Rules, 2012 (Annexure P-1) (hereinafter referred to as the 'HRRS Rules of 2012'), being ultra vires and unconstitutional. Further prayer has been made for quashing the order dated 28.02.2025 (Annexure P-2), whereby the maintenance charges have been fixed, in pursuance of the impugned Rule 33.
2. The essential facts required to be noticed for the disposal of the present petition are that the Government of Haryana vide its notification No.8/1/2018-4IB-II dated 22.6.2018 carried out certain amendments in the HRRS Rules of

2012. The amendments were carried out in exercise of the powers conferred upon the State by virtue of Section 87 of the Haryana Registration and Regulations of Societies Act, 2012 (hereinafter referred to as the 'HRRS Act, 2012'). Rule 33 as inserted vide the Haryana Registration and Regulations of Societies (Amendment) Rules, 2018, is reproduced as under:-

“33. Fixation of maintenance charges.-The society shall fix the charges on the basis of size of apartment for maintenance of common area and facilities, as such, existing society shall also modify the bye-laws accordingly and get the modified bye-laws approved from the District Registrar.”

3. The petitioner, claims to be a resident-cum-owner of Flat No.P-22, of group housing society known as 'PGI Enclave', GH-94, Sector-20, Panchkula, Haryana. It is the case of the Petitioner that respondent No. 7 has issued the impugned order dated 28.02.2025 (Annexure P-2) for enhancement of the monthly maintenance charges of common areas and facilities of Group Housing Society No. 94, Sector-20, Panchkula, on the basis of the newly amended Rule 33 of the HRRS Rules, whereby the existing system of fixing maintenance charges, which was in place since the past fifteen years, has arbitrarily been changed. It is alleged that the new system has caused disproportionate and discriminatory hike besides the fact that unequals have been treated as equals. It is further alleged that bigger flat owners have unfairly been penalized and made to subsidize the maintenance charges of smaller flat owners, though same common areas and utilities are used by all flat owners, irrespective of the size of their flats. Interestingly, the Petitioner also claims that Category C & D flats owners should be exempted from lift and fixed vehicle parking maintenance charges, since they do not enjoy such

facilities. A comparative table showing the old and new rates of maintenance charges has been tabulated, with an attempt to show that the impugned order has been passed, without application of mind. The comparative table as contained in paragraph No.4 of the petition is extracted as under:-

Category	Old rate (Rs.)	New Rate (Rs.)	Increase (Rs.)	%
Type A	1,400	2,100	+700	50%
Type B	1,300	1,700	+400	31%
Type C	850	1,250	+400	47%
Type D (EWS)	750	900	+150	20%

The total collection on the basis of the new rate is Rs.510,500/- and a similar amount of Rs.509,780/- could be achieved if there were a uniform 42% increase on the old rate. However, the above rate was increased without providing any reason or calculation of the cost behind the increase by Respondent No.7 and the above increased was without logic and requirement and still no improvement in the common facilities etc.”

4. The Petitioner alleges that the object of increased requirement of funds for proper maintenance of the flats could have been achieved by adopting alternative methods, which would have been fair and reasonable. She seeks quashing of the impugned Rule 33 of the HRRS Rules, on the ground that it is unconstitutional and is ultra vires the parent Act besides being violative of Article 14 and 21 of the Constitution of India as it mandates size-based maintenances charges without accounting for actual usage or critical differentials. Quashing of the impugned order dated 28.02.2025, which is based upon Rule 33, is sought on grounds that it is discriminatory, void ab initio having been issued without approval of the general body, by an unapproved governing body etc.

