

(1993) 07 DEL CK 0040

In the Delhi High Court

Case No : Civil Writ Appeal No. 527 of 1990

Satish Chandra and Another

APPELLANT

Vs

The Registrar Co-operative

RESPONDENT

Date of Decision : 16-07-1993

Acts Referred:

Delhi Co-operative Societies Rules, 1973 — Rule 53(3)

Citation : (1993) 3 AD 81 : (1993) 26 DRJ 528

Hon'ble Judges : V.K. Jain, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Kailash Vasdev and Vanita Sahni, for the Appellant;

Judgement

Vijender Jain, J.

(1) This is a petition filed by the petitioners praying, inter alia, to declare that amended Rule 53 of the Delhi Co-operative Societies Rules, 1973 (for short the Rules) as unconstitutional and consequently any business transacted at meetings pursuant to the said Rule to be, illegal and inoperative. The petitioners have further prayed that Sec. 34 of the Delhi Cooperative Societies Act, 1972 be declared unconstitutional and ultra virus of the Constitution. Lastly, the petitioners have prayed for issuance of a writ of mandamus to the Registrar, Co-operative Societies to forthwith appoint an Administrator of the respondent-Society under Sec.32 of the Delhi Co-operative Societies Act, 1972.

(2) Briefly stated the facts leading to the filing of the writ petition are that the petitioners were members of The Supreme Co-operative Group Housing Society Ltd. The land to the Society was given on 3rd May, 1983 at Mayur Vihar Phase-I. The Society appointed M/s Raj Rewal as their architect. The main grievance of the petitioners had been that the appointment of the Architect Mr. Raj Rewal was illegal as he charged 3 per cent as his professional fees on the cost of project. According to the petitioners the appointment of the said Architect on 6th January, 1984 by the General Body was illegal as there was no quorum nor the

agenda circulated contained the item of such appointment.

(3) The petitioners who are advocates appeared in person inter alias argued that under bye law 19(v) of the Society an item not on agenda ought not to have been discussed. The petitioners moved the Registrar, Cooperative Societies under Sec.60 of the Delhi Cooperative Societies Act on 5th September, 1986. The disputes were referred to the Arbitrator who rejected the claims of the petitioners. Against the said order the petitioners filed an appeal under the Act before Delhi Co-operative Tribunal which was also dismissed on 20th February, 1989 by a well reasoned order. It is important to reproduce the following paragraphs of the said order:-

"I have considered the averments made on behalf of the appellants on both the counts. I find that it has rightly been held by the learned Arbitrator that the question of approval of the plans prepared by the Architect cannot be disassociated from the appointment of that very Architect as the issue of approvals of plans is co-related to the issue of appointment of the Architect. The issue of approval of the plans has not been challenged on behalf of the appellants. Further, I find that the appellants were always present at the time of both the meetings of the " Managing Committee and Therefore it has rightly been held by the . Arbitrator that since no timely objection was raised, it does not now lie with the appellants to assail the appointment of the Architect. Coming to the next issue regarding the question of bifurcation of the Society, I again find that the learned Arbitrator has rightly come to the conclusion that the appellants are at liberty to pursue this matter with the Registrar Cooperative Societies.. The above decision, to my mind, Therefore, does not suffer from any legal infirmity."

(4) Aggrieved by the said order the petitioners filed a writ petition in this Court being Civil Writ No.454 of 1989 on 6th April, 1989. The said writ petition was dismissed on 7th April, 1989 in liming. The petitioners instead of filing a SLP in the Supreme Court for reasons best known to them, though as. pointed out earlier both are lawyers by profession, filed a writ petition being Cw 58 of 1989 under Article 32 of the Constitution of India before the Hon"ble Supreme Court. In the said writ petition the petitioners say they have prayed for the same prayers as have been agitated in the present writ petition before us. However, the said writ petition filed before the Supreme Court was withdrawn by the petitioners on 25th January, 1990, before even notice was issued therein, with the liberty to the petitioners to file a writ petition in the High Court for the same relief. The order of the Supreme Court dismissing the petition as withdrawn does not show if the Court was made aware of fact of dismissal of earlier writ petition by this Court. In the meanwhile, the petitioners were expelled from the membership of the Society with effect from 22nd October, 1990 when the period of six months for granting approval by the Registrar, Cooperative Societies under the amended Rule 36 of the Rules expired. It is strange that the order of expulsion has not been challenged either in this writ petition or in any other writ

petition. Obviously, the reason is very simple. Under the garb of one technicality or the other what the petitioners are trying to achieve is to constantly engage the Society into litigation without making any payment towards cost of construction of the flats. It is noteworthy to mention that other members of the Society had paid about Rs.6 lacs in relation to the flats of the Society since 1983 whereas the contribution of both the petitioners is Rs.20,000.00 only. It has become a trend that members who do not make payment on one pretext or the other either, by challenging certain short-coming in appointment of contractor/ architect or finding fault with the procedural matters thwart the whole construction process thereby depriving the benefits to those members who. had contributed for the construction activities. This results in delays in construction and also burdening the members on account of escalated cost. The case of the petitioners is an example in this regard.

