
(2015) 10 AHC CK 0027

In the Allahabad High Court

Case No : Writ - C. Nos. 42123 and 42202 of 2015

Resident Welfare Association and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 — Section 13, 14, 14(6), 14(7)(q), 3(j)

Citation : (2016) 114 ALR 404 : (2016) 1 AWC 272

Hon'ble Judges : Suneet Kumar, J.

Bench : Single Bench

Advocate : Ashish Dubey, Ananya Pandey, Anil Kumar Bajpei and C.L. Pandey, for the Appellant; Kunal Ravi Singh, Manjari Singh and Nisheeth Yadav, for the Respondent

Final Decision : Disposed Off

Judgement

Suneet Kumar, J.—Petitioner society is registered under the Societies Registration Act 18601 in the name and style Resident Welfare Association, Purvanchal Silver City-II, Greater NOIDA2 duly registered on 28 September 2010. The State notified the U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 20103, on 18 March 2010 to provide for the ownership of an individual apartment in a building of an undivided interest in common areas and facilities of appertaining to such apartment and to make such apartment and interest heritable and transferable and for matters connected thereto and incidental thereto. In exercise of power conferred under Section 13 of Act 2010, the U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Rules 20114 was notified on 16 November 2011. Pursuant to powers under Section 14(6) of Act 2010, the Governor made and got published Model Bye-Laws requiring every Association of Apartment Owners hereinafter to make their Bye-laws at its first meeting for the administration of the affairs in relation to the apartments and the property appertaining thereto. The Model Bye laws was notified on 16 November 2011.

2. The case of the petitioner-society is that upon notification of the Model Bye-laws, in its first extraordinary general body meeting held on 24 November 2011 the society adopted the Model Bye laws with minor amendment which was approved by 2/3rd majority of the RWA in accordance with clause 58 of the Model Bye-laws. The Deputy Registrar Societies on 8 September 2014 accepted and approved the Model Bye laws adopted by the petitioner-society along with amendments. Thereafter, the fourth respondent Deputy Registrar by letter dated 14 January 2015 intimated the petitioner-society that the amended Bye-laws not being approved by the second respondent Competent Authority/CEO, Greater NOIDA Authority, therefore, till approval is received the Model Bye laws framed under the Act shall govern the petitioner society. The petitioner filed objection/reply before the Deputy Registrar, who in turn by letter dated 19 March 2015 addressed to the CEO, Greater Noida Authority sought approval of the amendment proposed in the Bye laws by the petitioner society. In the mean time, the sixth respondent, Neelam Ahi made a complaint on 15 September 2014 to the CEO Greater Noida Authority on which the Nodal Officer, Greater Noida under Act, 2010 issued an order dated 26 September 2014 and 30 September 2014 convening special meeting of RWA. Aggrieved, the petitioner approached this Court in a petition being Writ Petition No. 55792 of 2014 which was disposed of finally on 16 October 2014 directing the second respondent, CEO, Greater Noida Authority to decide the objection of the petitioner society, till decision is taken the order passed by the Nodal authority dated 26 September 2014 and 30 September 2014 be kept in abeyance. Pursuant thereof, the CEO, Greater Noida decided the representation by order dated 1 April 2015 holding therein "it is upto the members to resolve their dispute, if any, in such manner as they may prefer". In the mean time, it is alleged that one of the member of RWA Sandeep Kumar was constrained to file a contempt petition being Petition No. 1673 of 2015, Sandeep Kumar Versus Devesh Singh, Deputy Registrar, Firms Societies and Chits Meerut, U.P. and another for violation of judgment and order dated 14 November 2013 passed in M/s. Designarch Infrastructure Pvt. Ltd. and Another Vs. Vice Chairman, Ghaziabad Development Authority and Others, in which notices were issued to the opposite party on 31 March 2015. The Deputy Registrar in the mean time passed order dated 28 April 2015 derecognising the Bye laws of the petitioner-society which was earlier recognized on 8 September 2014. Pursuant thereof, the Deputy Registrar made a reference on 11 May 2015 to the Prescribed Authority/Sub-Divisional Magistrate under Section 25(1) of Act 1860, to which the petitioner society submitted their objection on 12 June 2015. The Prescribed Authority by the impugned order dated 16 July 2015 observed that the rival parties since have submitted list of members being 258 and 306 respectively, their being large variance in the membership, therefore, it requires that in the presence of the Competent Authority the general meeting be convened and the Board of Management be constituted in a democratic process after determining the actual numbers of the apartment owners, accordingly, it was directed that till the elections are held, a receiver/administrator be appointed to run the affairs of the RWA. Pursuant to order dated 16 July 2015

