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

W.P.(C) 4313/2013

Date of Judgment: 07-10-2013

UDYOG VIHAR CGHS LTD.

.... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate,
Mr. Vinod Mehta and Mr. Nikhil Mehta
Advocates

versus

REGISTRAR COOPERATIVE SOCIETIES AND OTHERS

..... Respondent

Through: Mr. Sanjeev Sabharwal, Adv. for R-1

+ W.P.(C) 4702/2013

RAM SWARUP SHARMA & ORS.

..... Petitioner

Through: Mr. Maninder Acharya, Sr. Advocate
Mr. Puneet Singhal and Mr. Yashish
Chandra, Advocates

versus

REGISTRAR, COOPERATIVE SOCIETIES: DELHI & ORS.

..... Respondent

Through: Mr. Sudhir Nandrajog, Sr. Advocate,
Mr. Vinod Mehta and Mr. Nikhil Mehta
Advocates for R-3 to R-5

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

%MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT):

1. This common judgment shall dispose off two writ petitions, i.e. WP (C) No. 4313 of 2013 and WP (C) No. 4702 of 2013, which, in a

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sense, involve the same subject matter. The petitioner in WP (C) No. 4313/2013 (hereinafter referred to as 'society') is a co-operative group housing society consisting of 149 members, claims quashing of two letters issued by the Registrar, Co-operative Society (RCS) dated 3rd July, 2013 and 8th July, 2013, directing it to hold a Special General Meeting (SGM) upon requisition of some of its members. WP (C) No. 4702/2013 was preferred by certain members of the society (hereafter called the "Ram Swaroop Group"), seeking directions for setting aside the election process initiated by the Society and for further directions to call for Special General Body Meeting for fresh elections.

2. The Society had on 2nd July, 2013 resolved to hold a General Body Meeting for the purpose of conducting elections. Accordingly, it appointed a Returning Officer on 4th June, 2013. This move was intimated to the Returning Officer on 15th June 2013. In the meanwhile, Sh. R.S. Sharma on 14th June, 2013 moved a requisition claiming that such had to hold a Special General Meeting. The agenda for the Special General Meeting was regarding the correctness of maintenance charges sought to be recovered from the members (of the society). This was levied by Society @ Rs.2500/- per month pursuant to a Managing Committee's decision in that regard. The RCS apparently issued directions to the Society on 21st June, 2013 to hold a SGM. The Society by its communication dated 28th June, 2013 informed the RCS that the request for SGM could not be acceded to because it did not conform to the legal requirements; according to the society, such requirement could have been validly made by at least 1/5th members entitled to vote. The Society contended that a number of requisitionists of 14th June, 2013 (for the SGM) were defaulters and, therefore, not entitled to make valid requisitions. Other objections as to the competence of a few signatories on the ground that they were not members, was also highlighted. In

these circumstances, the Society proceeded ahead with the Annual General Meeting which was held on 14th July, 2013. The Society alleged that even though the Annual General Meeting was fixed on 14th July, 2013, the candidature of those who applied for elections was not opposed, the elections were completed and declaration of results was announced and the date notified, i.e 14th June, 2013. In these circumstances that the Society approached for court for a direction that communication of the RCS dated 3rd July, 2013 and 8th July, 2013 ought to be quashed.

3. The Ram Swaroop Group in its writ petition contends that the election proceedings were irregular and consequently require to be set aside. Besides, it is contended that Society's determination to exclude a large number of members from the electoral process is based on the pretext that they were defaulters who did not pay the maintenance charges. The petitioners rely upon Section 81(1), Delhi Co-operative Act, 2003 to argue that in order to levy such maintenance charges, the General Body of the Society should approve proposal. It is contended that in the present case, the Managing Committee alone had resolved to levy such charges and the amounts were recovered. The other contention is that some of the members elected, were also defaulters and could not hold themselves out as candidates.

