

(2009) 01 DEL CK 0028

In the Delhi High Court

Case No : WP (C) 7179 of 2007 and CM No"s. 13623 of 2007 and 6011 of 2008

Anang Pal Singh

APPELLANT

Vs

Registrar Coop. Societies and Others

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Citation : (2009) 01 DEL CK 0028

Hon'ble Judges : Vikramajit Sen, J;P.K. Bhasin, J

Bench : Division Bench

Advocate : Raju Ramachandran, R.K. Gupta, Anil Kumar and Amit Gupta, for the Appellant; Zubeda Begum and Sanjiv K. Jha, for Respondents 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—The Prayer in this Petition is for the issuance of a writ, order or direction in the nature of Certiorari quashing the Order dated 26.9.2007 passed by the Registrar Cooperative Societies (RCS) halting and postponing the election scheduled to be held on 29.9.2007.

2. Briefly stated, the facts of the case are that the Kohat Cooperative Housing Building Society is under supersession for the last fourteen years. By its letter dated 14.7.1992 the Joint Registrar (HB) Cooperative Societies, Delhi had informed the Delhi Development Authority (DDA) that the Kohat Cooperative House Building Society had developed 500 residential plots and that its membership was equal to its members. It also noted that there was a likelihood that some land out of eight acres may be available for further allotment and hence a Waiting List was being maintained. It was further recorded that there was no proposal for allotment of additional land to the Society. The Director (Delhi Division), Ministry of Urban Development, had addressed a letter dated 12.9.1994 to the DDA, the essential portion of which reads as follows:

5. The Government have considered the case of M/s Kohat Cooperative House

Building Society Ltd. and are of the view that the society may be allowed to convert excess land for residential use as per norms/provisions of MPD-2001.

6. Now, therefore, the Central Government, in exercise of the powers vested u/s 41(3) of the Delhi Development Act, 1957 directs DDA to approve the revised layout plan of the Society so as to enable it to utilise for residential purpose roughly 8.5 acres of excess land found to be surplus out of land meant for schools, tot-lots, local shopping service personnel, etc. as per MPD-2001 norms to accommodate 127 members as per waiting list already submitted to the DDA subject to determination of eligibility of members by the Registrar, Cooperative Society. This is further subject to the condition that, irrespective of the waiting list DDA would not allot any additional land to the Society over and above the 50 acres already in their possession.

3. In February, 2000 the Petitioner, alongwith 29 others whose names are contained on the Waiting List, filed a Claim u/s 60 of the Delhi Cooperative Societies Act, 1972 stating that their names were on the frozen List of 860 members and that they should be entitled to all the rights of members. On 24.3.2005, the learned Arbitrator passed an Award in favour of the Petitioner that thereafter came to be challenged before the Tribunal which, on 4.12.2006, stayed the Award. However, by its Order dated 13.2.2007, the previous Order dated 4.12.2006 was withdrawn. Accordingly, the position that obtains as on date is that there is no stay against the arbitral Award, which Award rules in favour of the Petitioner and others so far as membership of the Cooperative Society is concerned.

4. The Lieutenant Governor of Delhi appears to have issued directions to the Registrar Cooperative Societies to hold elections latest by 30.9.2007 as a sequel to which Respondent No.2, Shri N.L. Sethi, was appointed as the Returning Officer (RO) to conduct the elections. Meanwhile, the Administrator of the Society had got its Audit completed for the period 2004-2005 to 2005-2006 and 2006-2007 in which the Petitioner and some others were duly shown as members of the Society. In other words, the Administrator had also found in favour of the Petitioners herein, in addition to the Arbitrator, and this List had been duly forwarded to the Registrar, Cooperative Societies. The RO, Shri N.L. Sethi, thereafter issued an Agenda Notice in respect of the election programme in which Nomination Forms were to be collected on 14.9.2007 and were to be filed by 17.9.2007. By Notice dated 18.9.2007 the RO notified all members of the Society of the ? "Valid list of candidates for the election of the Kohat CGHS Ltd. to be held on 29.9.2007". The Petitioner and Dr. Raghunath Sharma are contesting for the post of President. What next follows is the letter dated 26.9.2007, authored by the Assistant Registrar (N/W), Government of National Capital Territory, New Delhi on the subject ? "Postponement of election of Managing Committee of Kohat Coop House Building Society fixed for 29.9.2007" which is a non-reasoned Order and cryptically states thus:

As per direction of the competent Authority, the election of the Managing

Committee of Kohat Coop Housing Society, which is scheduled for polling on 29/9/2007 as per Agenda issued by Shri N.L. Sethi, Returning Officer, is hereby postponed till further orders.

