

(2019) 11 DEL CK 0414

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 214, 266, 829 Of 2019, Civil Miscellaneous Application No. 6012, 7204, 25224, 25225, 39211 Of 2019

S Block Welfare Society & Ors

APPELLANT

Vs

Vidyut Arora & Anr

RESPONDENT

Date of Decision : 29-11-2019

Acts Referred:

Citation : (2019) 11 DEL CK 0414

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Shivam Goel, Sunil Goyal, Deepak

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. These three petitions relate to the Residents Welfare Association of S-Block, GK-1, known as the S-Block Welfare Society. The elections to the said society were held on 30th April, 2017 and the same came to be challenged in a suit filed by some of the residents, being Suit No. CS SCJ 646/2017 titled Vidyut Arora & Anr. v. S-Block Welfare Society & Ors. In the said suit, judgment/decreed was passed on 31st August, 2018. The operative portion of the judgment reads as under: -

"Issue No.1

Whether the plaintiffs have no locus to institute the present suit? OPD.

The defendants have failed to discharge their onus in respect of the issue. The issue accordingly stands decided in favour of the plaintiffs.

Issue No.2

Whether the proxy voting was permitted as per the rules framed under the

Society's Registration Act and the Indian Companies Act? OPD. The defendants have failed to discharge their onus in respect of the issue. The issue accordingly stands decided in favour of the plaintiffs.

Issue No.3

Whether the elections were conducted in contravention of the notification issued by the defendant no.2 himself and also in contravention of the rules under the Society's Registration Act and the Indian Companies Act and therefore the results thereof are liable to be declared as void? OPP. The plaintiff have for the above discussed reasons been able to discharge their onus with respect to this issue. The elections in dispute and the results thereof are being declared null and void for the above detailed reasons.

Issues No.4, 5, 6, 7

(4) Whether the plaintiff is entitled to the relief of declaration with respect to the elections held for the period of 2017-2019, held on 30.04.2017 and its consequent result to be null and void? OPP.

(5) Whether the plaintiff are entitled to the relief of perpetual injunction against defendant no,3 to 10 acting/holding the office as duly elected members of the Managing Committee of defendant no.1? OPP.

(5) Whether the plaintiffs are entitled to the relief of mandatory injunction as prayed for direction for fresh election of defendant no.1 to be conducted for the period of 2017-2019? OPP."

(7) Relief.

Issue no.4, 5, 6 & 7 relates to the reliefs sought. They also stand decided in favour of the plaintiffs for the above discussed reasons.

27. Thus, the case stands made out by the plaintiffs for the declaration of the elections conducted on 30.04.2018 to be null and void. Election accordingly stand so declared as null and void. Defendants no.3 to 10 are accordingly restrained from acting/representing themselves as office elected bearers of managing committee of defendant no.1. The managing committee existing prior to the said election to take control of the affairs of the society as adhoc arrangement, till fresh election are conducted by appointment of the Returning Officer afresh, as per bye laws and the rules governing the defendants society.

28. Decree sheet be prepared accordingly.

29. File be consigned to Record Room."

2. A perusal of the judgment/decreed passed by the Id. Trial Court shows that the elections which were held on 30th April, 2017, were declared null and void. Defendant Nos. 3 to 10 were also restrained from acting/representing themselves as the office bearers of the society. The Committee, as it existed prior to the election on 30th April, 2017, was to control the affairs of the society

as an ad-hoc arrangement. Fresh elections were directed, in accordance with the bye-laws and rules governing the society.

3. In order to give effect to this decree, Execution Petition No. 229/2018 came to be filed before the Executing Court. In the said proceedings, various orders have been passed, which are impugned in these three petitions.

4. Since the filing of these petitions before this Court, in the execution petition, an order dated 25th November, 2019, has now been passed wherein the Executing Court has issued directions to the SDM concerned to appoint a responsible officer as the returning officer for conducting fresh elections in the society. The Executing Court has directed as under:-

"6. It was directed vide judgment/decreed dated 31.08.2018 that the managing committee existing prior to the said election to take control of affairs of the society as ad-hoc arrangement till fresh elections are conducted. Although no time was specified in judgment dated 31.08.2018 for the elections to be conducted, however the spirit of the judgment was that the elections must be conducted within a reasonable time. More than one year has lapsed from the date of judgment/decreed dated 31.08.2018 and fresh elections have not been conducted by the ad-hoc managing committee. It appears that the ad-hoc managing committee is not interested in conducting fresh elections and the ad-hoc committee is trying to attain permanent status.

