
(2002) 09 DEL CK 0280
In the Delhi High Court
Case No : Civil Writ No. 3131 of 2001

Manav CGHS Limited

APPELLANT

Vs

P.O. Delhi Co-op Tribunal

RESPONDENT

Date of Decision : 04-09-2002

Acts Referred:

Citation : (2002) 100 DLT 428

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : Sudhir Nandrajog, M. Abbas and Virender Rawal, for the Appellant;
Sujata Kashyap and Amit Jain, for the Respondent

Final Decision : Allowed

Judgement

J.D. Kapoor, J.—The petitioner-Society has grievance against the award dated 12th July, 1999 holding that it has no jurisdiction to waive off the interest from defaulter members on the defaulted amount. The petitioner-Society is of the view that General Body of the society is superior and final authority and if it has jurisdiction to take the decision of levying interest on the defaulters it has also jurisdiction and powers to waive off the same which in this case was the interest levied by the earlier Managing Committee on those persons who did not pay the demands raised by the society on account of suspension and delay in construction work.

2. The row sparked off when the petitioner society vide its resolution dated 7th July, 1996 passed by the General Body decided not to charge interest from the Members who did not pay the demand amount because of the suspension or delay in the construction work whereas the categories of the Members including R-2 to R-6 were charged interest as according to R-2 to R-6 the said action of the petitioner-Society is malafide and is a premium on the defaulters as the Members who had paid the demanded amount within the time have not been given any benefits for their payment.

3. Apart from the aforesaid question of law the petitioner society also raised a plea that as per Section 28 of the DCS Act, 1972 the General Body of the society is supreme and any decision or action of the General Body cannot be subject to the claim contemplated u/s 60 of the DCS Act.

4. As regards the question whereas the Society has the jurisdiction to waive off the interest by superseding the resolution of the earlier Committee or for that purpose to alter any decision taken by either the Committee of the Society or its General Body. Section 28 of Chapter IV provides the answer which reads as under:-

Final authority in a co-operative society - (1) The final authority in a co-operative society shall vest in the general body of members:

Provided that where the bye-laws of a co-operative society provide for the constitution of a smaller body consisting of delegates of members of the society elected or selected accordance with such bye-laws the smaller body shall exercise such powers of the general body as may be prescribed or as may be specified in the bye-laws of the society.

Notwithstanding anything contained in Sub-section (2) of Section 24 each delegate shall have one vote in the affairs of the society."

5. Chapter IV of which Section 28 is a part deals with management of the Co-operative Societies and as is apparent the final authority is vested in the General Body of Members of the Co-operative Society. If the argument or the finding of the Registrar/Arbitrator that the General Body of the society did not have the jurisdiction to waive off the interest against the defaulted Members with retrospective effect is accepted then it would also be held that the General Body of the society does not have jurisdiction or power to levy the interest on the defaulted amount. If any person or authority is vested with the power to take an action, it also includes the power to recall or revoke that action subject of course, to any restraint, regulation or bar imposed by law. Therefore, unless and until there is a law or rule or bye-law prohibiting a person or authority from doing a particular act, that person or authority if vested with the final authority to take any decision for managing its affairs the said authority or person is competent to make any decision, revise, review or revoke any earlier decision taken by it. The Arbitrator fell in grave error in interpreting the provisions of Section 28 by holding that Section 28 of the Act nowhere specifies that the decisions of the General Body cannot be challenged u/s 60 & 61 of the Act. The limited question before the Arbitrator was whether the General Body of a society had a jurisdiction and power to take a decision of the kind one in question and not that whether its decision is challengeable u/s 60 & 61. It appears that the learned Arbitrator confused the issue to the supremacy of the General Body as claimed by the petitioner society and its jurisdiction to take any decision, review or revoke any earlier decision taken by it.

6. The very fact that Section 60 which pertains to settlement of disputes by the

Registrar himself or by way of referring them to the arbitration shows that any action of the General Body of the society or for that purposes its Managing Committee touching the constitution management or business of the society other than a dispute regarding disciplinary action taken by it against a paid employee shows that its resolutions and actions were not beyond challenge. The element of the supremacy of the Society to do any act is not as such unlimited and is circumscribed by essence of power by Registrar u/s 60 of the Act. If the Registrar finds that the dispute is covered u/s 60, he may refer the same u/s 16 of the Arbitrator for adjudication.

7. In view of the aforesaid position of law as to the powers and jurisdiction of the General Body of the society, the order dated 12th July, 1999 passed by the Arbitrator and the impugned order dated 27th September, 1999 passed by the Tribunal have to give way to the Resolution passed by the General Body of the Committee whereby the decision to waive of the interest from the persons who did not pay the demands raised by the society due to suspension and delay in construction work was taken. General Body of a Society is the best custodian of its interests and its resolution on the subject matter is binding on all members unless disputed by appropriate remedy under law.

8. In the result the petition is allowed and both the aforesaid orders are set aside.