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HIGH COURT OF DELHI : NEW DELHI

CM (M) No. 1159/2010 & CM No. 16143/2010

% Judgment reserved on: 24th September, 2010

Judgment delivered on: 4th October, 2010

Babar Road Colony Lease Holder Association,
4, Central Lane,
Bengali Market,
New Delhi. 110001.
Through General Secretary.

....Petitioner

Through: Mr. Chetan Sharma, Sr. Adv.
with Mr.A.K. Goel and
Mr. Rajeev Kumar, Advs.

Versus

1. Sh. Anand Bakshi,
R/o 42, Second Floor, Todar Mal Road,
Bengali Market,
New Delhi-110001.
2. Sh. I. C. Mittal,
R/o 52, Todar Mal Road,
Bengali Market,
New Delhi-110001.
3. Sh. B. S. Kaicker,
R/o 12, Babar Road,
Bengali Market,
New Delhi-110001.

....Respondents

Through: Nemo.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B.Gupta, J.

Present petition under Article 227 of the Constitution of India has been filed by petitioner for setting aside order dated 5th August, 2010, passed by Additional District Judge, New Delhi.

2. Brief facts are that petitioner is a resident welfare association registered under the Societies Registration Act. In general body meeting of the association held on 21st September, 2008 Sh. A. K. Goel was unanimously elected as President of petitioner's association for two years i.e 2008-2010.

3. On 10th September, 2009, a notice under signatures of respondent no. 3 was circulated on behalf of petitioner's association for meeting/formal get together of the members. Petitioner issued a legal notice asking respondent no. 3 to withdraw its notice dated 10th September, 2009. Members of Managing Committee of petitioner's association again came across a notice dated 19th September, 2009

therein respondent no. 2 claimed himself as General Secretary of petitioner's association and called a meeting of association for 20th September, 2009. General Secretary of petitioner's association circulated a notice dated 19th September, 2009 amongst the members that no such meeting has been called. Although, present tenure of the Managing Committee of petitioner's association under the presidentship of Mr. A. K. Goel is continuing but respondent no.1 projected himself as president of petitioner's association without election in general meeting and constituted other office bearers of petitioner's association including respondent no. 2 as General Secretary and respondent no. 3 as Vice President.

4. Hence, petitioner's association filed a suit for declaration and permanent injunction against respondents, in which petitioner as well as respondents filed applications under Order 39 Rule 1 and 2 read with section 151 Code of Civil Procedure (for short as 'Code').

5. Vide order dated 30 January, 2010, Civil Judge dismissed the application of respondents and allowed petitioner's application and restrained the respondents to function as President, Vice President,

Secretary respectively till the annual general meeting of the petitioner's association.

6. Respondents aggrieved with the order of trial court filed an appeal before Additional District Judge. During pendency of the appeal, petitioner gave notice to its members for Annual General Meeting to be held on 13th June, 2010, including regarding new terms of office bearers for 2010-2012. In Annual General Meeting held on 20th June, 2010, it was decided that Mr. A. K. Goel will continue as president till the matter is resolved.

7. Appeal filed by respondents against order of the trial court was disposed of by Additional District Judge. Being aggrieved with the observation of Additional District Judge, petitioner has filed the present petition.

8. It is contended by learned counsel for petitioner that learned Additional District Judge exceeded its jurisdiction by holding that respondents should take steps to conduct its election as per the memorandum and 15 days notice as envisaged be sent for holding Annual General Meeting to conduct the elections which ought to be concluded before 10th September, 2010, if not already been concluded.

9. It is further contended that neither in the suit nor in the counter-claim nor in the application under Order 39 rule 1 and 2 of the Code, there was any prayer seeking direction from the trial court regarding conducting election by the petitioner's association. As such Additional District Judge has travelled beyond the prayers as sought by the parties in the suit and in their respective applications under Order 39 rule 1 and 2 of the Code.

10. It is also contended that since existing Managing Committee headed by Sh. A. K. Goel, President, is still functioning as no election of the president of the new Managing Committee has been conducted therefore, no other person including, respondents can claim themselves as President, General Secretary and Vice President. As such, order dated 30th January, 2010 passed by Civil Judge ought not to have been disturbed.

11. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

12. In *Waryam Singh and another vs. Amarnath and another*, **AIR 1954, SC 215**, the court observed;

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in – ‘Dalmia Jain Airways Ltd. V. Sukumar Mukherjee’, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

13. In light of principles laid down in the above decision, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned order is maintainable or not.

14. Petitioner in its application under Order 39 rule 1 and 2 of the Code, has made following prayer;

“Pass ex-parte ad-interim injunction thereby restrain the Defendants from issuing any letter/notice on behalf of the Plaintiff Association to any member of Plaintiff Association and / or any resident of Bengali Market residential areas and/or any government/semi government/ local bodies and / or any other authority/person and also restrain the Defendant no. 2 from projecting himself as General Secretary of the Plaintiff Association and the Defendant no. 1 from projecting as president of the Plaintiff Association and/or”

15. Trial court while disposing of application under Order 39 rule 1 and 2 of the Code, held as under;

“The defendants are restrained to function as president/vice-president/secretary till the annual

general meeting of the plaintiff, which is likely to be held in the month of April, 2010, as the tenure of the present managing committee is going to be lapsed as per memorandum of association. The members of the association may be at liberty to hold election as per memorandum of association of the plaintiff after the completion of tenure of present managing committee. This order is only till the new managing committee elected. It is made clear if any act has been done by the defendants for the welfare of the members of association same may be further prosecute by the present managing committee headed by Mr. A.K.Goel. It is also made clear that if this order is in contravention of any order passed by any competent court, this order will not be in confrontation of that order. This application of the defendants deserves dismissal. Same is dismissed accordingly.”

16. While, learned Additional District Judge in impugned order held;

“The suit had been filed on 24.9.2009 and the counter claim on 11.1.2010. The impugned Order was passed on 30.1.2010. However, by the time the present appeal came to be heard it is already 21.7.2010. On the date when the arguments were heard, the elections had already become due in terms of clause 10 read with clause 6 of the Memorandum of plaintiff association. The Trial Court’s Order was also passed on the premise that the elections were any way due in April, 2010 on the basis that they have to be conducted within three months from the close of the functioning of the Association in a financial year.

In that view of the matter, the injunction as prayed for in the application under Order XXXIX Rules 1 and 2 has already become infructuous.

Any decision on the merits of the appeal one way or the other is merely on academic exercise at this stage. The respondent should therefore take steps to conduct its elections as per the Memorandum and a 15 days' notice as envisaged be sent for holding the Annual General Meeting to conduct the elections which ought to be concluded before 10th of September, 2010, if not already been concluded.”

17. As per petitioner's own case, in the annual general body meeting of petitioner's association held on 21st September, 2008, Mr. A. K. Goel was elected as president of the association for a term of two years i.e 2008-2010. Since, term of Managing Committee of petitioner's association has already come to an end on 20th September, 2010, nothing survives in this matter and present petition has become infructuous.

18. However, it is clarified that parties to the present litigation can have separate remedy to challenge the term of new officer bearers of the association for the period 2010-2012 as permissible under the law.

19. With these observations, present petition as well as pending application stand disposed of.

4th October, 2010
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V.B.GUPTA, J.