passed by the Prescribed Authority/Sub-Divisional Magistrate, Sadar, Greater Noida by order dated 29 July 2015 appointed an administrator who in turn by order dated 30 July 2015 stayed the election of the petitioner society scheduled to be held on 1 August 2015.

3. The order dated 29 July 2015 and consequent order dated 30 July 2015 are being assailed in writ jurisdiction.

4. In connected petition, the petitioner claims to be an apartment owner, a member of RWA and seeks a direction to the respondents to resolve the dispute between two rival Boards of Management of RWA and would pray for the following reliefs:-

"(I) Issue a writ, order, or direction in the nature of mandamus directing respondents No. 2 and 3 to immediately restrain the respondent No. 4 from holding election dated 01.08.2015 as same is in violation of the order of respondent No. 1 dated 16.07.2015.

(II) Issue a writ, order or direction in the nature of mandamus directing Respondent No. 2 to hold election of Governing Body of respondent No. 4 under section 25(2) of the Societies Registration Act, 1860 at an early date preferably within 4 weeks or as this hon"ble.

(III) Issue a writ, order or direction in the nature of a mandamus directing Respondent No. 3 to pass an order and appoint an administrator preferably within 7 days as per the order dated 16.07.2015."

5. Sri C.L. Pandey, learned Senior Counsel, appearing on behalf of the petitioner would submit that the impugned order dated 16 July 2015 passed by the Prescribed Authority is without jurisdiction, illegal as the Prescribed Authority under Section 25(1) of the Act 1860, would have no power to direct the Competent Authority under the Act 2010 for appointing an administrator/observer for holding the election of RWA, further, the elections of RWA was already due on 1 August 2015 as per the election programme published by the petitioner society. It is further contended that neither the Deputy Registrar, Firms, Chits & Societies, Meerut has jurisdiction to refer the dispute under Section 25(1) to the Prescribed Authority nor did the Prescribed Authority/Sub Divisional Magistrate has any authority to decide the dispute under Act 1860.

6. In view of Section 31 , the Act 2010 would have overriding effect over other laws, it is therefore, sought to be urged that the competent authority under Act 2010 would have jurisdiction and in view of order dated 1 April 2015 the competent authority has already directed the RWA to resolve the dispute amongst themselves. It is, therefore, urged that the impugned order is illegal and bad in law.

7. In rebuttal, Sri V.K. Singh, learned Senior Advocate assisted by Sri Kunal Ravi Singh would submit that the bone of contention lies within a small sphere, that is, as to whether the petitioner would continue as a Board of Management of

RWA elected presumably on 23 August 2015 specially when the prescribed Model Byelaws have never been adopted and registered with the Deputy Registrar. Admittedly, the alleged amended Model Bye laws which was accepted by the Deputy Registrar on 8 September 2014 was rejected on 14 January 2015 and 28 April 2015. Pursuant thereof, the petitioner-society has not called for a general body meeting of the RWA to adopt the prescribed Model Bye laws as required under Act 2010 and Rule 2011. The Deputy Registrar was justified in rejecting the earlier registration of amended Bye laws for the reason that the prescribed Model Bye laws was never adopted by calling a general body meeting, it is, therefore, urged that there is no illegality or infirmity in the order passed by the Prescribed Authority requesting the competent authority to convene the meeting of the general body to adopt the Model Bye laws and constitute the Board of Management.

8. Sri Nisith Yadav, learned counsel appearing for the competent authority, Greater Noida, would submit that the Act 1860 would not apply on the apartment owners but would contend that the provisions of the U.P. Cooperative Societies Act would be applicable, however, Sri Yadav does not dispute that the Chief Executive Officer of Noida is the competent authority within the meaning of Act 2010.