(5) As the petitioners have argued and defended their action in not making the payment to the Society on the ground that the managing committee elected was illegal or the fees of the architect was on the higher side, the petitioners have no business not to pay to the Society, maybe under protest and to get their disputes agitated under the machinery provided under Delhi Co-operative Societies Act and Rules framed there under. Petitioners have chosen to take advantage of the forum as provided under the Act and went up to the Supreme Court but failed to contribute single paise further to what was initially deposited by them, i.e. Rs.20,000.00 till this date. Petitioners arguments that they " were not informed about dues have no-force. Even Registrar, Co-operative Societies, respondent No.1 issued a letter dated 12th August, 1991 to the petitioners granting time to the petitioners of four weeks to square the dues failing which their expulsion stood approved. inspire of that opportunity the petitioners did not pay a single penny to the Society.

(6) Thereafter again on 9th September, 1991 on an interim application this Court further granted time to the petitioners to pay the amount within two weeks from that date. However, the petitioners on the ground that the Society had not informed them about the dues chose not to pay and on that account this Court ordered their expulsion to be stayed till final disposal. We would have agreed with the petitioners that the Society has not informed them about the payment, had the petitioners shown to us any bona fide intention to make the payment to the Society. Even in the court we had asked the petitioners if they were prepared to pay the amount demanded by the Society with interest for delayed payment from the first call, the petitioners did not agree. We are expressing ourselves in this case in these terms as we would like to make it abundantly clear that the conduct of the petitioners is such that they are not entitled to any relief under the extra-ordinary jurisdiction under Article 226 of the Constitution of India.

(7) The provisions of Delhi Co-operative Societies Act and Rules framed there under regarding expulsion of members particularly in relation to those who have defaulted in paying the call money by the society, have played havoc to the

working of the societies in Delhi. Any member even if his contribution is bare minimum can thwart the process of expulsion on account of various procedural delays in the office of the Registrar, Co-operative Societies and on account of the provision of appeal in the Cooperative Societies Act. We feel that defaulter members should not put the society at ransom and the defaulter member to show his bona fide and equity must deposit the call money with the society under protest and only there the legitimacy of his claim could be examined by the Registrar. It should not be a device to keep one's foot in the society and wait for the completion of the flats at the cost of others who have been regularly paying. After construction starts or is near completion the price of the flats escalates, then such defaulter members claim their right to own a flat. This will be giving premium to such kind of members for their default.

(8) Now let us examine the case of the petitioners in the light of their prayers. We are taking their last prayer i.e. for appointment of Administrator. In terms of Section 32 of the Delhi Co-operative Societies Act which reads as under:- "Suppression of committee-(1) If, in the opinion of the Registrar, the committee of any co-operative society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws, or commits any act which is prejudicial to the interest of the society, or its members, the Registrar may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the members committee".

(9) It is important to observe that the legislature had intended that in case of suppression of a committee it is the objective satisfaction of the Registrar based on material before him and if the committee is persistently making default or is negligent in the performance of its duties. Registrar after giving the committee an opportunity removes the committee. In the instant case the Registrar of the Co-operative Societies had conducted an enquiry u/s 55 of the Delhi Co-operative Societies Act. An enquiry officer was appointed. The enquiry officer submitted his report on 31st August, 1989. Taking into consideration the report of enquiry officer and other material before him the Registrar Co-operative Societies did not consider it a fit case for superseding the committee or for appointment of an Administrator. It is not for this Court to sit over the judgment of the Registrar of Co-operative Societies. This does not mean that this Court is without power to reappraise and re-evaluate the finding of the Registrar if the same are vitiated by mala fide, arbitrariness or are based on irrelevant consideration or are a result of non application of mind or against the principles of natural justice. But merely because some one has complained the Registrar must appoint an Administrator would be stretching too far the provisions of this Act and will make the functioning of the Co-operative Societies impossible. We have gone through the reply of the Registrar of Co-operative Societies and in paragraphs 7 and 8 of the counter filed to the petition it has been specifically mentioned that the representation received from the petitioners was considered and it was found that the elections were held in accordance with the provisions of the Act and the Rules and, Therefore, there was no case of taking any action

against the Society. It has been further stated in the counter filed by the Registrar that in case the petitioners were aggrieved by the manner in which the elections were conducted by the Society they failed to challenge the same under the provisions of the Act. Therefore, the petitioners have failed to make any ground so as to impress us not to agree with the opinion of the Registrar of Cooperative Societies in not superseding the managing committee of the Society. Therefore, this prayer of the petitioners fails.

