

(2011) 01 DEL CK 0353

In the Delhi High Court

Case No : Writ Petition (C) No. 416 of 2011 and CM No"s. 839-840 of 2011

Dinesh Kumar and Another

APPELLANT

Vs

Delhi Cooperative Group Housing Society Ltd. and Another

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0353

Hon'ble Judges : Sanjay Kishan Kaul, J;Rajiv Shakdher, J

Bench : Division Bench

Advocate : S.N. Khanna, for the Appellant; Vishwendra Verma, for R 1, Vidur Gopal Bajaj, Ex-Vice President for R 1/Society and V.K. Tandon, for R 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.

CM No. 840/2011

Allowed subject to just exceptions.

WP (C) No. 416/2011

1. Rule DB.

2. Learned Counsel for the Respondents accept notice.

3. At request of learned Counsel for the parties, the matter is taken up for final disposal.

4. The elections to R-1/Society were held on 06.12.2009. These elections were challenged by Petitioner No. 2 u/s 70 of the Delhi Cooperative Societies Act, 2003 ("the said Act" for short) which resulted in an Award being passed on 09.07.2010. In terms of the Award, it was held that the Returning Officer did not follow the procedure laid down under the Delhi Cooperative Societies Rules, 2007 for conduct of elections of the Managing Committee of R-1/Society and thereby

vitiated the election proceedings. The competent authority was directed to take necessary action.

5. The RCS thereafter proceeded to appoint an Administrator on 06.09.2010. However, R-1 challenged the Award before the Delhi Cooperative Tribunal inter alia pleading that the Award was ambiguous. R-1 also failed in the appeal which was dismissed on 03.12.2010 and it was held that the Award had the capability and impact of setting aside the elections itself. A further challenge was laid by R-1 before this Court by filing Civil Writ Petition No. 8297/2010, but after some hearing that writ petition was withdrawn on 13.12.2010. The Petitioners on the same date itself filed a review petition before the Delhi Cooperative Tribunal i.e.13.12.2010 which was dismissed for non prosecution on 15.12.2010.

6. The result of the aforesaid proceedings is that the Award became final and the elections held on 06.12.2009 stood set aside and thus fresh elections were required to be held through the process of appointment of an Administrator by the RCS. Thus the RCS issued a fresh letter dated 16.12.2010 for appointment of an Administrator which was in continuation of the earlier letter dated 06.09.2010. In pursuance to this letter, the Administrator/R-4 issued a letter dated 22.12.2010 to the erstwhile Managing Committee of R-1 informing that the Administrator would be taking charge on 23.12.2010. This letter of the Administrator dated 22.12.2010 was challenged by R-1/Society through Mr. Vidur Gopal Bajaj as Vice President, whose membership itself is stated to be in doubt, by filing a revision petition in the name of the Society before the Financial Commissioner. It appears that while certain defects in the revision petition were directed to be removed by the Financial Commissioner in terms of the order dated 23.12.2010 he simultaneously directed issuance of notice and stay of the operation of the order dated 22.12.2010. The matter was adjourned to 04.01.2011 for hearing on admission.

7. We are informed that the Financial Commissioner did not hold Court on that date as he was on leave and the proceedings were adjourned to 18.01.2011. Learned Counsel for the Petitioners, on instructions, states that even on 18.01.2011 the Financial Commissioner was on leave and the proceedings now stand adjourned to 03.02.2011.

8. The present writ petition under Article 226 of the Constitution of India has thus been filed challenging the proceedings before the Financial Commissioner and for other reliefs.

9. On hearing learned Counsel for the parties, we find from a perusal of the revision petition filed on behalf of R-1 that the only ground taken to challenge the action of the Administrator to take over charge of R-1/Society is stated to be the action of the Ex-Managing Committee on 15.12.2010 deciding to conduct the elections to the R-1/Society. We find that the challenge to the Administrator taking over charge of R-1/Society is misconceived and mischievous.

10. The Award of the Arbitrator has attained finality and the Tribunal has clarified

the effect of the Award. It is thus not in doubt that the elections to the earlier Managing Committee held on 06.12.2009 had been declared as invalid and thus there was no Managing Committee in existence. That being the position, no decision could have been taken on 15.12.2010, after all these proceedings were over, by the Managing Committee to hold elections itself. The elections could have been held only by the Administrator appointed by the RCS and that is the step RCS has taken. It is to thwart the Administrator, from taking over charge of R-1/Society and thereafter to take necessary steps for holding of elections by appointment of a Returning Officer, that the Ex-Managing Committee of R-1/Society has taken the dubious route of filing the revision petition before the Financial Commissioner to challenge the taking over of charge of R-1/Society by the Administrator. The order of the Financial Commissioner dated 23.12.2010, in our considered view, shows complete non-application of mind as he has not even cared to consider as to how he could have granted a stay in view of the orders passed by the Tribunal and the High Court earlier, the effect of which is that the revision petition filed on behalf of the R-1/Society could not be said to be maintainable. The members of the erstwhile Managing Committee of R-1/Society are like any other members of the cooperative society and thus enjoy the rights only in that behalf.

11. We thus consider this a fit case to exercise jurisdiction under Article 226 of the Constitution of India to dismiss the revision petition itself filed before the Financial Commissioner and to vacate the order passed on 23.12.2010 staying the letter of the Administrator to take over charge of R-1/Society communicated vide letter dated 22.12.2010 and direct the Administrator to forthwith take over charge of R-1/Society. The sequitur to this would be that the election notice purportedly issued by the erstwhile Managing Committee of R-1/Society dated 10.01.2011 also stands recalled as also the notice for the Special General Body Meeting dated 15.01.2011 for holding the meeting on 23.01.2011. We make it clear that all steps for holding the elections expeditiously will be taken by the Administrator and the RCS will also take necessary steps to make the request for appointment of the Returning Officer as soon as the Administrator has done the necessary preparatory work for holding the elections.

12. Insofar as the other prayers made in the writ petition to initiate enquiry into the functioning of R-1/Society, to hold a special audit or to disqualify existing members of the Managing Committee of R-1/Society are concerned, it is for the RCS to take necessary action in accordance with law.

13. The writ petition is accordingly allowed with costs in view of the conduct of the Ex-Managing Committee of R-1/Society and thus the costs quantified at Rs. 10,000/- will be paid by the Ex-President of R-1/Society Sh. Rishi Dev equally to the Petitioners which he can recover proportionately from other members of the Ex-Managing Committee who took the decision to hold elections.

CM No. 839/2011

No further directions are called for on this application.

The application stands disposed of.