9. Rival submission falls for consideration.

10. Learned counsel for the petitioner has failed to show as to whether the Model Bye laws was ever adopted by the general body of RWA and registered with the Deputy Registrar. The amended Bye-laws which is alleged to have been accepted by the Deputy Registrar on 8 September 2014 was rejected by the Deputy Registrar as is reflected from the letters dated 14 January 2015 and 28 April 2015. It is not the case of the petitioner society that upon rejection of the Model Bye-laws on 14 January 2015, the petitioner society ever called for a meeting of the general body to adopt the Model Bye-laws under the Rules 2011, therefore, the Deputy Registrar on 28 April 2015 rejected the acceptance of the Model Bye-laws for the reason that the notified Model Bye-laws under Rules 2011 were never adopted by calling the general body meeting. Rule 3(f) and 3(e) of the Act 2010 defines "Board and "Association of apartment owners", which is extracted:-

"3(f) "board" means the Board of Management of an Association of Apartment Owners elected by its members under the Bye-laws:

3(e) "association of apartment owners" means all the owners of the apartments therein, acting as a group in accordance with the Byelaws."

11. Definition would require that all the owners of the apartments would form an association and the Board of Management is to be elected by the members of the association under the Bye-laws. The petitioner has basically assailed the jurisdiction of the Prescribed Authority in directing the competent authority to appoint an administrator who would in turn institute a validly elected Board of Management upon adoption of the notified Model Bye-laws in a meeting

convened by the general body of the apartment owners. Reliance was placed on an observation made in order dated 1 April 2015 passed by the competent authority directing the parties to resolve their dispute amongst themselves. The said order was passed pursuant to directions issued by this Court in Resident Welfare Association through Sec. Pankaj Jain Versus State of U.P. Civil Misc. Writ Petition No. 55792 of 2014 which was filed by the petitioner, wherein, the petitioner questioned the authority of the competent authority convening special meeting of the petitioner-society of all the apartment owners on 12 October 2014. The petitioner contended before this Court that there being an election, dispute of the society which could be resolved by the authority under Section 25 of the Act 1860 and cannot be resolved under the U.P. Apartment Act. In the present case, there being dispute of rival Board of Management one under the Presidentship of sixth respondent who is alleged to have adopted prescribed Model Bye-laws, therefore, the Registrar referred the matter to the Prescribed Authority under Section 25(I) of Act 1860. The Prescribed Authority passed the impugned order directing the competent authority/CEO of Noida to appoint the receiver to constitute the Board of Management. Clause 2(i) of the Model Bye Laws defines "Registrar" which means the "Registrar under the provisions of the Societies Registration Act." Therefore the Registrar would have power to register an Association of Apartment Owners and the Bye-laws of the Association. By operation of law it has to be the prescribed Model Bye-laws there can be no deviation or variation from the Model Bye-laws, save without prior permission of the competent authority. It, therefore, follows that in the event of the Association adopting the Model Bye-laws in a duly convened meeting of the general body, the Registrar is bound to register the association along with the prescribed Model Bye-laws. The competent authority under Act 2010 has no role whatsoever in the registration process. It is the Registrar alone who has to ensure that the Model Bye-laws are in the prescribed proforma and if there is any deviation/amendments, the Registrar would have to ensure that the deviation/amendment is backed with the prior approval of the competent authority which is supported by a resolution passed by 2/3 of the total apartment owners. The authority in the present case being Deputy Registrar who has power to accept the prescribed Model Bye-laws, by necessary implication would also have the power to reject the Bye-laws for the reason of there being not properly adopted as required under the Act 2010 and Rules 2011. It is admitted by the parties that the prior permission of the competent authority was not obtained before the the alleged adoption of the amended Model Bye laws. The petitioner has not placed on record any documents nor the approval order of the competent authority nor the resolution passed and approved by 2/3rd of the total apartment owners, therefore, in my opinion, the Bye-laws were rightly rejected on 28 April 2015. The petitioner/Board of Management claims to have been constituted under the amended Bye-laws. The Prescribed Authority in the impugned order has categorically recorded that since the amended Model Bye-laws was wrongly registered as it was not approved by the competent authority, Board of Management so constituted under the alleged amended Bye-laws cannot be

accepted under the Act 2010. The finding has not been challenged in the writ petition nor there is any averment with regard to its illegality.

