

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

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Date of decision: 15th June, 2011

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WP(C) NO.4333/2011

KAMLA AGGARWAL & OTHERS

..... Petitioners

Through: Dr. G.S. Chouhan & Mr. Pradeep
Kumar, Advocates

Versus

REGISTRAR, COOPERATIVE SOCIETIES & ORS Respondents

Through: Ms. Shobhana Takiar, Advocate for
R-1.
Mr.R.K. Gupta, Advocate for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE G.P. MITTAL

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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 |

RAJIV SAHAI ENDLAW, J.

1. The five Petitioners claiming to be the members of the Respondent no.2 Vikas Co-operative Group Housing Society Limited have filed this petition claiming the following reliefs:

“It is therefore prayed that:-

- a. Record of the case may be summoned;
- b. filing of the certified copies of the Annexures may kindly be dispensed with;
- c. to issue an appropriate writ or order/direction whereby to set aside the resolution dated 10.04.2011 for being illegal, arbitrary, unconstitutional, unjust, unreasonable, fabricated, manipulated and against the provisions of Delhi Cooperative Societies Act, Rules and by-laws;
- d. to issue an appropriate writ or order/direction to set aside the agenda notice of the elections dated 08.06.2011 issued by the Returning Officer for being illegal, arbitrary, unconstitutional, unjust, unreasonable, manipulated and against the provisions of Delhi Cooperative Societies Act, Rules and by-laws;
- e. to issue appropriate writ or order/direction to Respondent No.1, to appoint an Administrator for running day-to-day affairs of the society and to hold free and fair elections of the society after preparing the list of the members in fair and transparent manner

and after settling the claims of membership of bona fide purchasers of the flats in the society;

- f. pass any other appropriate writ or order/direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

PRAYER FOR INTERIM RELIEF:-

It is respectfully prayed that this Hon'ble Court may be pleased to direct the Respondent No.1 and 2 not to take further steps to hold the elections and maintain status quo till the final disposal of the present Writ Petition.”

2. The Resolution dated 10th April, 2011 which is sought to be set aside has not been placed before this Court. It is however the case of the Petitioners that the said Resolution of the Managing Committee of the Society is for holding elections for the constitution of the new Managing Committee of the Society and appoints the Respondent No.3 Shri H.C. Kaushik as the Returning Officer for holding the said election, scheduled on 26th June, 2011.

3. The challenge to the Resolution dated 10th April, 2011 of the Managing Committee of the Society is on the ground that as on 10th April, 2011 there was no Managing Committee of the Society in existence; it is contended that the Managing Committee comprised of 7 Members including the Petitioners No. 1 and 3 and one Shri M.L. Gupta (who is neither the Petitioner nor has been included as the Respondent) and all three of whom had resigned in December 2009, May 2010 and August 2010 respectively.

4. It is thus contended that with the said resignations, only four members were left in the Managing Committee while the statutory requirement is of a minimum 5 members. Reference is made to *Suresh Chand v. Delhi Co-operative Tribunal* 167(2010) DLT 590, in the last paragraph of which judgment the Division Bench observed that upon the number of members of the Managing Committee dropping below the statutory requirement, the Registrar, Co-operative Societies is required to take action in accordance with law to see that the affairs of the Society are conducted on a day-to-day basis and that fresh elections are conducted as early as possible.

5. I may however notice that the Petitioners have not filed before this Court any document whatsoever to show that the Managing Committee at

any point of time comprised of the Petitioners No. 1 & 3 and Shri M.L. Gupta aforesaid or that the said persons had on the dates alleged resigned from the Managing Committee.

6. It is also pleaded though not argued, i) that of the total of 110 flats of the Society, 24 flats are still awaiting draw by DDA and hence as per Section 35 of the Delhi Co-operative Societies Act, 2003 r/w Rule 53 and Schedule II Clause 1(ii) of the Delhi Co-operative Societies Rules 2007, RCS is empowered to appoint Returning Officer for conduct of the election at the request of the Managing Committee of the Society; ii) that the statutory audit of the Society has not been conducted and AGM of the Society not held for the last two years and owing where to the Returning Officer is required to seek prior permission of RCS before initiating the process of election and which permission has also not been sought by the Respondent No.3 appointed as the Returning Officer; iii) Errors are also pleaded in the list of members of the Society eligible to vote; iv) that the Respondent No.3 appointed as the Returning Officer is not holding the election at the premises of the Society but elsewhere; and, v) that 22 members of the Society (all of whom are not parties to the writ petition) have on 30th May, 2011 called upon the RCS for calling a Special General

Body Meeting of the Society for removal of the present Managing Committee but no action has been taken thereon.

7. At the outset, question was raised as to the maintainability of the present petition. It is felt that the Petitioners have alternative remedy available to them and the matter entails disputed questions of fact best left to be adjudicated in the alternative fora available.

8. The counsel for the Respondent No.2 Society appearing on advance notice has also referred to *Narender Kumar Jain v. Govt. of NCT of Delhi* 2008 X AD (Delhi) 105 where the Division Bench of this Court held that the matters relating to elections stand covered by Section 70 of the Act aforesaid and disputes of this category must be decided through arbitration. It was further held that the disputes relating, *inter alia*, to holding or failure to hold elections, term of office of the elected members and eligibility or disqualification for standing for elections would all be covered by arbitration provided for under Section 70. The Division Bench further observed that disputes pertaining to elections invariably raise disputed questions of fact which cannot conveniently be decided in appellate proceedings or writ jurisdiction and must be decided through arbitration, as per Section 70 and

against the decision or Award published thereon, an appeal would lie under Section 112.

9. The counsel for the Respondent No.2 Society has in this regard also invited attention to, a) *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra* AIR 2001 SCC 3982 where the Supreme Court in relation to the Maharashtra Co-operative Societies Act held that Writ Petition to quash election schedule on ground of illegality in preparation of electoral roll is not maintainable since such challenge can be raised in Election Petition; and to, b) *P. Subba Rao v. Andhra Association, Delhi (Regd.)* 2008 (102) DRJ 201 where another Division Bench of this Court observed that Courts should not interfere once the election process has started and specially where disputed questions of fact are required to be adjudicated.

10. The counsel for the Petitioner has however placed strong reliance on *Suresh Chand* aforesaid to contend that the Division Bench of this Court in that case had entertained the Writ Petition.

11. It is not as if the Division Bench in *Suresh Chand* did not notice the earlier dicta in *Narender Kumar Jain* (supra). The Division Bench in

Suresh Chand also held that when such Writ Petitions are filed, High Courts relegate the parties to pursue their alternative remedies but nevertheless chose to interfere in that case for the reason of the option of relegating the parties in that case to arbitration being not efficacious since the term of the Managing Committee constitution whereof was challenged was also to come to an end. However, that is not the position here. The Petitioners herein have an alternative efficacious remedy available to them.

12. The Writ Petition is therefore dismissed as not maintainable with liberty to the Petitioners to avail alternative remedies available to them. No order as to costs.

Dasti under signature of court master.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**G.P. MITTAL
(JUDGE)**

**June 15, 2011
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