

(1992) 02 DEL CK 0086

In the Delhi High Court

Case No : Civil Writ Petition No. 758 of 1991 and Civil Miscellaneous Appeal No"s. 1244, 1363 and 4255 of 1991 and 544 of 1992

S.N. Misra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-02-1992

Acts Referred:

Delhi Co-operative Societies Rules, 1973 — Rule 25

Citation : (1992) 46 DLT 337 : (1992) 23 DRJ 145

Hon'ble Judges : R.L. Gupta, J;D.P Wadhwa, J

Bench : Division Bench

Judgement

R.L. Gupta, D.P. Wadhwa, JJ.

(1) Petitioner, a member of the Panchshila Cooperative House Building Society Ltd. respondent No.4 has filed this writ petition under Article 226 of the Constitution of India for issue of a writ. Order or direction for quashing the voters list/list of members dated 13.4.1990 issued by the aforesaid Society to the Registrar of Cooperative Society, respondent No.3 and the Care Taker, respondent No.5 to finalize the voters list in accordance with Rule 37 of the Delhi Co-operative Societies Rule 1973 (hereinafter referred to as Rules) after inviting objections from the Society and considering the same and for removing the disqualified members from the rolls and allow only the first named members in case of joint members to cast vote, further ordering Mr. George P.Peter, Sub Inspector of Co-operative Societies-cum-Election Officer, respondent No.6 or any other officer appointed by the Registrar to .hold elections of the Managing Committee in accordance with the corrected list and in the meanwhile restraining the respondents from holding elections to the Managing Committee.

(2) 6TH respondent issued a notice dated 21-2-1991 (copy Annexure 8, page 39) for holding the elections of Managing Committee of the Society on 10-3-1991. It is alleged that the list of members/voters purported to have been issued on 13.4.1990 (copy Annexure 2 running pages 33 A to 33Z) contains names of 24

members, who are actually no longer members of the society and the names of several persons who are dis-qualified to be members under Rule 25 of the 1973 Rules. It is further alleged that Rule 37 contemplates that every Co-operative society shall prepare a list of its members as on the last day of each Co-operative year and the said list of members shall be revised 30 days prior to the date of election meeting. Such a revised list should include the members admitted and exclude the members removed during the intervening period. But the 6th respondent directed the holding of the election meeting in contravention of Section 31 of the Delhi Co-operative Societies Act, 1972. Despite several personal requests made to the third respondent and officials working under him vide representations dated 27.10.1990 for correction of the list, it has not been corrected and, Therefore, the election meeting called for 10-3-1991 by the 6th respondent was illegal. Third respondent should have actually issued directions to the Society as well as the Care Taker to update the list of members/voters in consonance with Rules 25 to 28 and 37 to 39 of the Rules and relevant Bye laws of the Society.

(3) Notice to show cause was issued to the respondents as to why rule nisi be not issued and meanwhile elections were also stayed. Answer to show cause was filed on behalf of respondent No. 4 and another by respondents 3 and 6. Respondent No. 4 said that the matter in connection with the preparation of the list of members and conduct of election to the Managing Committee on account of any alleged differences were actually covered by Section 60 of The Act, and Therefore, this writ petition was not maintainable. The petitioner should have approached the third respondent for arbitration. It was further stated that the petitioner approached this court on 7.3.1991 only when the election was scheduled to be held on 10-3-1991. The election process having already set in motion, this petition should not have been entertained. The Society in question was registered on 1-12-1955 under the Bombay Co-operative Society Act, 1925 and then extended to the State of Delhi. The Bye laws of the Society were also framed in 1955 and duly registered. According to the Act and the Bye laws framed by the Society, any person or his spouse or even dependent children owning a residential house or plot in the Union Territory of Delhi, could become member of the Society and in fact some such persons did become members of the Society. Section 98 proviso (b) of Delhi Co-operative Societies Act, 1972 specifically saved any right, privilege, obligation or liability acquired or accrued under the repealed Act. The society did weed out some known plot holders and plot holder members who acquired any disqualification under Rule 25(2) of the 1973 Rules. In this way, initially the number of the members of the Society enrolled under the 1925 Act which stood at 619 on 30-9-1971. was reduced to 504 against a total number of 465 plots. This situation presently continues because some members are independently holding separate shares of the society and exercising their right of vote u/s 18(1) of the 1925 Act because their rights and privileges were saved by Section 89, proviso(b) of the 1973 Act. Incase of persons holding jointly a share of the society, only the person whose name was

