

(1998) 08 DEL CK 0063
In the Delhi High Court
Case No : C.W. No. 4737/95

O.P. Dhingra and Others

APPELLANT

Vs

Registrar, Cooperative Societies and Others

RESPONDENT

Date of Decision : 07-08-1998

Acts Referred:

Citation : (1998) 75 DLT 778 : (1999) 48 DRJ 154

Hon'ble Judges : K. Ramamoorthy, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Anand Yadav, for the Appellant; Sanjay Poddar and M.L. Munjal, for the Respondent

Judgement

Devinder Gupta, J.—Petitioners are members of Panchdeep Cooperative Group Housing Society Limited (hereinafter referred to as the "Society"), which is a Society duly registered under Delhi Cooperative Societies Act, 1972 (hereinafter referred to as the "Act"). The petitioners, in this petition instituted on 1.12.1995, have prayed for quashing of the order dated 27.4.1995 (Annexure-O) passed by the Financial Commissioner, Delhi and the order dated 25.8.1995 (Annexure-Q) dismissing petitioners' review application.

2. The facts, as they emerge from the respective affidavits filed on record are that on 22.6.1994, show cause notice (Annexure-1) was served upon the Society by the Registrar, Cooperative Societies stating that the Society, which is required to perform certain statutory obligations, namely, preparation of annual accounts for auditing, holding of annual general body meetings and election of one third of the members of the Managing Committee every year, failed to discharge such statutory obligations and there were charges of various other irregularities against the running of the Society. As such, the Managing Committee of the Society was called upon to show cause within a period of 15 days from the date of issue of the notice as to why the Society be not superseded u/s 32 of the Act.

3. The reply of the Managing Committee was considered by the Registrar, who

also heard the representative of the Managing Committee including O.P. Puri, President, and R.K. Mudgil, Honorary Secretary. B.M.Sethi, Assistant Registrar was heard on behalf of the department. On 13.9.1994, the Registrar proceeded to pass order (Annexure-K) discharging the notice, after coming to the conclusion that there was no reason to supersede the Managing Committee. However, while discharging the show cause notice dated 22.6.1994, he observed that Joint Registrar, Cooperative Societies will continue pursuing vigorously the action already initiated under Sections 33 and 82(5) of the Act and will also initiate action for early conduct of the elections, which are overdue.

4. Almost within a period of one month of the passing of the aforementioned order (Annexure K), the Society was served with another show cause notice dated 20.10.1984 (Annexure-L) calling upon the Managing Committee to show cause why it should not be superseded u/s 32 of the Act. To this show cause notice, reply was filed on 28.11.1994 by the Managing Committee raising numerous objections that another show cause notice on similar grounds ought not to have been issued especially when the first notice had already been discharged and that the second show cause notice has been issued mala fide at the behest and under pressure from the Minister of Development and Cooperation. On 10.2.1995, the Registrar proceeded to pass the order (Annexure-M) superseding the Managing Committee of the Society in exercise of his power u/s 32(1)(b) of the Act and appointing one P.N.Mishra as the Administrator of the Society. Feeling aggrieved, the Society preferred a statutory appeal (Annexure-N) before the Financial Commissioner u/s 76 of the Act, who after hearing arguments in the appeal and on going through the entire record passed his order on 27.4.1995 (Annexure-O) allowed the appeal and setting aside the order of the Registrar. The petitioners claiming themselves to be the bona fide members of the Society, filed review petition (Annexure-P) against the order of the Financial Commission. This review petition was dismissed by the Financial Commissioner through his order dated 25.8.1995 (Annexure-Q) holding that the same is not maintainable. This writ petition has been filed by some of the members of the Society questioning the legality and validity of the order dated 27.4.1995 (Annexure-O) on a number of grounds.

