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

Date of Decision : 18th December, 2015.

+ **W.P.(C) 7116/2014 & CM No. 16678/2014**

DELHI STATE GOVT. EMPLOYEES COOP. HOUSE BLG.
SOCIETY LTD.

..... Petitioner

Through: Mr.Arvind Kumar Gupta, Advocate.

versus

REGISTRAR, COOPERATIVE SOCIETIES, DELHI & ORS

..... Respondents

Through: Ms.Sonam Gupta, GNCTD panel
counsel and Mr.Devansh Arya,
Advocate with Mr.Ashok Kumar
Navet, Assistant Registrar, RCS in
person.

+ **W.P.(C) 7903/2014 & CM No.18510/2014**

MADAN LAL GUPTA & ORS.

..... Petitioners

Through: Mr.Sudhir Nandrajog, Sr. Advocate
with Mr.Siddharth Bambha,
Advocate.

versus

THE REGISTRAR, COOPERATIVE SOCIETIES & ANR.

..... Respondent

Through: Mr.Arvind Kumar Gupta, Advocate.
Mr.Vikramaditya for Mr.Sanjoy
Ghose, Advocate.
Ms.Sonam Gupta, GNCTD panel
counsel and Mr.Devansh Arya,
Advocate with Mr.Ashok Kumar
Navet, Assistant Registrar, RCS in
person.

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W.P.(C) 8117/2014 & CM No.18919/2014

DELHI STATE GOVT. EMPLOYEES COOP. HOUSE BLG.
SOCIETY LTD.

..... Petitioner

Through: Mr.Arvind Kumar Gupta, Advocate.

versus

REGISTRAR COOPERATIVE SOCIETIES, DELHI & ORS

..... Respondent

Through: Ms.Sonam Gupta, GNCTD panel
counsel and Mr.Devansh Arya,
Advocate with Mr.Ashok Kumar
Navet, Assistant Registrar, RCS in
person.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

GITA MITTAL, J (ORAL)

1. The Delhi State Government Employees Cooperative House Building Society Ltd. was registered as a society with the Government of NCT of Delhi in the year 1954. Shri B.P.Jain, Shri L.D.Gupta, Shri Harimohan Lal and Shri B.L.Saini (then office bearers of the managing committee of the above society) appear to have got registered a trust by the name of C.C Colony Welfare and Charitable Trust, Delhi. Certain disputes have arisen between the present managing committee of the society and the persons who are residing in the society.

2. The recitals of the trust shows that the trust was registered for the purpose of establishing a fund for the pubic charitable trust and promotion

of charitable activities including relief for the poor, education, medical relief, maintenance of civic and other community services and the advancement of any other project of general public utility.

3. A dispute was raised by the members of the society with regard to the authority of the said four persons to settle the property of the society in the Trust on various legal grounds.

4. Before us, a Deed of Cancellation of the Trust Deed dated 29th April, 2009 has been placed on record. Inasmuch as these writ petitions can be disposed of at this stage without examining the legality or validity of the trust deed or its cancellation as well as the objections raised by the society with regard to the same, we are refraining from expressing an opinion on the merits of the rival contentions with regard thereto.

5. Be that as it may, on a complaint made by the society with regard to the possession of the old records of the society, a letter dated 12th September, 2014 was sent by the Additional Registrar of Cooperative Societies to the Divisional Commissioner, Govt. of NCT of Delhi. For expediency, we set out the relevant portion of the same hereunder:

“You are accordingly requested in terms of section 38 of DCS Act 2003 to authorize the area SADM in whose jurisdiction the office of the society is located to recover the old record from Sh.Rameshwar Dayal, R/o C-10, C.C. Colony, Delhi-110 007 and enter, search or break open the said premises No.C-10, C.C. Colony, Delhi-110 007 where such records of the society are kept and seize any such record. You are also requested to authorize the said SDM to take possession of the property of the society known as Community Centre bearing No.A-30, C.C.Colony, Delhi-110 007 by breaking open the lock, outer or inner of the said Community Centre and the records relating to the management of the same from Madan Lal Gupta R/o B-70, C.C. Colony, Delhi-110 007 (2) Sh. Suresh Kumar Gupta R/o D-22, C.C.Colony, Delhi-110007 (3) Sh.Sunil Jain R/o