4. The Ram Swaroop Gupta's writ petition was filed earlier; on 28th August, 2013, this court had stated that an Administrator should be appointed and so directed. The official respondents have appointed one such Administrator, in compliance with the order. According to the society, the said Administrator is yet to take charge of the affairs of the society.

5. During the course of hearing, it was suggested to the petitioners in both the sets of the proceedings that to resolve the controversies, the

Society should first proceed to hold a SGM specifically on the issue of the maintenance charges but all members of the Society would be entitled to vote in such meeting. The next step towards resolving the dispute would be to – after giving a reasonable time to the members to pay the maintenance charges --- draw a list of defaulters. Thereafter, the election process can be initiated and held afresh. The election process held and completed on 14-7-2013 would also stand superseded. This course of action was agreeable to all parties, to the two sets of proceedings, as well as the Government of NCT of Delhi and the RCS.

6. In the light of the above developments and in view of the consent of the parties as well as the RCS, the following directions are issued:

- i) The Society shall hold a Special General Meeting of its members on a date the Administrator may notify; exclusively on the issue of maintenance charges be recovered from the members. All such members desirous of moving resolutions in respect of such item shall give notice in that regard, vis-à-vis the amount which could be conveniently fixed and recovered by the Society. It is clarified that proposed resolutions/ notices shall be exclusively confined to the issue of maintenance charges and the amounts to be levied/ recovered, including the ratification of the previous levy, if moved.
- ii) All members of the Society shall be entitled to participate and vote in the Special General Meeting. The member's list available with the Registrar of the Society shall be operated for this purpose. It is directed that no member shall be deemed a defaulter, on the ground that he/ she has not paid the maintenance charges hitherto levied.
- iii) The Administrator shall conduct the SGM and for this purpose, maintain the records and minutes necessary in that regard, or as may be spelt out in the Delhi Co-operative Societies Act, Rules or by-laws governing the society;

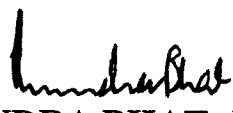
- iv) Based on the resolution ultimately carried in such SGM, the members shall be given reasonable time of not less than 15 days- but not exceeding one month to pay, or make up for any shortfall of the maintenance charges or arrears thereof. Notice in that regard shall also be issued by the Administrator within a week after conclusion of the proceedings of the SGM calling upon the members to make good the maintenance charges.
- v) After conclusion of the above steps, the Administrator, with the assistance of such members of the previous Managing committee(s) or members of the society, as he may deem appropriate, shall issue a default notice within expiry of 30 days.
- vi) The Administrator shall thereafter proceed to held Annual General Meeting for the purpose of conducting and concluding the elections to the society after drawing the valid list of voters and excluding such of the defaulters who are not entitled to vote.
- vii) After conclusion of elections, the result shall be announced by the Administrator. He (the Administrator) is authorized to do all such things as necessary to conduct election process including appointing of Returning Officer.
- viii) The entire process detailed above shall be concluded within 3 months from today; after conclusion of elections and declaration of results, the Administrator shall hand over charge and affairs to the newly elected Managing Committee, which shall proceed to function in accordance with the society's by laws and other provisions of law.
- ix) the Administrator may, if needed, seek the assistance of such members of the society, as he may deem appropriate for carrying out the tasks he is assigned by this order. It is also open for him to appoint any individual or official as he deems necessary, on such reasonable terms as are required, to be borne by the Society.

x) The Administrator shall file an action taken report in this Court immediately after three months.

xi) It is open to any party aggrieved by the election process or declaration of results to avail the remedies available under the law with regard to validity of such elections, under Section 70 of the Delhi Cooperative Societies Act, 2003.

7. The Petitions shall be listed on 14th January, 2014 to consider the Action Taken report filed by the Administrator pursuant to the above directions. The writ petitions are disposed of in terms of the above directions.

A copy of the order shall be given *dasti* to the parties.


S. RAVINDRA BHAT, J


NAJMI WAZIRI, J

OCTOBER 07, 2013
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