

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 15.09.2009

+ **WP(C) 11663/2009**

**PANCHSHILA CO-OPERATIVE HOUSE
BUILDING SOCIETY LTD**

.....Petitioner

- Versus -

GOVT OF NCT OF DELHI

....Respondent

Advocates who appeared in this case:-

For the Petitioner : Mr B. S. Chauhan

For the Respondent /RCS : Mr Sanjeev Sabharwal

For the Respondent /GNCT : Mr Shoaib Haider for Mr N. Waziri

For the Complainant : Mr C. M. Lal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VEENA BIRBAL

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED (ORAL)

1. With the consent of the parties, this writ petition is taken up for final disposal. The petitioner is aggrieved by the order dated 28.08.2009 passed by the Deputy Registrar (South) in the Office of the Registrar of Cooperative Societies, Delhi. The order purports to be one passed under Section 61(1) of the Delhi Cooperative Societies Act, 2003 (hereinafter referred to as the 'said Act'). A plain reading of the order indicates that the Office of the Registrar of Cooperative Societies received representations from several members vide letters dated 29.06.2009, 03.07.2009, 12.07.2009 and 14.07.2009

complaining about the management of the society. Several allegations have been outlined in the order dated 28.08.2009. Ultimately, the Deputy Registrar (South) passed the following order:-

“Now therefore the Registrar, Cooperative Societies after satisfying himself is pleased to appoint Shri C R Garg, DIG, Central Prison, New Delhi to inspect the relevant record of Panchshila CHBS Ltd under Section 61(1) of DCS Act 2003 to verify the allegations made by the petitioner as stated hereinabove. Shri Garg is requested to submit report within a period of 15 days from the issue of this order. Shri Garg will be paid an honorarium of Rs 15,000/- (rupees fifteen thousand only) out of the funds of the society.”

2. The petitioner society is aggrieved by the said order and, therefore, filed this writ petition. Several grounds have been taken by the petitioner society. One of the grounds is that the pre-conditions of Section 61(1) have not been met. Section 61 pertains to inspection of Cooperative Societies and the relevant portion of which reads as under:-

“61. Inspection of co-operative societies.

- (1) The Registrar may, on the request made by a creditor or, not less than one-thirds of the members of the committee, or not less than one-fifths of the total number of members, of a co-operative society, undertake inspection of a co-operative society or class of co-operative societies by general or special order in writing and authorise any person by order in writing in this behalf, to make an inspection into the constitution, working and financial condition of a co-operative society.

PROVIDED that where a serious complaint is made by a member or a public servant in writing about the affairs of a co-operative society or committee or office bearers, to the Registrar or to any person authorized by him in this regard not below the rank of Joint Registrar and if the Registrar is prima-facie satisfied, after recording his views in writing

and affording an opportunity to the person against whom complaint has been made, he may order an inspection in respect of only issue or issues as the case may be, raised in the complaint and the inspection shall be conducted by a person not below the rank of an Assistant Registrar.

- (2) xxxx xxxx xxxx xxxx
- (3) xxxx xxxx xxxx xxxx
- (4) xxxx xxxx xxxx xxxx”

It is apparent that in the normal course of events, an inspection may be undertaken at the direction of the Registrar only upon a request made either by (a) a creditor; or (b) not less than one-third of the members of the committee; or (c) not less than one-fifth of the total number of members of a cooperative society. In the present case, none of these pre-conditions are fulfilled and, therefore, no inspection could have been initiated under the main provision of Section 61(1) of the said Act. However, a proviso to Section 61(1) was inserted with effect from 01.04.2005. The said proviso pertains to cases where serious complaints are made by a member or a public servant in writing about the affairs of a co-operative society or the committee or office bearers. A plain reading of the proviso indicates that such a complaint must be made in writing to the Registrar or to any person authorized by him in this regard not below the rank of Joint Registrar. Secondly, it is only if the Registrar is *prima-facie* satisfied, after recording his views in writing and affording an opportunity to the person against whom the complaint has been made, to order an inspection in respect of the

complaint in entirety or in respect of some issues therein. It is also a requirement that the inspection, in such an eventuality, would be conducted by a person not below the rank of an Assistant Registrar.

3. Even if the present case is treated as one falling under the proviso, inasmuch as serious allegations have been levelled, the pre-conditions have to be satisfied before an inspection can be ordered. The first pre-condition is that the complaint must be made to the Registrar or to any person authorized by him in this regard not below the rank of Joint Registrar. The second condition is that it is the Registrar who has to be *prima-facie* satisfied and not any other officer. It appears from the impugned order itself that the complaints were received in the Office of the Registrar of Cooperative Societies. It was, therefore, necessary on the part of the Registrar to have returned a finding that he was *prima facie* satisfied that an inspection was necessary. This finding was to be recorded in writing and that too after affording an opportunity to the person against whom the complaints were made. In the present case, admittedly, no opportunity of hearing has been given to the petitioner society or the members of the managing committee against whom serious allegations have been leveled. Apart from this, the order which is impugned herein, is one which has been made not by the Registrar which was the requirement under law, but by the Deputy Registrar (South). Although the operative portion of the order states that the Registrar of Cooperative Societies has satisfied himself and is, therefore, pleased to

appoint Mr C. R Garg, DIG, Central Prison, New Delhi to inspect the relevant record of the society, the satisfaction, if any, must be recorded by the Registrar himself and must not be conveyed in the manner as indicated in the impugned order.

4. Thus, even if we assume that the proviso would be applicable in this case, the pre-conditions necessary for passing an order on inspection have not been satisfied and, therefore, the impugned order is liable to be set aside. It is ordered accordingly.

5. The setting aside of the impugned order dated 28.08.2009 would not, however, come in the way of the Registrar to follow the procedure as laid down in Section 61(1) to arrive at a satisfaction as to whether any inspection is to be ordered or not, after giving an opportunity to the affected persons. The learned counsel appearing for the Registrar of Cooperative Societies submits that the Registrar will re-examine the matter after following the due procedure indicated in the provisions of the said Act and shall take a definitive view within four weeks.

This writ petition stands disposed of.

Dasti.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

**SEPTEMBER 15, 2009
SR**