
(2013) 08 DEL CK 0015

In the Delhi High Court

Case No : Writ Petition (C) 5234 of 2013 and CM No. 11745 of 2013

S.N. Jain

APPELLANT

Vs

Registrar Co-Op. Societies

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Delhi Co-operative Societies Act, 2003 — Section 35(5)

Citation : (2013) 08 DEL CK 0015

Hon'ble Judges : Reva Khetrapal, J;Pratibha Rani, J

Bench : Division Bench

Advocate : K.K. Malhotra, for the Appellant;

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—The prayer in the present writ petition is for setting aside of the order dated 17.6.2013 passed by the Registrar Cooperative Societies, Delhi (the Respondent herein), whereby in exercise of the powers conferred u/s 35(5) of the Delhi Cooperative Societies Act, 2003 (DCS Act), Shri S. Roy Biswas, Deputy Director, DDA was appointed as Returning Officer for holding the election of the Managing Committee of the Jai Laxmi Cooperative Group Housing Society Ltd. (hereinafter referred to as "the Society"), as per DCS Act and Rules. At the outset, we may note that the writ petition has been filed by the Petitioner in his capacity as Treasurer of the Society. The Petitioner also professes to have been the Secretary of the Society for more than 15 years. According to the Petitioner, the Society had appointed one Shri Pandit Vinod Kumar Dubey, Advocate as the Returning Officer for holding the elections of the Managing Committee of the Society vide Resolution No. 3 dated 7.12.2011 of the Managing Committee. The Returning Officer so appointed by the Managing Committee had issued an agenda notice dated 5.1.2012 for the holding of elections but the process of holding elections came to a stop on some of the residents of the Society making a representation to the Respondent, Registrar of Cooperative Societies. By an

order dated 30th March, 2012, the Respondent appointed an Inspecting Officer to inspect the Society in view of the said complaints and to explore the possibility of holding elections of the Managing Committee of the Society and to submit report within 45 days from the issue of the order. By subsequent orders dated 25th June, 2012, the Respondent invoking the powers conferred upon him u/s 35(5) of the DCS Act, 2003 appointed an Administrator of the Society to take steps to revive the democratic set up within 90 days of his appointment after assuming charge. The said order of the Registrar Cooperative Societies dated 25.6.2012 was challenged by the Society before the learned Financial Commissioner, Delhi in revision proceedings. By his order dated 14th May, 2013, the learned Financial Commissioner disposed of the said revision petition directing that the elections be conducted in the Society without any further delay by a Returning Officer to be appointed by the Registrar Cooperative Societies. In this factual scenario, the Registrar passed the impugned order dated 17.6.2013 appointing Shri S. Roy Biswas, Deputy Director, DDA as Returning Officer for holding the elections of the Managing Committee of the Society.

2. We have heard learned counsel for the Petitioner and in our opinion the writ petition deserves to be dismissed at the threshold. We say so on the basis of the facts delineated in the order of the Financial Commissioner, which have not been disputed by the Petitioner in the present writ petition. Admittedly, the last election of the Managing Committee of the Society was held in the year 2002 and the Managing Committee elected in that year has been continuing to hold office till date for no justifiable reason. Indubitably, therefore, the conduct of the elections of the Society is imperative, more so as there are several disgruntled members of the Society who had in the first instance approached the Registrar to look into the affairs of the Society and subsequently filed applications for impleadment under Order I Rule 10 CPC before the Financial Commissioner. The counsel for the said impleaded applicants as evidenced by the order of the Financial Commissioner made a strong plea before the Financial Commissioner that the members of Society are likely to suffer irreparable loss and injury if the existence of the present Managing Committee is allowed to be perpetuated indefinitely and if the democratic functioning of the Society is not restored by the conduct of elections. The relevant extract from the order of the Financial Commissioner dated 14.05.2013 is reproduced hereunder:-

5. ...In the special situation prevailing in this cooperative society and in view of above facts and observations and because all the parties are now willing to conduct the elections at the earliest it is directed that the elections may be got conducted in this society without any further delay.

6. Be that as it may, now it would be only proper and appropriate that in a time bound manner elections are held in this cooperative society under the due supervision of RCS. This could be achieved only when the RCS is given freedom to appoint a competent Returning Officer of repute who would be acceptable to all and the election process is earnestly set in motion within 15 days from today

so that elections are brought to completion observing due procedure laid down under the DCS Act and Rules within the shortest period prescribed.

7. Since the present managing committee has been working for several years and has also got all the records and documents required for conduct of elections, as has been confirmed in the court, in person, by the President, Sh. M.K. Verma, he is directed to extend all cooperation to the Returning Officer to be appointed by RCS. The Returning Officer so appointed by RCS shall conduct the elections systematically and without any fear or favour, maintaining transparency and observing all the steps and procedure laid down under the DCS Act and Rules for the purpose.

8. Further, as a precautionary measure it is cautioned that all the parties in the case shall extend full cooperation in the early conduct of election, and if any evidence of lack of cooperation or hindrance is noticed on the part of the existing managing committee or any other member of the Society, the RCS shall have freedom to appoint another senior officer afresh as Administrator for smooth conduct of elections. It is also ordered that the existing managing committee having already served its full term by several years is restrained from taking any major or policy decisions.

9. There being no other substantive issues left to be adjudicated upon, this petition is disposed of accordingly with the above directions.

3. In our opinion, the present writ petition has been filed by one of the members of the Ex-Managing Committee with the mala fide object of perpetuating the existence of the Managing Committee and constitutes an abuse of the process of the Court. The order of the Financial Commissioner has not been challenged before us and the present writ petition, therefore, appears to be an attempt to assail the same collaterally. There also does not appear to us to be any justifiable reason why elections of the Society should not be held by the Registrar Cooperative Societies as directed by the Financial Commissioner, the Society itself having failed to hold the same ever since the year 2002. Interestingly, the Society is not even made a party to the present writ petition, which goes to show that the writ petition has in fact been filed by the Petitioner in his individual capacity. The writ petition is accordingly dismissed. CM No. 11745/2013 stands disposed of accordingly.