5. The present Petition has been filed challenging this letter and the decision.

6. It appears that some of the members had carried their grievances to the Lieutenant Governor of Delhi who had sought a clarification from the Registrar, Cooperative Societies. On 15.1.2008 the Lieutenant Governor of Delhi approved the extension of period of supersession upto 13.4.2008, subject to the "restoration of democracy in the Society by holding of elections". Even this Order of the Lieutenant Governor of Delhi passed after the filing of the Writ Petition has not been honoured and implemented till date.

7. Succinctly stated, the Objection articulated on behalf of RCS in the Counter Affidavit is that the violation of Section 75 of the extant Act has taken place, which enjoins that a Waiting List should not be maintained. The provision, however, was introduced into the 2003 Act with effect from 1.4.2004. A proviso thereto was added with effect from 31.1.2007, enabling members of flats of a particular plot to gain membership of the Cooperative Housing Building Society, subject to specified formalities. What is important is that these provisions are not stated to be retrospective and, therefore, *prima facie*, cannot render nugatory the already compiled Waiting List, prepared much earlier to these statutory amendments. The proviso cannot also negate the decision of the learned Arbitrator whereby persons, such as the Petitioner, who were not allottees of the available 500 plots, are members of the Society. We have deliberately used the word '*prima facie*' for the reason that our present decision is not founded on the eligibility or otherwise of these Petitioners and others similarly situated to them.

8. Respondents No. 4 and 5, namely, S/Shri M.S. Banga and B.N. Chopra, have also impugned the Electoral List forwarded to the Returning Officer for the scheduled elections on account of violation of Section 91 of the Delhi Cooperative Societies Act, 2003 (for short "DCS Act") whereby membership rights, including voting rights, are to get transferred to the purchaser having registered Power of Attorney or registered Agreement for Sale or registered Sale Deed etc. and the previous members' rights are to simultaneously get extinguished if his entire interest has been conveyed. It is sought to be urged that the said Electoral List consists of names of the previous members were shown instead of the new members who have acquired membership by virtue of Section 91 of DCS Act. We would again reiterate that such errors in the Voters List cannot constitute reasons for any Authority to impede or halt the democratic process. The Respondents have the right to raise their grievances after the Election process is over before the concerned statutory authority in the form of an election petition. It will be topical to refer to the Division Bench decision of this Court in *Narender Kumar Jain v. Govt. of NCT of Delhi* 2008 X AD (Delhi) 105.

9. It should further be observed that there is not a single objection from the

members whose names have allegedly either not appeared, or have been wrongly shown in the Electoral List already prepared by the RO. The Registrar vide letter dated 26.9.2007 has held the Electoral List prepared by the Administrator appointed by himself to be wrong and "a serious lapse on the part of the Administrator." The precedents emanating from the Supreme Court of India and High Courts spanning over country proscribe holding-up of elections unless there exists circumstances of extraneous nature, as are reflected in Rule 58 of DCS Rules.

10. In these circumstances, we direct the RO to continue and complete the Elections on or before 23rd day of January, 2009, commencing from the stage where the same were stayed, that is, after the filing of nomination papers; and with the same Electoral List as also with the List of Candidates contained in the letter/notice of the RO dated 18.9.2007 that were forwarded to the RO by the then Administrator of Kohat Cooperative Housing Building Society and accepted by the RO.

11. The Writ Petition is allowed in these terms and the pending applications stand disposed of. There shall be no order as to costs.

12. Dasti.