A-22 C.C.Colony, Delhi-110007 by searching their premises and to cause delivery of the said property No.A-30, C.C.Colony, Delhi-110007 and records to the present managing committee of the society through its President/Secretary”

6. Aggrieved by the failure of the SDM to execute the order dated 12th September, 2014, the society had filed W.P.(C) No.7116/2014 seeking the following prayers:

“A. Issue a writ of mandamus or any other appropriate writ, order or directions, thereby directing the respondent no.2 to 4 to execute the search and seizure warrants in pursuance to order no.WPC-4433/2014/582 dt. 12-9-2014 passed by respondent no.1 and hand over the same to the petitioner, on a day that may be fixed by this Hon’ble Court and also to break open the two almirahs sealed in a room in Community Centre on 25-9-2014 mentioned in Annexure P-7.

B. Issue a writ of mandamus or any other appropriate writ, order or directions, thereby directing the respondent no.2 to 4 to execute the search and seizure warrants at any other property also where the records may be alleged to have been kept/transferred by the persons named in the search warrants.

C. Issue a writ of mandamus or any other appropriate writ, order or directions, thereby this Hon’ble Court may supervise the execution of Search and Seizure warrants by appointing a Court Observer/Commissioner in whose presence the warrants may be executed by respondent no.2 to 4”.

7. Apprehending that the office of the RCS may effect ex parte modification of the order dated 12th September, 2014, W.P.(C) No.6784/2014 was filed by the society. Disposing of this writ petition on 29th September, 2014, we had directed as follows:-

“We, therefore, dispose of this writ petition with the following directions to the respondents:-

(i) The respondents shall make available to the petitioner any representations or complaints received with regard to the affairs of

the petitioner, especially any which relate to the working of the order dated 12.09.2014.

(ii) The petitioner shall be given an opportunity to submit its representation and documents with regard thereto.

(iii) The petitioner shall also be accorded an opportunity of personal hearing in respect of these representations.

(iv) In case an order stands passed by the respondents, the same shall not be implemented for a period of three weeks from today”.

8. The order dated 12th September, 2014 was objected to by the afore-noted three persons against whom it was passed. They aggressively sought an opportunity of making submissions and consideration of their objections to the making of such an order.

9. These three persons, namely, Madan Lal Gupta, Shri Suresh Kumar Gupta and Shri Sunil Jain, therefore, filed W.P.(C) No.7903/2014 on the 11th November, 2014 seeking setting aside the order dated 12th September, 2014. In the meantime, the Registrar of Cooperative Societies passed order dated 14th November, 2014 (page 104 of WP(C) No.8117/2014). For the sake of convenience, the same is set out hereunder:

“F.No.WPC -4433/2014/651

Dated 14/11/2014

NOTICE

Whereas order no.WP(C) 4433/2014/582-583 dated 12-9-2014 was issued to Divisional Commissioner in terms of Section 38 of DCS Act, 2003 to authorize the area Sub-Divisional Magistrate to take action in the matter.

And Whereas, several representations have been received from some persons against this office order dated 12-9-2014. The Competent Authority has desired to afford opportunity of personal hearing to the effected persons.

Considering the above facts, I hereby direct all concerned to appear in person or through authorized representative under proper authorization before undersigned at the above mentioned address on 25-11-2014 at 3.0-0 P.M. with all material/documentary evidence of substantiate their claim.

sd/-

(RAJ KUMAR)

ADDL. REGISTRAR CO-OPERATIVE SOCIETIES

F.No.WPC-4433/2014/651

Dated 14/11/2014”

10. At this stage, the society filed W.P.(C) No.8117/2014 challenging the above order dated 14th November, 2014 challenging the order dated 14.11.2014 and once again reiterating the prayer for taking action in terms of the previous order dated 12th September, 2014.

