

(1996) 11 DEL CK 0061

In the Delhi High Court

Case No : Civil Writ Petition No. 4518 of 1995 and Civil Miscellaneous Appeal No. 7519 of 1995

Manik Gurbuxani

APPELLANT

Vs

Madan Jha

RESPONDENT

Date of Decision : 08-11-1996

Acts Referred:

Citation : (1997) 1 AD 306 : (1997) 65 DLT 19 : (1996) 39 DRJ 697

Hon'ble Judges : S.N. Kapoor, J; R.C. Lahoti, J

Bench : Division Bench

Advocate : Girdhar Govind and Rakesh Munjal, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) The petitioner is a member of the respondent No. 3, a cooperative society, both governed by the provisions of the Delhi Cooperative Societies Act, 1972 (hereinafter the Act, for short). The petitioner raised a dispute and sought for its reference to arbitration by filing a petition u/s 60 of the Act before the Registrar Cooperative Societies. He also made an application seeking an interim relief. The Registrar directed maintenance of status quo till the decision of the case.

(2) The society feeling aggrieved by the interim order of the Registrar preferred a revision petition u/s 78(6) of the Act to the Cooperative Tribunal.

2.1 The Tribunal has, vide its impugned order dated 17.11.1995, allowed the revision and set aside the order of the Registrar by forming an opinion that the Registrar has no competence or jurisdiction to pass any interim or interlocutory order at the reference stage of Section 60 of the Act.

(3) It is submitted by the learned counsel for the petitioner that the Tribunal has committed an error of law in setting aside the order of the Registrar inasmuch as the Registrar does have power to pass an interim/interlocutory order if the interest of justice may call for the same.

(4) The learned counsel for the respondent society has supported the order of the Tribunal submitting that the scheme of the Act contemplates two different stages of proceedings whenever a dispute is sought to be referred to arbitration : one is the stage contemplated by Section 60 of the Act which is anterior to the arbitration proceedings; second is the arbitration proceedings contemplated by Section 61 of the Act which commence on receipt of the reference of dispute u/s 60 of the Act. Jurisdiction to make such interlocutory orders as may be deemed necessary in the interest of justice is conferred by sub-section (3) of Section 61 of the Act, which can be exercised only by the Registrar or any other person to whom a dispute is referred for decision u/s 61(1) of the Act.

(5) Developing his argument further, the learned counsel for the respondent society submitted that the key to the solution of the riddle is provided by Rule 88 of the Delhi Cooperative Societies Rules, 1973 (hereinafter referred to as "the Rules"). Reading the provisions of Sections 60 and 61 of the Act and Rule 88 of the Rules together, it is clear that every dispute has to be raised before the Registrar who has to apply its mind to the four questions contemplated by sub-rule (4) of Rule 88. It is only when the Registrar has formed an opinion in favor of the petitioner by answering all the said four questions in his favor then he may admit the application directing the claimant to deposit the arbitration fee whereupon the Registrar would determine whether he would decide the dispute himself or transfer it for disposal to another person invested with such powers by the Lieutenant Governor or refer it for disposal to an arbitrator within the meaning of sub-section (1) of Section 61 of the Act. That will be a stage of reference of dispute. Jurisdiction to pass interlocutory order u/s 61(3) of the Act would come into play only when the dispute has been referred for decision. Prior to that stage, so long as the matter is under inquiry within the four corners of Section 60 of the Act, there is neither a dispute nor a reference and hence there is no question of any interlocutory order being passed by the Registrar.

(6) Having heard the learned counsel for the parties, we are of the opinion that the petition deserves to be allowed and the order of the Tribunal deserves to be set aside.

(7) A Division Bench of this Court has held in *Anil Gupta v. Uoi* (C.W.P. No. 1688/91, decided on 13.8.1996) -

"SECTION 60 confers power and jurisdiction on the Registrar to decide the disputes referred to therein. It also excludes jurisdiction of courts to entertain any suit or other proceedings in respect of such disputes as lie within the jurisdiction of the Registrar. The Registrar has also been vested with jurisdiction to decide the question as to whether a dispute referred to him is a dispute covered by Section 60 or not. Section 60 is a complete and self contained provision on jurisdiction. Even if the provisions contained in sub-section (1) of S. 61 were not there, it would not have made any difference in so far as the jurisdiction conferred by S. 60 on the Registrar to decide the disputes is concerned. Sub-section (1) of S. 61 merely enables the jurisdiction conferred by

Section 60 on the Registrar being exercised not only by the Registrar but also by a person empowered by the Lieutenant Governor or by an arbitrator. However, even such a person or arbitrator acquires jurisdiction to decide dispute by reference to Section 60 of the Act. In other words. Section 60 confers the jurisdiction to decide; sub-Section (1) of Section 61 provides for forum- it merely speaks of persons who may exercise the jurisdiction. In addition, sub-section (2) of S. 61 confers power on the Registrar to withdraw and decide or make over a reference and sub-section (3) of S. 61 confers power to make interlocutory orders. "S. 60 and S. 61 of the Act are part of one scheme. They have to be read together. Sections 60 and 61 taken together contemplate the different facets and stages of one compact proceedings which begin with initiation of reference and terminate with the decision or award".

(8) Inasmuch as Sections 60 and 61 of the Act are part of one scheme, different facets and stages of one compact proceedings, beginning with initiation of reference and terminating with the decision or award, it follows that the jurisdiction to pass an interlocutory order u/s 61(3) of the Act would be available to the Registrar ever since the point of time when an applicant invokes the jurisdiction of the Registrar by making an application u/s 60 of the Act, seeking reference of the dispute.

(9) There is yet another reason why the jurisdiction to make an interlocutory order must be deemed to be vesting inherently in the Registrar even if it could be held by taking a conservative view that the jurisdiction to make an interlocutory order u/s 61(3) of the Act could not be exercised by the Registrar dealing with an application u/s 60 of the Act.

(10) The Registrar of Cooperative Societies is an Executive officer. He has been vested with jurisdiction to decide disputes touching the rights of the parties. The jurisdiction so conferred is quasi judicial.. The Registrar may decide within the scope of Section 60 : "whether there is a dispute," whether the dispute is within limitation and whether the person raising the dispute is one having the status of any one of the persons referred to in clauses (a) to (d) of Sub-Section I of Section 60? Even at the stags of Section 60, the Registrar may decide : "whether a particular person is a member of a Society or not?" At that very stage" there may be felt urgent need of passing an interlocutory order which if not made, may frustrate the proceedings itself. An in term order may be required to save the proceedings from being rendered an exercise in futility in the result. It is to be noted that the jurisdiction conferred by Sections 60 and 61 of the Act is an exclusive jurisdiction conferred on the Registrar and the jurisdiction of civil court to take cognizance of the disputes covered by Section 60 is excluded. Unless the above said view of the law is taken, the person aggrieved would be required to approach the Registrar for reference and settlement of dispute while he would be required to approach the civil court for the purpose of an interim relief. Such an anomaly has to be avoided.

(11) It is held that Registrar of Cooperative Societies seized of the proceedings u/

s 60 of the Act is competent to make an interlocutory order u/s 61(3) of the Act.

(12) For the foregoing reasons, the petition is allowed. The impugned order of the tribunal dated 17.11.95 is set aside. The revision pending before the Cooperative Tribunal shall stand revived. The tribunal shall hear the parties and dispose of the revision afresh in accordance with law. No order as to the costs.

(13) Parties through their respective counsel are directed to appear before the Cooperative Tribunal on 2.12.96.