

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 04.12.2009

+ W.P.(C) No. 13593/2009

MANGAL CGHS LTD AND ORS

..... Petitioner

- versus -

REGISTRAR COOPERATIVE SOCIETIES AND ORS Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Rajiv Vig, Advocate

For the Respondent : Mr. V.K. Tandon, Adv. for R-1 & 2
Counsel for R-3 & 4.

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the 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, J (ORAL)

1. The petitioner No.1 is Mangal Cooperative Group Housing Society Ltd, through its Secretary and the petitioners 2 to 12 are all members of the Managing Committee of the petitioner No.1 Society. Elections to the Managing Committee were conducted on 13.07.2008 but the results were declared on 31.01.2009.
2. The petitioners and, particularly, petitioners 2 to 12 were all elected. Respondents 3 and 4 had initially filed an appeal under Section 112 of the Delhi Cooperative Societies Act, 2003 before the Delhi Cooperative

Tribunal, challenging the rejection of their nomination papers and acceptance of nomination papers of petitioners 2 to 12 and others. In other words, the respondents 3 and 4 were aggrieved by the election of the petitioners 2 to 12 as also by the fact that they had not been permitted to contest in the said election.

3. In the meanwhile, a Division Bench of this Court in the case of **Narender Kumar Jain v. Govt. of NCT of Delhi : (2008) 10 A.D. (Delhi) 105** had concluded that in an election dispute with regard to a Cooperative Group Housing Society, the remedy was not by way of an appeal under Section 112 of the said Act, but the remedy lay in approaching the Registrar under Section 70 for a reference to arbitration. Consequently, the appeal filed by the respondents 3 and 4 before the Delhi Cooperative Tribunal was withdrawn and a claim petition was filed under Section 70 of the said Act before the Registrar of Cooperative Societies. In that claim petition, not all the elected members, namely, petitioners 2 to 12 were individually made parties and it was only the President, Secretary and the Committee Members of the petitioner No.1 Society (as a group), who were made parties. To be clear, the petitioners 2 to 12 herein were not made parties individually, even though their individual elections were also the subject matter of challenge in the claim petition. No notices were sent individually to the elected members by the RCS and the notice was only sent to the petitioner No.1 Society.

4. It was contended on behalf of the petitioner No. 1 Society, before the Deputy Registrar, who was hearing the claim petition under Section 70 of the said Act that the claim petition filed by the respondents 3 and 4 was not

maintainable as the same had not individually impleaded any of the elected members as parties, whose elections were challenged, particularly, when they would be effected by the outcome of any decision taken by the Registrar under Section 70.

5. This plea was rejected by the Deputy Registrar by virtue of the impugned order dated 16.06.2009 wherein he concluded as under:-

“.....The claim has been filed on certain procedural issues alleging non-adherence to the provisions under Act and Rules by the Returning Officer and not against the individual. The society, which is represented by the Managing Committee members, can very well take care the interest of the member elected defending the rules and procedure adopted while conducting the election and no specific or individual person is being challenged to be displaced. The petition since been filed within one month of the declaration of result is not time barred.”

6. In view of the aforesaid finding, the Deputy Registrar, held that the dispute was one which was covered under Section 70 of the said Act and, therefore, he referred the same for adjudication under Section 71 of the said Act. We are informed that the Arbitrator (Mr. Satbir Silas Bedi) has already fixed a date for hearing.

7. The petitioners are aggrieved by the said order dated 16.06.2009. Their specific grievance is that petitioners 2 to 12 were not made parties to the claim petition filed by the respondent 3 and 4, even though their individual elections were being challenged on separate grounds. The learned counsel for the petitioners also contends that they had a right to appear before the Deputy Registrar in the proceedings under Section 70 of the said Act, particularly, in view of Rule 84 (5) of the Delhi Cooperative Societies

Rules, 2007. The learned counsel for the petitioners also informs this Court that they have challenged the impugned order dated 16.06.2009 before the Delhi Cooperative Tribunal by way of an appeal under Section 112, but, as the Tribunal is not functioning at present, they were constrained to file this writ petition inasmuch as the Arbitration proceedings are sought to be proceeded with.

8. We have heard the learned counsel for the petitioners as well as the learned counsel appearing for respondents 3 and 4. Since the Tribunal is not functioning, we feel that the petitioners do not have any equally efficacious remedy in the facts and circumstances of this case and, therefore, we are taking up this writ petition for disposal. The counsel for the parties have also consented that the matter be disposed of at the admission stage itself.

9. We may observe straightway that the findings of the Deputy Registrar, as extracted above, are not in consonance with the law. When the elections of members of the Managing Committee are under challenge on individual grounds, then each of them should be made a party. They are not only proper parties but, are necessary parties. Each of the respondents in the proceedings under Section 70 of the said Act, also have a right to be heard although that right is circumscribed by Rule 84 (5) to a maximum of two hearings. In the present case, we find that petitioners 2 to 12 were never made parties nor were any notices issued to them and that the impugned order dated 16.06.2009 has been passed without hearing them. In these circumstances, the said order is liable to be set aside on this ground alone. We do so accordingly.

10. The learned counsel for the respondents 3 and 4 submits that he may be permitted to amend the claim petition by adding all the petitioners 2 to 12 as individual respondents and that the matter be continued with the Arbitrator.

11. However, in view of the fact that petitioners 2 to 12 have not been given any opportunity of being heard at the time of hearing of the claim petition under Section 70 of the said Act, we feel that the matter be remanded to the Deputy Registrar for a fresh consideration after the respondents 3 and 4 add the petitioners 2 to 12 as respondents in the said claim petition and after an opportunity of hearing is granted to the said newly added respondents. The parties shall appear before the Deputy Registrar on 21.12.2009 at 3.00 P.M. The learned counsel for the petitioners states that no adjournment would be taken. No further notice would be necessary to the parties. However, it is made clear that the respondents 3 and 4 shall amend the memo of parties in the claim petition, now pending before the Deputy Registrar, within one week. The Registrar shall thereupon pass appropriate orders in accordance with law within thirty days.

Dasti.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

DECEMBER 04, 2009

srb