12. Section 14 of the Act 2010 provides that there shall be an association of an apartment owners for the administration of the affairs in relation to the apartments and the property appertaining thereto and for the management of common areas and facilities. Sub-rule 6 provides "the Government may by notification in the Gazette frame Model Bye-laws in accordance with which property referred to in sub-section shall be administered by the Association of Owners and the association shall, at its first meeting, make its Bye-laws in accordance with the Model Bye-laws so framed, and in making its Bye-laws the Association of Apartment Owners shall not make any departure from, variation of, addition to, or omission from, the Model Bye-laws aforesaid except with the prior approval of the competent authority".

13. It is clear from the reading of sub-clause (1) and sub-clause (6) of Section 14 that there shall be one association of Apartment Owners and upon notification of the Model Bye-laws, the association is required to adopt the Model Bye-laws in its first meeting. Further, requirement is that the Model Bye-laws shall not be altered without prior approval of the competent authority. Section 14 has to be read along with Clause 58 of Model Bye-laws 2011 which prescribes an additional condition for amendment, a resolution has to be adopted by 2/3rd of the total member of Apartment Owners followed by approval of the competent authority. The legal position has been affirmed by a Division Bench in M/s. Designarch Infrastructure Ltd. case (supra).

14. The competent authority has been defined under Rule 2 which means the Vice-Chairman of the Development Authority in whose development area the building is situated or the Collector of the district where no such Development Authority exists and by amendment Chief Executive Officer of the Noida Authority. The case set up by the petitioner society is that it was incorporated on 28 September 2010 under the Act 1860. The Model Bye-laws were notified on 16 November 2011. Petitioner society under Act 1860 in its Bye-laws provided the term of the Board of Management for five years with a total of eight members being elected every five years. It is contended that the Model Bye-laws was adopted on 24 November 2011, later amended. The Agenda of the meeting held on 24 November 2011 would reflect that meeting was convened for "Demand Letter of builder towards the intimation for making the payment of land compensation amount demanded by Greater Noida", therefore, the claim that Model Bye-laws were adopted on 24 November 2011 is totally false. Nothing has been brought on record to show that the general body of the association was ever convened to adopt the Model Bye-laws, whereas, within eight days from the date of notification of the Model Bye-laws on 16 November 2011 it is alleged that the meeting was convened. It is an improbable case set up by the petitioner regarding the adoption of the Model Bye-laws in such a short period of time. The record would reveal that the Registrar, Firms, Chits and Societies, Meerut issued

a general direction only in 2013 to every Deputy Registrar to comply with the Model Bye-laws to scrutinize every Bye-laws registered by the apartment owners and were required to inform the association to get the Model Bye-laws registered. The other contention on behalf of the petitioner is that the Model Bye-laws is alleged to have been adopted on 24.11.2011 and were amended by holding a meeting on 13 May 2012 and 06 May 2012. As many as 28 amendments were made in the Model Bye-laws, however, the petitioner have failed to bring on record that as to when the meeting was convened for amending the Model Bye-laws and as to whether any prior permission was sought from the competent authority as required under sub-section (6) of Section 14 . The approval of the competent authority is mandatory and there is no deeming clause that in the event of the competent authority not granting permission within a stipulated time, the amendment would deem to have come into force. The Deputy Registrar of societies who registered the amended Bye-laws on 8 September 2014, on complaint being filed by the sixth respondent and other residents that the Model Bye-laws were never adopted by the apartment owners. The Deputy Registrar, thereafter, on 14 January 2015 directed that the Model Bye-laws would govern the affairs of RWA until permission is obtained from the competent authority. The earlier alleged adoption on 24 November 2011 was therefore obtained on the basis of fraud and misrepresentation. This is further fortified by the fact that the petitioner made an application on 31 January 2015 requesting the Deputy Registrar to withdraw the order dated 14 January 2015. The petitioner was directed to appear on 17 March 2015 to place their case before the Deputy Registrar, petitioner submitted a reply on the same day but did not submit any document/resolution indicating the adoption of the prescribed Model Bye-laws upon a resolution by the general body of the RWA, consequently, on 28 April 2015, the Registrar rejected the amended Model Bye-laws registered on 8 September 2015 for the reason that the procedure prescribed under the Act, Rules and the Bye-laws were not followed. The petitioner admittedly has not assailed this order in any proceedings, therefore, it attained finality. The order was passed after reasonable opportunity, therefore, the contention on behalf of the petitioner that all the necessary documents were already on record is incorrect. Further, the petitioner is not disputing that the prior permission of the competent authority as required under Section 14(6) was not obtained. Thus in the backdrop of the admitted facts, it is clear that the petitioner did not adopt the prescribed Model Bye-laws, the amendment of Model Bye-laws could not have been registered or accepted or acted upon save without prior permission of the competent authority, the constitution of the petitioner-Board of Management is illegal, therefore, would not have a right or authority to manage the affairs of the RWA.

