
(2002) 05 DEL CK 0016
In the Delhi High Court
Case No : LPA 672 of 2001

Shri C.L. Wadhawan

APPELLANT

Vs

Shri B.M. Sethi and Others

RESPONDENT

Date of Decision : 28-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Constitution of India, 1950 — Article 226

Delhi Co-operative Societies Act, 1972 — Section 60, 60(2), 61, 61(3), 94

Citation : (2002) 05 DEL CK 0016

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : Sanjeev Rajpal, for the Appellant; Zubeda Begum, for Respondent No. 1, Amit Sachthey and Arijit Prasad, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—This Letters Patent Appeal arises out of a judgment and order dated 26th November, 2001 passed by a learned single Judge of this court whereby and whereunder the writ petition filed by the appellant herein questioning the legality or validity of an order dated 22nd August 2000 passed by the Arbitrator u/s 61 of the Delhi Cooperative Societies Act, 1972 has been dismissed.

2. The respondents No. 1 and 2 are said to be elected members of the Managing Committee of Anand Niketan Cooperative Housing Society. The third respondent herein is a cooperative society registered under the said Act. The Annual General Meeting was held for election of the office bearers on 12th September 1997. The nomination paper of the respondent No. 2, however, was rejected. He filed an application u/s 60 of the Delhi Cooperative Societies Act, 1972 challenging the election held on 12th September 1999 and for quashing the result of the said election as also for a direction for holding fresh elections upon preparation of fresh voters list from the members of the housing society.

3. The main contention of the respondent No. 2 was that the said election was not held in the manner as laid down in the Second Schedule appended to the said Act. On such an application being filed, the Registrar invited replies from the society which was only impleaded as a party and upon hearing it, by an order dated 21st December 1999, referred the dispute to the Arbitrator u/s 61 of the Act. The said order was passed by the Deputy Registrar and by reason of the said order, he referred the dispute appointing himself as Arbitrator. Upon an application filed by respondent No. 3-society, for impleading 37 members who would be affected by any order passed by the petitioner, the same was allowed where after the respondent No. 2 filed an amended petition u/s 60 before the first respondent impleading the elected members. When the proceedings u/s 61 were already in progress, however, on an application made by the third respondent the matter was transferred to Deputy Registrar-Arbitrator. The appellant as also the respondents 4 to 7 filed their written objections before the learned Arbitrator. By reason of the impugned order, it was held that the amendment application having already been allowed, the said order attained finality. It was further held that appellant and the respondents No. 4 to 7 were afforded opportunity to support their stand. It was further observed that appellant-respondents No. 4 to 7 had been afforded opportunity to study their case before his predecessor in office. The material portion of the said order reads thus:

"...I have carefully considered the respective stand of the parties and do not find any merit in the objections filed by the Respondents. The application filed by the claimant was already allowed and the said order is final. As a matter of fact by the said order respondent No. 2 to 7 were afforded opportunity to state their case which is in the interest of the justice. Otherwise too, the order admitting the application by the previous arbitrator is final and the undersigned is not the appellate authority to consider the legality or propriety of the order admitting the application by the previous Arbitrator. The objections filed are, Therefore, rejected and the respondents No. 2 to 7 may file the written statements and in case this is not done, it shall be presumed that they don't want to avail any opportunity of stating their case."

4. Learned single Judge by reason of the impugned judgment dismissed the said application stating:

"The petitioner, Therefore, seeks a writ petition of certiorari seeking quashing of order of referral. Subsequent to the order of referral, the petitioner has been joined as a party and is being heard in the dispute. At present, no adverse order has been against the petitioner. Obviously prima facie, the reading of the Delhi Cooperative Societies Act suggests that interim orders were not deemed amenable to the Appellate jurisdiction. Even otherwise on the facts of the present case the petitioner has not been able to demonstrate how the petitioner is prejudiced by the Order of the referral warranting interference by the Court in its extraordinary jurisdiction under Article 226 of the constitution of India

proceeding on the assumption that the appeal is not maintainable.

