

HIGH COURT OF DELHI AT NEW DELHI

WP (C) No. 11766/2005 & CM No. 11157/2005

Date of Decision:- September 25, 2008

Rajeshwer Kumar Gupta ... Petitioner

Through: Petitioner in person.

Versus

Lt. Governor of NCT of Delhi & Ors. ... Respondents

Through: Ms. Sujata Kashyap, Adv.

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the Digest? Yes

S. L. BHAYANA, J.

This Writ Petition has been filed under Articles 226/227 of the Constitution of India for issuance of appropriate writ and to set aside/quash Notification No.F.47/01/Coop/Policy/05/24, dated 06.04.2005 being unconstitutional, *ultra vires* and *void ab initio* in view of Notification No.37/01/Coop/Act/Policy/RCS/10, dated 24.3.2005, vide which Delhi Co-operative Societies Act, 2003 (for short 'DCS Act, 2003') came into force.

2. Adumbrated in brief, the case of the Petitioner is that Respondent No.2/ the Registrar Cooperative Societies had issued an illegal Notification No.F.47/01/Coop/Policy/05/24, dated 06.04.2005 which is not only unconstitutional but *ultra vires* as per Section 137 of DCS Act 2003. The main contention of the Petitioner is that the DCS Act, 1972 was repealed under the provisions of Section 141 of DCS Act, 2003, and consequently the DCS Act, 2003 came into force with effect from 01.04.2005. However, the Notification, dated 06.04.2005, was issued under Sub-section (1) of Section 97 of DCS Act, 1972 on 06.04.2005, on which date the said Act had already ceased to exist. Section 97 (1) was repealed by Section 141 of the DCS Act, 2003.

3. Adverting to the Petitioner's case, learned counsel for the Respondents submitted that amendment in Rule 24 (2) of DCS Rules 1973 is valid and as per law because DCS Rules 1973 were still in force as Rules under the DCS Act 2003 had not been framed. The Respondents have initiated the amendment in the Rule 24 (2) when DCS Act 1972 was in force. Again that Notification No.F.47/01/Coop./Policy/05/24 issued on 06.04.2005 has a protection of Section 141 of DCS Act 2003 because the competent authority had approved the amendment when the DCS Act 1972 was in force but the Notification could be issued when the DCS Act 2003 came into force. Notification dated 06.04.2005 has been issued with the intention to prevent taking over of the co-operative Societies by builder mafia and

making the procedure of enrolment of membership more transparent.

Thus, the same is not illegal, arbitrary and not liable to be quashed.

4. Again in reply, learned counsel appearing for the Respondents, has pointed out that a further Notification No.RCS/Policy/07/628 was issued on 31.07.2008 which reads as under:

“In exercise of the powers conferred by section 137 of Delhi Co-operative Societies Act, 2003 (Delhi Act 3 of 2004), the Lt. Governor of the National Capital Territory of Delhi, hereby, makes the following amendments in the Delhi Co-operative Societies Rules, 2007 namely:-

1. Short Title and Commencement (1) These rules may be called the Delhi Co-operative Societies (Amendment) Rules, 2008.

(2) These rules shall come into force with effect from the date of their publication in the official Gazette.

2. Amendment of rule 19- In the Delhi Co-operative Societies Rules, 2007, in rule 19, after sub-rule (2), the following sub-rules shall be inserted, namely:-

“(3) The Registrar, on an application from a co-operative society on behalf of member or members enrolled up to the 2nd July, 2007 by such co-operative society in contravention of sub-rule (2) of rule 24 of the Delhi Co-operative Societies Rules, 1973 (repealed vide notification No. F 37 (Policy)/RCS/ 142 dated 19th October, 2007), may regularize the membership of such member or members.

(4) Notwithstanding anything contained in sub-rules (3), any regularization so made by the Registrar shall not affect the liability, criminal or civil, of any such member or any other person under any law, for the time being in force.

By order and in the name of the
Lt. Governor of the National Capital
Territory of Delhi
Sd/-
(J.K. DADOO)
Secretary (Co-operation)”

5. So far as the issues raised in the Writ Petition are concerned, the same in our considered opinion have become infructuous after examining on the touchstone of the above-mentioned Notification, dated 31.07.2008, which nullifies the previous Notification. Moreover, it is illuminatingly highlighted by the above-mentioned Notification that DCS Rules, 1973 remained in force till 19.10.2007 and, therefore, the Respondents have issued Notification No.F/47/01/Coop./Policy/05/24, under DCS Rules, 1973, which, in our opinion, was justified on their part. After the issuance of this further Notification, clarifying the above said position, nothing survives in this Writ Petition.

6. The Writ Petition is, accordingly, dismissed as the dispute does not survive.

S.L. BHAYANA, J.

VIKRAMAJIT SEN, J.

September 25, 2008
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