15. It is contended by the learned counsel for the petitioner that the sixth respondent and other members associated with the sixth respondent have been disqualified and debarred from the membership of the association for non payment of dues to the Association. As per the scheme of sub-clause (3) and sub-

clause (4) of Section 14 , every apartment owner is under an obligation to become member of the Association of Apartment Owners. It is mandatory, the apartment owner cannot resist to become a member of the Association. All the persons who have purchased the apartment and executed a deed of apartment shall automatically become member of the Association and pay the entrance fee of Rs. 1000/-. Sub-clauses (3) and (4) of Section 14 is extracted:-

"14.(3) In a case, where an association of the apartments owners of a building has not been formed, on the intended date of execution of a deed of apartment in favour of prospective apartment owner, it shall be obligatory for a prospective apartment owner to become member of the association within a period of 4 weeks on receipt of a written intimation about the formation of such association.

"(4) Where an association of an apartment owners exist on the intended date of transfer of an apartment, it will be obligatory for the prospective apartment owner to become member of such association before execution of a deed of an apartment in his favour."

16. The provision, abovementioned, read with clause 4 of Model Bye Laws makes the membership automatic upon executing deed of apartment. Clause 4 of Model Byelaws is extracted:-

"Members of Association-

(I) All persons who have purchased apartments in condominium and executed a deed of apartment, shall automatically be the members of the Association and will pay the entrance fee of one thousand rupees. Each apartment owner shall receive a copy of the Bye-laws."

17. Thus, it is evident from the provision extracted, herein above, that membership is not depended upon payment of membership fees but is subject to execution of deed of apartment (sale deed and other etc.), membership fees follows purchase of an apartment.

18. Clause 7 of the Model Bye-laws provides for disqualification of apartment owners from participating in the election of Members of the Board, President and other office bearers or entitle to stand for election to such office, "if he is in arrears, of any sum due from him in respect of his contributions for common expenses, for more than sixty days on the last day of the year preceding the year in which the election to Board would take place." Common expenses has been defined in Section 3(j) of the Act 2010 which is extracted:-

"Common expenses" means-

(i) expenses of administration, maintenance, repair or replacement of the common areas and facilities, utilities, equipment and machineries and all other sums assessed against the owners of apartment by the Association of Apartment Owners.

(ii) expenses declared as common expenses by the provisions of this Act or by

the Bye-laws."

19. It is, therefore, clear from Clause 7 of the Bye-laws mere default or arrears in common expenses would not dis-entitle an apartment owner from participating in the election or of being disqualified as the member of the association.

20. According to the petitioner, the last election was held on 1 August 2015, therefore, the financial year would end on 31 March, the dues of common expenses have to be paid till 31 March only. If, therefore, the expenses were paid till 31 January of the subsequent financial year then in that event the sixth respondent could not have been disqualified or debarred from voting or participating. Under the scheme of the Model Bye-laws and the Act there is no absolute disqualification but is limited and qualified to only voting or taking part in the elections but does not restrict the members from participating in any other meeting of the Association. Therefore, the contention of the petitioner that the sixth respondent and some other members have been debarred and disqualified from membership of the Association is untenable as the mandatory requirement of the Act is each apartment owner would automatically become a member of the association. The contention of the petitioner, therefore, is rejected.