5. Mr. Sanjeev Rajpal and Mr. Amit Sachthey, the learned counsel appearing on behalf of the appellant and the third respondent respectively inter alia submitted that the appellant having not been given any opportunity to contend that no dispute existed at the stage of Section 60 of the Act, the Arbitrator cannot be said to have any jurisdiction whatsoever to implead the appellant as also respondent No. 4 to 7. The learned counsel would contend that in terms of Section 94 of the said Act, the Registrar had only been conferred with the powers of a court under the CPC as specified therein and in that view of the matter, it must be held that any other power including the power to implead a third party at the stage of arbitration in terms of Order 1 Rule 10 of the CPC was not available. The learned counsel would contend that the reference to an Arbitrator being a statutory one in terms of Section 60, the arbitrator must exercise his jurisdiction within the four corners of the statute and he must, Therefore, be held to have exceeded his jurisdiction in exercising his power under Order 1 Rule 10 CPC which has not been provided for in terms of Section 94 of the Act.

6. On behalf of the respondents, however, it had been contended that the Arbitrator has not passed any adverse orders against him. In any event, the appellant and/or his counsel, having attended 34 hearings before the Arbitrator must be held to be estopped and precluded from raising the said question. According to the learned counsel, the appellant has succeeded to continue in office as Treasurer in collusion with the Registrar/society.

7. The respondent has also relied upon a Division Bench of this court in Manik Gurbuxani Vs. Madan Jha, for the proposition that Sections 60 and 61 of the Act being part of the one scheme and are in substance form different facets and stages of one compact proceedings. Therein it has been held:

"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."

8. It is not in dispute that Section 60 of the said Act occurring in Chapter VIII thereof provides for settlement of disputes.

Sub-section (1) of Section 60 reads thus:

"60. Disputes which may be referred to arbitration.

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society arises-

- (a) among members, past members and persons claiming through members, past members and deceased members, or
- (b) between a member, past member or person claiming, through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society of liquidator, past or present, or
- (c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or
- (d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society,

Such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

9. Sub-section (2) of Section 60 raises a legal fiction to the effect that any dispute touching the constitution, management or the business of the cooperative society as specified therein for the purpose of Sub-section (1), those specified therein would be deemed to be the disputes touching the constitution, management or the business of a cooperative society.

10. Section 61 provides for reference of dispute to arbitration in terms whereof the Registrar may decide the dispute himself.

11. No contention has been raised that there does not exist any dispute between the respondent and the appellant as regards the constitution and management of the respondent society. Any dispute arising in connection with election of an officer of a society, thus, is a dispute within the meaning of Clause (c) of Sub-section (2) of Section 60. In terms of Sub-section (3) of Section 60, if a question arises whether a dispute referred to the Registrar under this section is or is not a dispute, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

12. In the instant case, the dispute has been referred by the Deputy Registrar to himself. He, Therefore, assuming the contention of the learned counsel for the appellant, is correct, could have amended his order and enlarged the scope of the dispute itself. The submission of the learned counsel for the appellant that he had not been given an opportunity to contend that no dispute existed is not a matter which cannot be gone into by the Arbitrator.

13. Furthermore, no final order has yet been passed. Only when a final order is passed, the same becomes an appealable one.

14. The appellant did not question the order of the Arbitrator dated 20th April 2000. Thereafter, as indicated hereinbefore, on 22nd August 2000 the appellant

and the concerned respondents attended the proceedings before the Arbitrator without any demur whatsoever. Even, assuming, they had raised objection as regards the jurisdiction of the arbitrator to pass the said order dated 20th April 2000, in our opinion, the respondent No. 1 cannot be said to have committed any illegality in passing the impugned order dated 26th November 2001 holding that the earlier order dated 22nd August 2000 has attained finality.

15. The principles of res judicata, as is well known, may apply to different stages of the same proceedings.

16. For the reasons afore-mentioned, we do not find any merit in this letters patent appeal which is accordingly dismissed but in the facts and circumstances of this case, there shall be no order as to costs.