(10) The other ground which have been as sailed by the petitioners before us is to strike down amended Rule 53 of Delhi Co-operative Societies Rules as ultra vires. Amended Rule 53(3) reads as under:-

"If within one hour from the time appointed for the meeting, a quorum is not present, the meeting shall stand adjourned for one hour on the same day, which should be specified in the notice calling the meeting, but if the meeting is called upon the requisition of members of the Society (not of the Registrar), it shall stand dissolved. Provided that in the adjourned meeting no quorum shall be necessary. "

The amended Rule 53 prior to its amendment on 9th September, 1988, unamended Rule 53(3), was as follows:-

"If within an hour from the time appointed for the meeting, a quorum is not present, the meeting shall stand adjourned for an, hour on the same day which should be specified in the notice calling the meeting, but if the meeting is called upon on the requisition of the members of the society (not of the Registrar), it shall stand dissolved. Provided that in the adjourned meeting no quorum shall be necessary."

(11) We fail to appreciate the arguments advanced by the petitioners. What has been done by the amendment to sub-rule , Rule 53 is that instead of postponing the meeting on account of lack of quorum for a week from that day the same-now can be convened after an hour on the same day. This has been amended of course keeping in view the exigencies of the working of the Society that normally in Societies the members do not take interest and meeting had to be adjourned for lack of quorum. So, instead of having the meeting after one week the members who have come to attend the meeting can participate and take decision after one hour as the meeting then shall be an adjourned meeting and the society and its members will not be put to inconvenience- The ground of challenge to this amended Rule as argued by the petitioners is that in the notice for the meeting in which the Managing Committee of the Society was elected on the agenda circulated for the meeting it was not/mentioned that in the event of no quorum the meeting shall be adjourned for one hour. The petitioners have complained about the non-observance, if any, by the Society to the Registrar, Co-operative .Societies. Registrar, Co-operative Societies has not taken any action in this regard. We cannot give a finding on a fact which the petitioners have already brought to the notice of Registrar. The same has been considered by him. We,

however, fail to understand as to how the said amended Rule is unconstitutional. The petitioners are not in a position to substantiate their challenge in support of their prayer. We even otherwise do not find any merit to the challenge of the petitioners that amended sub-rule (3) of Rule 53 of the Rules is ultra vires.

(12) The last contention of the petitioners is that Section 34 of the Act is also unconstitutional and ultra vires. Section 34 of the Act reads as under:-

"NO act of a co-operative society or of any committee or of any officer shall be deemed to be invalid by reason only of the existence of any defect in procedure or in the constitution of the society or of the committee or in the appointment or election of an officer or on the ground that such officer was disqualified for his appointment."

(13) The argument advanced by the petitioners is that when the constitution of the committee is invalid right from its inception and they have been challenging it before the appropriate forum acts done or purported to have been done by the said committee are nullity. Though this argument is of no force for challenge the unconstitutionality or the virus of Sec.34 of the Act, it must be made clear that from the language of this Section it is amply clear that the legislative intentions are to validate acts of society or its committee or of any officer which may otherwise ought to have been invalid on account of any defect in the procedure or in the constitution of the society or of the committee. This has been incorporated with the view that if a committee or an officer authorised on that behalf takes a decision, spends money of the members of the society in the construction of building or flats or other activities as per the objects of the Society subsequently it cannot be said that because that Committee or the officer there was any defect in the appointment of such officer or the election of such committee on account of any defect in procedure in the constitution of the society or its committee, the building or the flats so constructed be demolished because the ultimate sufferers in the process will be a larger members of the society. There is no other prayer in the petition and on the basis of the discussions above, we do not find any merit in the prayers made in the present writ petition. Rather, we feel sorry for the 85 members who have paid over Rs.6 lacs in the society but still the flats could not be allotted to them because of interim orders passed by this court on 9.9.1991 and 29.10.92 by virtue of which, flats were kept reserved. We vacate all interim orders granted in the petition. Writ petition is dismissed with costs of Rs.2500.00 .