at the top in the share certificate had a right to vote. But it was legal and competent for independent members having separate shares of society other than husband, wife and dependent children or joint plot holder members to exercise their right of vote qua the separate share certificates held by them. Therefore, in the light of the aforesaid facts, the election officer appointed by the third respondent in liaison with the 4th respondent had brought out an updated voters" list of members, eligible to cast their votes. Thereafter the statutory notice was issued to the members for the election to be held on 10.3.1991 at 10 AM.

(4) Respondents 3 and 6 in their answer to show cause brought out certain more additional facts when the election was fixed for 13.5.90. At that time the list of members and defaulters was updated as on 1.5.1990. But at that lime Y.P.Kapur and others challenged rejection of their nomination in Cw 1447/90. The order of the Election officer rejecting the nomination of Y.P. Kapur was quashed on 17.1.1991 and his nomination was declared valid. The whole election process was then set in motion. In other respects the stand taken up by the 4th respondent was substantially supported by them.

(5) Cmp 1363/91 was filed by five aggrieved members of the Society, namely, S/ Shri Krishan Saigal, Prem Nath Handa, Smt. Romola Dhameja, S/Shri Ramesh Chander and Chuni Lal Mehra for being imp leaded as party and for Vacation of the stay order and dismissal of the writ petition.

(6) Shri M.M.Lal, another member of the Society also filed Cm 4255/91 for being imp leaded as party. Similarly S/Sh. J.M. Baweja, C.M. Baweja and M.M. Baweja, claiming to be members at S.Nos. 415,416 and 418 of the list of members/voters filed yet another Cm 544/92 for being imp leaded as parties. They have also prayed for dismissal of the writ petition and conduct of the election.

(7) We have heard learned counsel for the parties. We were initially surprised to see how an entire family comprising of the husband, wife and dependent children could become or remain members in a House Building Society because as the Co-operative housing law and the rules framed there under stand at the moment only one person out of the whole family of the husband, wife and dependent children is entitled to be a member of a society. This is so because the policy is that one compact family should have at least one dwelling unit. in the Union Territory of Delhi. For that reason now only one person out of a family composed in the aforesaid manner is eligible for the membership of a society. Learned counsel for the petitioner drew out attention to Rule 37 of the 1973 Rules and contended that the Society did not revise the list of members/voters as per the mandate of this rule. She also drew our attention to sub rule (c)(i) of Rule 25 according to which no person who owns a residential house or a plot of land in any approved or unapproved colony and the other locality in the Union Territory of Delhi, in his own name or in the name of his spouse or any dependent child on lease hold or free hold basis, is eligible for membership of a Co-operative Society. Then she also drew our attention to Rule 27 of the aforesaid Rules

according to which the Society although empowered to admit joint members can do so only on their making a declaration in writing that the person whose name stands first in the share certificate shall have the right to vote and so on. Rule 28, it is contended, prohibits a person from being a member or two cooperative Societies at the same time. On the basis of these rules, it is contended that the list of members/voters of the Society issued on 13.4.90 contains names of 24 members who are actually disqualified members under Rule 25. Similarly in case of joint members, a declaration has not been taken from them that only the first named person will be entitled to vote. Thus, according to the petitioner many persons who are actually not entitled to vote are included in the list of members/voters and election could not be held on the basis of such a list. On behalf of the respondent and the applicants, our attention has been drawn to some of the provisions of the Bombay Co-operative Society Act, 1925 which was in force in the Union Territory of Delhi before promulgation of the Delhi Co-operative Societies Act of 1972. It is not disputed that during the period 1925 Act was in force no such restrictions like that only one person of a family could be a member of the society, or in case of the death of the member, his legal heirs could hold separate share certificates, were applicable. Bye law 4 (d) of the Bye laws of the Society permits the Society to admit minors and person of unsound mind inheriting share or interest of deceased members as its members through their legal representative or guardian respectively. Therefore, it appears that according to these Bye laws, after the death of a member of the Society, his legal representative/heirs could hold share in their individual names. Viewed in this context, learned counsel for the respondents drew our attention to Section 98 of the 1972 Act, the relevant portion of which reads as follow:

"SECTION 98 Repeal and savings.- On the day on which the Delhi Co-operative Societies Act, 1972 comes into force, the Bombay Co-operative Societies Act, 1925 as in force in the Union territory of Delhi shall stand repealed: Provided that the repeal shall not affect- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or

(8) It has also been pointed out during the course of argument that the members/ voters of the society have been participating in the election process for a number of years and previously there has never been any such objection as has been raised in the present writ petition. Some is the argument on behalf of the applicants in CMs 1363 & 4255 of 1991 and Cm 544/92. It is stated in the counter affidavit of respondents 3 and 6 that at the time of initial allotment of shares where the allottee desired that the plots be allotted in the joint names of more than one person, the Society decided that the number of shares allotted would necessarily be equal to the number of joint plot holders. Therefore, the Society allotted additional separate shares to each of such joint plot holders. Similarly in case of members who had died, the nominee or the legal heirs stepped into their shoes and the Society decided to allot separate share certificates to all the legal heirs. So in sum and substance the stand of the respondents 3,4 and 6 is that such members independently holding separate

shares of the society were exercising their right of vote u/s 18(1) of the 1925 Act and their right is saved u/s 98 proviso (b) of the 1972 Act. Time and again we called upon learned counsel for the petitioner to clarify the effect of Section 98 proviso (b) of the 1972 Act. However, no satisfactory answer came from her. Therefore, we are of the view that the rights, privilege, obligations etc. which had been acquired by such members or had accrued to them under the 1925 Act having been specifically saved by Section 98 of the 1972 Act, the same could not have been taken away after the coming into force of the 1972 Act. Therefore, we do not find any defect or illegality in the exercise of the right of vote by such members. The list of members entitled to vote in fact has already been settled by the Managing Committee of the Society of which the petitioner himself was a member at that time. In the rejoinder of Cm 1363/91, it has been shown that applicants .1,2 and 3 were enrolled as members by the Managing Committee separately in addition to other heirs of the deceased members. Such resolutions of the Managing Committee are prior to 1967. Therefore, in view of the practice prevailing in the Society as also the saving clause contained in Section 98 proviso (b) of the 1972 Act, we do not find if any of the persons are wrongly shown as members in the list of members/ voters of the society. But the position may be a little different in case of joint plot holders who hold a joint share Certificate. In their case, the person whose name stands First in the Share Certificate shall have the right to vote.

(9) We are pained to observe that the election of the Managing Committee of the respondent-Society is being stalled for one reason or the other. Earlier the Society was to hold its elections on 13.5.1990 but the same could not take place because of the orders in writ petition No. 1447/90. Thereafter the elections scheduled to be held on 10th March, 1991 could not be held because of this writ petition. In these circumstances, we think that it will be appropriate to appoint some Local Commissioner to over see the smooth holding of the elections so that the functioning of the Society could be handed over to a duly elected Managing Committee. Its functions at the moment are being looked after by 5th respondent as a Care Taker. We, there fore, appoint Justice Jagdish Chandra, a retired Judge of this court as a Local Commissioner to hold the elections in the light of the observations made above. His fee is tentatively fixed at Rs. 10,000.00 besides out of pocket expenses. The Registrar of the Co-operative Societies as well as the Care Taker will afford all co-operation to him for holding the election. His fee will be paid by the Care Taker within two weeks. The process of election will be completed within two months thereafter. The charge will then be handed over to the newly elected Managing Committee. Election expenses decided by the Local Commissioner, shall also be paid to him by the Care-Taker/ Society. Writ petition stands disposed off.