5. It is alleged that from the year 1987 till date, three elections were held where after no elections could be held because of the conduct of R.K.Mudgal, O.P.Puri and M.P.Sharma. Records were not handed over for which reason fresh elections could not be held. Records have been forged. There were various complaints on the basis of which show cause notice was issued. O.P.Puri and R.K.Mudgal were able to mislead and misguide the Registrar. Therefore, full facts were not brought to the notice of Registrar. Show cause notice was also discharged. As members were suffering, they again approached the Registrar, who was apprised of the facts and for that reason, fresh show cause notice was served. Registrar this time examined the entire record and passed his order on 10.2.1995. Earlier P.N.Mishra was appointed as the Administrator, but he expressed his inability to function as such, Therefore, through another order dated 31.3.1995, Lt. Col. O.V.S.Arya was

appointed as the Administrator. In appeal also, R.K.Mudgal misguided the Financial Commissioner, which was the main cause in the Financial Commissioner passing the impugned order dated 27.4.1995. One of the grounds stated in the petition is that the Financial Commissioner failed to appreciate an important aspect that the term of the "Executive Committee elected in 1991 had already expired in 1992 and in view of his orders passed, the same Managing Committee was continuing to hold the office. The Managing Committee was not cooperating in holding of fresh elections though the Election Officer had been appointed for the purpose. The main object of O.P.Puri and R.K.Mudgal was to continue managing the affairs of the Society for their personal gains.

6. Respondent No.1 in its reply filed on the affidavit of J.S.Jolly, Assistant Registrar stating that the last election of the Managing Committee was held on 27.10.1991. No further elections were held by the erstwhile Managing Committee. Therefore, P.P.Sikri was appointed as the Election Officer on 9.2.1993. He could not hold elections as the Managing Committee failed to furnish requisite records. Again S.C.S.Bisht was appointed as the Election Officer on 8.2.1994 to conduct elections. As list of the members was not supplied Along with the requisite records, he could not hold elections of the Society. It is further stated that the erstwhile Managing Committee had been taking shelter of non availability of the records with them. Therefore, an inquiry u/s 55 of the Act was ordered. The Inquiry Officer also expressed his inability to conduct the inquiry in view of the acts of the Managing Committee. On receipt of the request of the Inquiry Officer, complaints under Sections 33(1) and 85(2) of the Act against the Ex-Managing Committee elected in 1989, were filed before the competent authority, but the same did not yield any results so far. As such, there was no option left except to issue show cause notice u/s 32.

7. Respondents Nos.2 and 3 have filed their separate reply denying petitioners' allegations and supporting the impugned order stating that the same was rightly passed by the Financial Commissioner withdrawing the earlier notice.

8. During the course of arguments, learned counsel for the petitioner pointed out that the term of the Managing Committee elected in 1991 expired on 27.10.1992. Grounds on which Financial Commissioner passed the impugned order on 27.4.1995 were extraneous. The second show cause notice was not on the same ground on which earlier show cause notice was issued and the effect of the impugned order would be that no elections to the Managing Committee of the Society can be held because of the conduct of respondents Nos.2 and 3.

9. The first show cause notice which was served upon the Society was on the following grounds:-

"And whereas no information about holding of election has been received after 27.10.1991 and thereafter the society did not hold any election.

And whereas after the failure of the society to hold election on its own, an Election Officer was appointed by this office vide order No.98-99 dated 8.2.94.

But the society failed to produce the required documents for conducting the elections and as such the same could not be conducted.

And whereas the society did not get its accounts audited after 1989 on the ground that the record of the society has not been handed over to the present Managing Committee by the previous Managing Committee.

And whereas the society is charging premium from members enrolled since 8.6.88.

And whereas there are charges of various other irregularities against the Managing Committee of the society viz. withdrawing large sums from the accounts of the members whose names have not been cleared by this office, submission of wrong affidavit by the present Secretary and selling of flats on premium etc."