21. Common expenses are of two kind; one, general common expenses incurred in running maintaining the common areas and facilities which is referred to as the Annual Maintenance Contract (AMC), second type of expenses declared as expenses for which the resolution of the general body of the association is required, therefore, every and any kind of expenses cannot be included in the Annual Maintenance Contract, therefore, any default in payment of such expenses would not debar a member from participating in the election. It is only common expenses which being the Annual Maintenance Contract which is paid by the residence/apartment owners would be entitled to participate in the activities of the association including elections. The term of the Board in the Model Bye-laws, as per clause 26, is for one year, the election is to be held every year in which minimum of four and maximum of ten member are to be elected, there is also an arrangement for retirement of members every year.

22. The contention of the petitioner for holding election for only three posts would, therefore, be illegal as the election contemplates under the Model Bye-laws as annual election for the entire Board of which some member would retire. Upon rejection of the Model Bye-laws by the Deputy Registrar and there being non adoption by the association pursuant to order dated 14 January 2015, all previous and present election as alleged to have been conducted by the petitioner on 1 August 2015 would be illegal and non est. In terms of the Model Bye-laws all elections would have to be held as per the provisions of Act 2010 and the Model Bye-laws.

23. The competent authority under the Act 2010 has to ensure that peace and harmony is maintained and the common area facility to each of the apartment owner, is preserved. The scheme of the Act 2010 nowhere contemplates that the

functions can be exercised by the Registrar under the Act 1860 as the Registrar lacks the necessary authority and power to ensure preservation of residential facility. The rule for registration under the Act 1860 is limited, ensuring the registration of the Model Bye-laws and preserving the right of each apartment owner by ensuring that elections to the Board of Management is strictly held in accordance with the provisions of the Model Bye-laws. Clause 57 of the Model Bye-laws confers power upon the competent authority to inspect the building.

24. Clause 57 reads as follows:-

"57. Power of competent authority to inspect the building:

The competent authority, suo muto or on an application, may make an inspection of the building to which the Act applies. A memo of inspection may also be prepared by the competent authority about the status of the building including the common areas and facilities and, thereupon, the competent authority may take such action in respect thereto as may be deemed necessary by him."

25. In the present case, due to the ongoing dispute the use of common area and facilities by the members have suffered as the petitioner has cut/stalled access to several amenities available to the members including the sixth respondent for the reason that the sixth respondent is opposing the petitioner. This would further highlight the important function the competent authority is assigned under Act 2010 in preserving the administration of the residential complex. Section 14(7)(q) is extracted:-

"14(7) The Model Bye-laws framed under sub-section (5) shall provide for the following, among other matters, namely:-

(q) any matter which may be required by the competent authority to be provided for in the Bye-laws for the proper or better administration of the property:"

26. The competent authority has to provide for a better administration of the property which would include ensuring that free and fair elections are conducted after adopting the prescribed Model Bye-laws.

27. Reference may also be had to section 31(2) of the Act 2010:

"31.(2) Save as otherwise expressly provided in sub-section (1) the provisions of this Act, shall be in addition to, and not in derogation of any other law for the time being in force."

28. Since the provisions of the Act are in addition to and not in derogation of any other law for the time being in force, the Competent Authority is bound to ensure better administration of the property which, inter alia, would require constitution of Board of Management as per Model Bye-laws.

29. A Division Bench in Grand Omaxe Apartment Owners Association Versus New Okhla Industrial Development Authority and others Civil Misc. Writ Petition No. 39150 of 2015 decided on 05.08.2015, relying upon a decision of Privy Council in

the case of *Sunder Singh-Mallah Singh Sanatan Dharam High School Trust* AIR 1938 73 (Privy Council) , held that mere issuance of registration certificate by the Deputy Registrar without registering the bye-laws, which in the present case has been cancelled cannot lead to the conclusion that the petitioner-society is registered under the provisions of the Act. The Court without entering into the merits of the case and in the interest of the Apartment Owners disposed of the petition with the directions for constitution of association and holding election.

30. In *Manish Kansal and another Versus State of U.P. And others* Writ-C No. 17986 of 2015 decided on 29.05.2015, Single Judge of this Court while disposing of the petition provided that electoral roll has to be prepared strictly in accordance with the provision of Act 2010, Rule 2011 and Model Bye-laws.