7. Although DH has sought relief for appointment of Local Commissioner to be appointed as returning officer, in the facts and circumstance of the case, it is deemed appropriate that direction be issued to the SDM concerned to appoint some responsible officer as a returning officer for conducting fresh elections of the JD's society. The SDM concerned shall appoint some responsible officer within 10 days from the date of receipt of this order. The JDs (ad-hoc managing committee) are granted one month time after the appointment of returning officer to conduct the elections. The JDs are also directed to file the authenticated copy of list of eligible voters, under the intimation to this court to the SDM concerned as per order dated 28.01.2019 and 07.02.2019 within 10 days from today. The entire expenses for the election shall be borne by the JD no. 1 society. All the payments shall be made in cheque to be drawn under the signature of the person concerned who is the authorized signatory and in case he has demitted the office or is not available for any other reason then the President or the Secretary of the Ad-hoc committee shall sign the cheques. The bank concerned shall honour the said cheques subject to other rules of the bank."

5. The Executing Court also took note of the fact that frivolous applications have been filed by the Decree Holder. As per the above order of the Executing Court, a responsible officer has to be appointed as the returning officer, fresh elections have to be conducted and an authenticated list of eligible voters is to be submitted by the Petitioners herein.

6. The issue that has now arisen is as to who are the eligible voters for the

elections to be held. Counsels appearing for both sides have argued with vehemence their respective points of views. The clear dispute is as to the date on which the electoral roll has to be frozen. The submission made on behalf of the Respondents is that the electoral roll should be as of the date when the last election challenged was conducted i.e., 30th April, 2017. On the other hand, Id. counsel for the Petitioners submits that it should be as of the date of the decree i.e., 31st August, 2018 or 31st March, 2019 or today's date.

7. Allegations in respect of the electoral roll are placed before this Court, which this Court does not intend to go into. The main idea is to now ensure that free and fair elections are held in the society. In order to achieve this, the electoral roll needs to be drawn up. Accordingly, the following directions are issued: -

(1) The returning officer shall be appointed by the concerned SDM within two weeks, as per the order dated 25th November, 2019 passed by the Executing court.

(2) The electoral roll available in the record of the Executing Court shall now be taken as the basis for the drawing up of the final electoral roll.

(3) The electoral roll which existed as of 30th April, 2017, shall be considered by the returning officer and the returning officer shall also obtain information from the Petitioners as to the new members who have been admitted.

(4) After considering all the three lists i.e., the list that existed as of 30th April, 2017, the list filed before the Executing Court and the list of members submitted by the Petitioners herein, a consolidated list of eligible voters shall be drawn up by the returning officer, on the following parameters:-

(a) In the electoral roll of 30th April, 2017, any persons who have left the society or who have passed away, shall be deleted.

(b) If any person whose name is reflected as a member in the electoral roll of 30th April, 2017 has not paid the subscription amount or the membership amount, reasonable time, not exceeding one month, shall be granted for payment of the subscription/membership.

(c) If any members have been inducted after 30th April, 2017, the list of such members shall be prepared, their identity shall be ascertained and it shall be ensured that all the requisite forms and fees have been paid by these new members.

8. It is submitted that amendments have been made to the Bye-laws of the Society post the elections held on 30th April 2017. It is clarified that the electoral roll shall be drawn up by the returning officer as per the bye-laws which existed as of 30th April, 2017. The elections will then be conducted by the returning officer as per the said bye-laws, after giving adequate notice to the members of the society. Proxy voting shall not be permitted. The election shall be conducted by secret ballot for all the posts. Once the new Committee is elected, it shall

decide whether to adopt the amended bye-laws or not. The bye-laws as amended after 30th April 2017 shall not be given effect to.

9. Justice S.P. Garg (Retd.) (M: 9910384627) is appointed as a local commissioner to oversee the entire process of the elections. The returning officer appointed by the concerned SDM shall also be present in all the meetings and during the elections. The fee of the local commissioner is fixed at Rs. 2,00,000/- lump sum, for the entire exercise of drawing up the electoral roll and conducting the elections. The election process shall be concluded by 31st March 2020. The fees to the Local Commissioner shall be paid by the Petitioner on the date of the first meeting.

10. With these observations, none of the grievances in the three petitions survive. Accordingly, the three petitions and all pending applications are disposed of.

11. Till the elections are conducted the proceedings before the Executing Court shall remain stayed. The returning officer shall file a report after the conduct of the elections in order to record compliance. List for compliance on 28th April, 2020. Dasti.