5. The learned counsel appearing for the petitioner contends that the newly added Rule 33 and the impugned order dated 28.02.2025, which has been passed in pursuance thereto, are in direct conflict with the provisions of the Haryana Apartment Ownership Act, 1983 (hereinafter referred to as the HAO Act). He has drawn the attention of the Court to the provisions of Sections 10 and 16(3)(b) to contend that it is mandatory that the common profit shall be distributed and common expenses shall be charged from the apartment owners according to their percentage of undivided interest in the common areas. He submits that by imposing a size-based charge without distributing any profit or providing a rebate for larger flats, the society is violating the 'common profit' clause of Section 10. He further contends that the provisions of Section 16(3)(b) allow distribution of proceeds to the apartment owners as income or application thereto in reduction of their common charges for maintaining the said property. It is his argument that the owners of the larger flats, who have great ownership share in this common area, are entitled to this right and since the newly amended Rule 33 and the proposed enhancement thereunder deny this entitlement, it is a clear infringement of the Act. It has also been argued that since the Rule treats equal and unequals in the same manner, it is violative of the principle of equity as enshrined under Article 14 of the Constitution of India. By depriving larger flat owners of their rightful income from their property, the impugned Rule also infringes upon their right to life and property, which is protected under Article 21 of the Constitution of India, and the principles of natural justice.
6. Certain other arguments have also been made regarding the impugned order dated 28.02.2025 (Annexure P-2) on the lines of the grounds of

challenge raised in the petition, such as the impugned order being void ab-initio, having been issued by the unapproved governing body; having been passed without amending the society's bye-laws; without approval of the District Registrar and without the approval of general body. It is also contended that infact it is respondent No.6, the Director of PGIMER, who is the ex-officio President of the PGI Employees Welfare Organization and not respondent No. 7. It is submitted that this matter of mis-representation has been brought to the notice of respondent No. 6, whose intervention has been sought to protect the petitioner and others residents/flat owners of GHS-94.

7. Before testing the arguments raised by the learned counsel for the petitioner, as regards the validity of the vires of Rule 33 of the HRRS Rules, it is necessary to take note of certain relevant provisions of the HAO and HRRS Acts, which are extracted as under:-

“Haryana Apartments Ownership Act, 1983.

3. **Definitions:-** *In this Act, unless the context otherwise requires.---*

xxx

- (b) *“apartment owner” means the person or persons owning an apartment and undivided interest in the common areas and facilities in the percentage specified and established in the declaration;*

xxx

- (d) *“association of apartment owners” means all the apartment owners acting as a group in accordance with the bye-laws and the declarations;*

xxx

- (g) *“Common expenses” means-*

- (1) *all sums lawfully assessed against the apartment owners by the association of apartment owners;*
- (2) *expenses of administration, maintenance, repair or replacement of the common areas and facilities;*
- (3) *expenses agreed upon as common expenses by the association of apartment owners;*

CWP-23455-2025

- (4) *expenses declared as common expenses by the provisions of this Act, or by the declaration or the bye-laws;*
- (h) *“Common profits” means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses;*

6. Common areas and facilities:-

- (1) *Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the apartments in relation to the value of the property; and such percentage shall reflect the limited common areas and facilities.*
- (2) *The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners and expressed in an amended declaration duly executed and registered as provided in this Act. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument.*

10. Common profits and expenses:-

The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities.

11. Contents of declaration:-

- (1) *The declaration shall contain the following particulars, namely:-*

xxx

(f) value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting, and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner whatsoever or not on the date of the declaration;

xxx

12. Contents of deed of apartment:-

The deed of apartment shall include the following particulars, namely:-

xxx

d) the percentage of undivided interest appertaining to the apartment in the common areas and facilities; and

xxx

6. Bye-laws:-



xxx

3) *The bye-laws may also provide for the following matters namely:-*

xxx

(b) provisions enabling the Board of Managers to lease out certain areas of the property for the purposes for which the same are meant and for distribution of resulting proceeds to the apartment owners as income or application thereto in reduction of their common charges for maintaining the said property;

xxx

HRRS Act, 2012.

CHAPTER III

AIMS AND OBJECTS OF SOCIETY

6. *Any seven or more persons associated for any of the purposes mentioned hereunder, may, by subscribing their names to a Memorandum and filing the same with the District Registrar, form themselves into a Society. The aims and objects, for which a Society may be formed are,-*

xxx

(x) formation of associations of flats or tenement or condominium or floor space owners pursuant to the requirements as laid down under the Haryana Apartment Ownership Act, 1983 (Act 10 of 1983) or a welfare organization formed for housing projects or a resident welfare organization for the operation, management and maintenance of facilities for the residents or civic amenities of any defined area;

87. Power to make rules.

(1) The Government may make rules for carrying out the purposes of the Act.

particular and without prejudice to the generality of the foregoing power, such rules may provide for,-

(i) Draft Bye-laws;