10. The Registrar in his order dated 13.9.1994 clearly opined for the reasons stated therein that the present Managing Committee could not be blamed for not conducting the elections and not having the records audited. The allegation of charging premium from the members enrolled since 8th June, 1988 also does not hold good against the present Managing Committee and the inquiry report dated 10.5.1994 did not mention any alleged irregularity purported to have been committed by the Managing Committee. Thus, there was no ground to hold the present Managing Committee guilty of lapses and, Therefore, there was no reason to supersede the Managing Committee.

11. After the second show cause notice, the Financial Commissioner in the impugned order while setting aside the order, held:-

"I have given my careful consideration to the points raised on behalf of the appellants, which practically remained unrebutted by the departmental representative. I find that, on the face of it, the impugned order has been passed without application of mind and that it is totally a non-speaking order. No grounds/reasons, except the allegations/charges contained in the show cause notice, have been spelt out in the impugned order by the learned Registrar as to why the Managing Committee has been removed. The order under assailement, Therefore, deserves to be set aside on this solitary ground itself. It is also noteworthy, that undeniable the earlier show cause notice on identical facts had been discharged by the previous Registrar after consideration of the reply furnished on behalf of the Society. There was, Therefore, no reason again for issuing the second identical show cause notice. I, Therefore, hold with the learned counsel for the appellants that that certainly tantamounted to reviewing the earlier decision and that the powers of review are not available with the Registrar. The impugned action culminating in the passing of the order under challenge is, Therefore, again bad in law and without jurisdiction. The other irregularity such as the fixation of the date of hearing before the date of furnishing the reply to the show cause notice is apparent on the face of it.

To conclude, judged from all the angles, the impugned order cannot be sustained. That being so, the appeal is allowed and the impugned order of superseding the Managing Committee of the appellant-society is set aside."

12. In view of what the Financial Commissioner observed coupled with the reasonings, which were recorded by the Registrar in his earlier order and the note which is available on the original file of Registrar which is at p-102 (which was made available to us during the course of hearing), are sufficient enough to dismiss the petition as we do not find any ground to interfere with a lawful order passed by an authority allowing the appeal of the Society and thereby setting aside the order of the Registrar. Reading of the two show cause notices and the note which is at p-102 of the file of Registrar, will lead to no other conclusion than what the Financial Commissioner observed in the aforequoted portion of the order that there was no reason again for issuing second identical show cause notice and that the second show cause notice was nothing else, but reviewing the earlier decision by issuing fresh show cause notice for which Registrar was not competent.

13. We find no ground to interfere with the impugned orders. We are of the view that direction still can be issued in this petition for holding fresh elections for which none of the parties had any objection. Accordingly, we direct the Registrar, Cooperative Societies to proceed to make appointment of an Election Officer for the conduct of elections in consonance with law and as per the provisions contained in Rule 21 of the Cooperative Societies Rules and Schedule-11 thereof within a period, of four months from today. The Election Officer will proceed to complete the entire election process within a period of six months from the due of his appointment. Respondents Nos. 2 and 3 will handover, whatever record is available with them, to the Registrar, Cooperative Societies or his nominee against receipt, within a period of four weeks from date of passing of this order. On receipt of the said record, which is handed over by respondents Nos.2 and 3, in case Registrar or his nominee or the Election Officer will feel that record is insufficient, for the conduct and holding of the elections, Registrar will proceed to pass the appropriate orders for preparation of fresh records in accordance with law. Needless to add that for any reason whatsoever, election process when started, will not be stopped merely for this reason that the record is not available or has not been handed over by the respondents. It is further clarified that the Registrar will be competent separately to take appropriate action in accordance with law against the defaulting parties for dereliction of their statutory duties under the provisions of the Act. Mere rejection of petitioners prayer to quash the impugned order will not come in the way of the Registrar in taking appropriate action in accordance with law against the defaulting persons against whom there might be any complaint of default in dereliction of their statutory duties.

14. This writ petition stands disposed of.