31. In *S.P. Singh Yadav Versus State of U.P. and others* Writ-C No. 36208 of 2015 decided on 13.07.2015, Single Judge of this Court held that the Act 2010 being enacted by the State Legislature, therefore, the provisions of the Societies Registration Act, 1860 will have overriding effect over the Act of 2010 while the Prescribed Authority making a reference to decide the dispute with regard to election of members relating to RWA.

32. Having examined the facts in some detail, the provisions of the Act 2010, Rule 2011 and the Model Bye-laws, it transpires from the impugned order passed by the Prescribed Authority and the material available on record that:

(i) the petitioner society, upon notification of the Model Bye-laws has not been registered upon adoption of the Model Bye-laws by the general body of RWA,

(ii) no meeting of the general body of RWA was ever convened to adopt the Model Bye-laws;

(iii) the alleged amendment of the Model Bye-laws had never taken place, as there being no resolution of 2/3rd members approving the amendment;

(iv) there being no prior approval of the Competent Authority approving the amendment;

(v) cancellation of the registration and the bye-laws of the petitioner-society by the Deputy Registrar Societies makes the petitioner society a non entity; and

(vi) by stop-gap arrangement RWA has been directed by the Deputy Registrar to function as per the Model Bye-laws until adopted by the general body.

33. In this view of the matter, the legality of the impugned order passed by the Prescribed Authority under Section 25(1) of Act 1860 and the consequential order of the Competent Authority appointing a receiver to convene a general body of the RWA in order to determine the electoral college (voters) so as to constitute a legal and valid Board of Management need not be gone into, by me, in the facts and circumstances of the case. The petitioner is in writ jurisdiction, which being discretionary, the Court can refuse to interfere with the impugned orders, in the event of interference would amount to perpetuating fraud,

misrepresentation and illegality. In setting aside the impugned order, would ultimately legitimize the petitioner society which otherwise is illegally constituted. Board of Management under the Model Bye-laws is yet to be constituted. I, therefore, decline to interfere with the impugned orders, and propose to dispose of the writ petition with the following directions:

- (1). The Chief Executive Officer, Greater NOIDA or any officer authorised by him not below the rank of Joint Secretary, NOIDA shall call a meeting of the apartment owners and the promoters on a date, time and place to be fixed by him for the purpose of forming an association of the apartment owners;
- (2). The association so formed in the said meeting after adopting the Model Bye-laws shall make an application before the concerned Registrar for registration and the association so formed, with the elected office bearers, shall be registered along with bye-laws adopted;
- (3). After the association is registered, the Chief Executive Officer shall proceed to consider granting recognition to said association;
- (4). The election/constitution of the Board of Management as provided under the Act and Rules shall be held in the said meeting by the apartment owners under the supervision of the competent authority or the officer nominated by him in this behalf;
- (5). The electoral roll shall be prepared strictly in accordance with Section 12(1) (f), Rule 3, Form "A" read with Annexure "B" appended to Rule 3 and Bye-laws 8 of the Model Bye-laws in a meeting of the Association;
- (6). The apartment owners shall be permitted to deposit interest/fee of Rs. 1000/- within a stipulated time, if already not deposited earlier;
- (7). The voter list of eligible members, thereafter, shall be prepared in accordance with the Act, 2010 and Rule 2011 and Model Bye-Laws;
- (8). The Election Officer, thereafter shall proceed to hold the elections as per the Election Schedule without questioning or entertaining any objections to the validity of the voter list prepared hereinabove;
- (9). The Board of Management constituted upon elections shall be handed over charge of the Association (RWA);
- (10). The Competent Authority, as well as, the District Authorities shall ensure that no outsider or external bodies, including associations shall be permitted to interfere in the election of the Association;
- (11). Senior Superintendent of Police, Gautam Budh Nagar shall provide requisite police force, if necessary, on the request of the CEO, Greater NOIDA;

34. It is provided that the entire exercise as directed herein above shall be concluded within six weeks from the date of service of certified copy of this order.

35. With the aforesaid directions, the writ petition is disposed of finally.

36. No order as to costs.

1Act 1860

2RWA

3Act 2010

4Rules 2011