(ii) Conditions and procedure to be followed in making, amending and abrogating Bye-laws;

(iii) Forms and documents required for the registration of Society;

(iv) Forms and Registers required to be maintained;

(v) Annual and other returns to be filed alongwith fee;

(vi) Manner and verification of various forms of accounts, returns and registers;

- (vii) Qualifications of Administrator, members of the Committee to assist the Administrator, returning officers, observers, and of the persons authorised to hold inquiry;*
- (viii) Procedure to be followed for dissolution of a Society;*
- (ix) Inspection of documents kept by the Registrar and the grant of copies thereof;*
- (x) Custody of books, papers and documents in the Registrar's office and the destruction of such books, papers and documents;*
- (xi) Any other matter for carrying into effect the provisions of the Act."*

8. Perusal of the above provisions make it abundantly clear that the State validly added Rule 33 by way of the 2018 amendment, in exercise of its legislative powers conferred upon it under Section 87 of the HRRS Act. Secondly, the provisions of Section 6 sub-section 1 and 2 read with Section 10 of the HAO Act clearly demonstrate that each apartment owner is entitled to undivided interest in the common areas and facilities in the percentage expressed in the declaration, which is to be computed by taking into consideration the value of the apartments vis-à-vis the value of the property. The common profits of the property are to be distributed and the common expenses are to be charged from the apartment owners according to the percentage of the undivided interest in the common areas and the facilities. Section 16 pertains to the bye-laws and under Sub-section 3 thereof, the Board of Managers 'may' lease out certain areas of the property for the purposes for which the same are meant and for

distribution of resulting proceeds to the apartment owners as income or application thereto in reduction of their common charges for maintaining the said property.

9. After examining the said statutory provisions, we are of the considered opinion that Rule 33 of the HRRS rules cannot be said to be ultra vires the said provisions. To the contrary, it is abundantly clear that the provisions of the HAO Act provide for charging of common expenses according to the 'respective' percentage of the apartment owners in the undivided interest in the common areas and facilities. In such view of the matter, the newly added Rule 33 fixing maintenance charges on the basis of size of the apartment, cannot in any manner be said to be militating against the provisions of the said Act.
10. It is settled law that challenge to a statutory rule can be raised only on limited grounds, like lack of legislative competence, violation of fundamental rights, the rule being ultra vires of the parent Act or any constitutional provisions, or if it is found to be patently unreasonable, arbitrary, discriminatory, or if it is a colourable and malafide exercise of power. The learned counsel appearing for the petitioner has failed to show that any such ground exists. The Rule has been added in exercise of the powers conferred by the parent statute and thus, cannot be challenged on the ground of lack of legislative competence. Perusal of the Rule shows that it

provides for fixation of the maintenance charged on the basis of the size of the apartment, which cannot be termed as an unreasonable classification or to fall within the mischief of treating unequals as equals.

11. The learned counsel appearing for the petitioner has failed to show how the impugned Rule can be said to be in violation of the fundamental rights of the petitioner or that the same is unreasonable, arbitrary, discriminatory or a colourful and malafide exercise of powers.
12. We may also note that there is no mention whatsoever in the petition as to which category of flat, the petitioner claims to own. In fact, the averments in the petition appear to be self-contradictory, in as much as, on one hand it is averred that the difference in the rates of maintenance, penalize the large flat owners, while on the other hand, there is a reference to the unfair treatment meted out to smaller flat owners not utilizing lifts. Perusal of the chart tabulated in the petition would also show that even earlier the rates were being charged as per the size of the flats and by virtue of the impugned order only marginal enhancement has been done.
13. Be that as it may, these are not issues which can be examined by this Court, while exercising its powers under Article 226 of the Constitution of India.
14. As regards other arguments regarding the validity of the impugned order dated 28.02.2025 (Annexure P-2) are



concerned, we are of the view that the petitioner has a separate remedy for laying challenge to the same *de-hors* and independent of the challenge to the vires and constitutional validity of the newly added Rule 33 of the HRRS Rules, 2012, which she may choose to exercise, if so advised.

15. In view thereof, the present writ petition cannot be entertained, and is dismissed accordingly.

(ASHWANI KUMAR MISHRA) (ROHIT KAPOOR)
JUDGE JUDGE

August 13, 2025

ajaysharma

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No