

IN THE HIGH COURT OF DELHI

Writ Petition (Civil) No. 9276/2009

Date of decision: 24th February, 2010

NARAIN DASS & ORS. Petitioner
Through Mr. Rakesh Tikku, Adv.

versus

THE REGISTRAR OF COOPERATIVE SOCIETIES & ORS.
..... Respondent
Through Mr. B.S. Arora, Adv. for R-2
Mr. Sunil Sabharwal, Adv. for R-4

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. Whether reporters of local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

GITA MITTAL, J(Oral)

1. The present writ petition has been filed seeking the following prayers :-

“(a) That your Lordships may be pleased to issue an appropriate writ of certiorari and/or any other writ and/or direction of likewise nature, thereby quashing the impugned communications dated 30.3.2009 (Annexure P-1) and circulars dated 9th April and 14th April, 2009 (anexure P-2 and Annexure P-3) respectively. Your Lordships may be further pleased to hold that the petitioners herein and other similarly situated members of the Society are not legally liable to pay said demand of Rs.61,257/- along with or without any interest and a sum of Rs.10,000/- claimed as development charges by the respondent no. 2 and members who have paid Rs.10,000/- as development charges, may be refunded the same.

(b) Your Lordships may be further pleased to hold that the petitioners herein as well as the other similarly situated persons/members who have either not availed of the loan from respondent nos. 2 and 4

and/or if have availed of the loan but have got No Due Certificates from the respondent no. 2 are also entitled to vote as well as contest the elections of the Managing Committee of the respondent no. 2 slated for 30.5.2009;

(c) Your Lordships may also be pleased to pass a writ of mandamus and/or any other writ and/or direction of likewise nature, thereby directing the respondent no. 1 to take appropriate action expeditiously in respect of its order dated 25.5.2001 (annexure P-10_ in terms of which enquiry was ordered to be conducted against the irregularities on the part of the then Managing Committee of misappropriating the funds of respondent no. 2 society and pass appropriate order in that regard in a time bound manner.”

2. An objection has been taken by learned counsel appearing for the respondent no. 2 society that the prayers made by the petitioner are not maintainable before this court on the ground that the petitioner has available alternate efficacious remedy of dispute redressal by way of proceedings under Section 70 of the Delhi Cooperative Societies Act, 2003.

3. On consideration of the matter, Mr. Rakesh Tikku, learned counsel appearing for the petitioner prays for leave to withdraw the prayers made at serial nos. (a) and (b) of the writ petition with liberty to invoke the remedy available to the petitioner under Section 70 of the Delhi Cooperative Societies Act, 2003.

4. The writ petition to the extent of prayers (a) and (b) is therefore dismissed as withdrawn with liberty as prayed for. It is clarified that there is no expression of opinion on the merits of the petitioner's contentions by the orders which we are passing today.

5. So far as prayer (c) is concerned, Mr. Tikku contends that the respondent no. 1 has failed to take action despite the order dated

25th May, 2001 passed by the Registrar of Cooperative Societies appointing an inquiry officer to examine the conduct of the ex-office bearers of the managing committee. He submits that prayer (c) made by the petitioner is, therefore, liable to be granted and time bound directions are required to be issued to the respondent no.1 in this regard.

6. Learned counsel appearing for respondent no. 2, however, pointed out that by an order dated 11th December, 2001 Shri J.S.Sharma was appointed as an Inquiry Officer to conduct an inquiry under Section 59(1) of the Delhi Cooperative Societies Act, 1972 into the affairs of the Pharmaceutical Employees Cooperative Group Housing Society Limited. Our attention has drawn to a report dated 29th April, 2002 which has been submitted by the said Mr.J.S.Sharma. Perusal of the inquiry report shows that the inquiry stands conducted against office bearers of the society.

7. Learned counsel appearing for respondent no. 2 has pointed out that the Registrar of Cooperative Societies has acted upon the inquiry report dated 29th April, 2002 and notice stands issued to delinquent ex-office bearers of the managing committee of the society with regard to the faults which has been attributed to them by the inquiry officer. He however submits that the inquiry officer has returned a finding that there was no misappropriation of the funds collected from the members of the society which were utilised towards bonafide construction purposes.

8. We are not expressing any opinion on the correctness or illegality of the inquiry report inasmuch as the matter is stated to

be pending before the Registrar of Cooperative Societies.

However, in view of the report dated 29th April, 2002 placed before us, it would appear that the grievance of the petitioner to the extent that the inquiry officer has not proceed in the matter is not justified. The report stands submitted and action thereon has been already initiated.

9. Our attention is drawn by Mr. Tikku to the order dated 28th August, 2009 passed by this court permitting the petitioners to participate in the election process. Mr. Tikku contends that despite service of the order on the respondents, on 29th May, 2009, the petitioner were not permitted to participate in elections which were held on 30th May, 2009.

10. In this regard, Mr. B.S. Arora, learned counsel appearing for respondent no. 2 has drawn our attention to the election schedule which had been appointed. The schedule which was notified by the society for the conduct of elections was as follows :-

S.N o.	Programme	Date	Timing	Venue
1	Issue of Nomination Forms (free of cost)	18/05/09 to 20/05/09	10.00 a.m. to 1.00 p.m.	Office of the Society i.e. Flat No. B-10/123 Pharma Apts.,
2	Filing of Nomination Forms	21/05/09	10.00 a.m. to 1.00 p.m.	-do
3	Scrutiny of Nomination Forms	22/05/09	12.00 noon to 2.00 p.m.	-do
4	Display of list of valid nominations	22/05/09	5.00 p.m.	-do-

5	Withdrawal of nominations	24/05/09	Upto 3.00 p.m.	-do-
6	Display of final list of contesting candidates	24/05/09	5.00 p.m.	-do-
7	Polling, if necessary	30/05/09	10.00 a.m. to 1.00 p.m.	IPEX Bhawan, I.P. Extn., Delhi-92
8	Counting	30/05/09	2.00 p.m.	Office of the Society i.e. Flat No. B-10/123

11. It has further been submitted that only one nomination for each of the 15 posts was received by the society and consequently elections to all posts was unanimous and no polling was required. In this background, we find from the agenda notice dated 23rd April, 2009 that the respondents had appointed 30th May, 2009 as the date for “polling, if necessary” and counting of votes.

In view of the above factual position, neither polling nor counting of any votes was necessary and the objection of the petitioners that they were not permitted to participate in terms of the court orders dated 28th May, 2009 in the election process is misconceived and devoid of legal merit.

In view of the above, nothing survives for adjudication in the present matter.

This writ petition and all pending applications are accordingly disposed of.

As and when the petitioner approaches the respondent no.1 with an appropriate proceeding in respect of prayers (a) & (b), we

hope and expect that the same would be expeditiously dealt with
uninfluenced by this order.

GITA MITTAL,J

VIPIN SANGHI, J

FEBRUARY 24, 2010
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