11. When the writ petition (Civil) 8117/2014 was listed before the Court for the first time on 24th November, 2014, an interim order of stay of the operation of the communication dated 14th November, 2014 was effected. As a result, the Registrar of Cooperative Societies held back the hearing which was ordered.

12. We are informed that pursuant to order dated 14th September, 2014, in the proceedings undertaken, one room has been sealed by the SDM in the community centre which is stated to be used for housing some records. In terms of our order dated 30th November, 2015, the said room was de-sealed by the SDM on 4th December, 2015 and the inventory of the records which were found therein was prepared. The room was de-sealed again on 8th December, 2015 when photocopies of some records were prepared by Mr.Ashok Kumar Navet, Assistant Registrar in the office of RCS. Copies of the records have been given to all the parties present today and a copy thereof retained by Mr.Ashok Kumar Navet, Asst. Registrar of RCS as well.

13. We are informed that as on date, the room stands sealed along with the original record.

14. Leave is sought by Mr.Sudhir Nandrajog, learned Senior Counsel for the petitioners in W.P.(C) 7903/2014 to place on record affidavits of the petitioners dated 18/12/2015 therein. Advance copies thereof have been handed over to other counsels appearing today in this case. These affidavits are taken on record.

15. As per these affidavits, Shri Madan Lal Gupta, Shri Suresh Kumar Gupta and Shri Sunil Jain have deposed that they have never been in possession of the documents or data with regard to the society. There is nothing on record which would manifest possession of any such records by these persons. Therefore, no further direction with regard to production of records of the society from or by these three persons can be passed.

16. We may note that so far as order dated 12th September, 2014 is concerned, it had directed recovery of old record from Shri Rajeshwar Dayal, resident of C-10, CC Colony, New Delhi-110 007. Further, steps against these persons with regard to said premises were also directed in that order. Shri Rajeshwar Dayal has not challenged the order passed against him and it shall be open for the SDM to proceed in the matter so far as he is concerned.

17. So far as opportunity for grant of hearing to the petitioners in W.P.(C) 7903/2014 is concerned, the same has been provided by the order dated 14th November, 2014 passed by the office of RCS. The same appears to be in consonance with the statutory requirements and principles of natural justice and cannot be faulted with.

18. It is submitted by Mr.Arvind Kumar Gupta, learned counsel for the society that in view of the affidavits sworn by these three petitioners, the society is not pressing execution of the order dated 12th September, 2014 against them to the extent it relates to recovery of the records from them. It is, however, submitted that possession of premises No.A-30, CC Colony, New Delhi has been legally taken and lawfully handed over to the society which is entitled to the same.

19. In view of the above, these three writ petitions are disposed of with the following directions:

(i) Mr.Ashok Kumar Navet, Assistant Registrar of RCS shall ensure that photocopies of the entire remaining records lying sealed in terms of direction made on 30th November, 2015 are prepared in the manner directed therein and copies thereof be made available to counsel for the parties. The original records shall thereafter be handed over to the petitioners in W.P.(C) 7903/2014 against receipts.

(ii) Any portion of the premises bearing No.A-30, CC Colony, New Delhi-110 007 shall be handed over to the Delhi State Government Employees House Building Society Ltd. remaining sealed by the authorities, shall be de-sealed and possession thereafter also handed over to the said society.

(iii) In view of the above, the order dated 14th November, 2014 so far as W.P.(C) Nos.7116/2014, 7903/2014 & 8117/2014 are concerned, is rendered infructuous.

These writ petitions are disposed of as such.

GITA MITTAL
(JUDGE)

I.S.MEHTA
(JUDGE)

DECEMBER 18, 2015
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