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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 194/2016, C.M. NO.798/2016**

SURESH KUMAR ARORA & ORS. Petitioners
Through : Sh. Surender Singh Hooda and Sh.
Shashank Sharma, Advocates.

versus

THE REGISTRAR CO-OP. SOCIETIES & ORS. Respondents
Through : Ms. Saahila Lamba, Advocate, for RCS.
Sh. Aman Lekhi, Sr. Advocate with Sh. Rakesh
Munjali, Sr. Advocate, Sh. Abhimanyu Mahajan,
Sh. Milan Deep Singh and Ms. Anubha Goel,
Advocates, for Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
% **13.01.2016**

1. Issue notice. Ms. Saahila Lamba, Advocate and Sh. Abhimanyu Mahajan, Advocates accept notice.
2. The petitioner seeks a direction to set aside the election proceedings of the second respondent Group Housing Cooperative Society [hereafter "the Society"] for election of its members, scheduled for 24.01.2016.
3. It was contended that the Society had not conducted elections despite directions to do so. The Society felt aggrieved and had approached this Court earlier by filing W.P.(C) 6803/2015. That writ petition was disposed of on 29.09.2015. The Court *inter alia* directed the appointment/nomination of *Justice Kailash Gambhir (Retd)* as a

Court-appointed Observer [hereafter “the Court Observer”] to oversee the conduct of elections. The Court further recorded as follows:

“It is further agreed that at the first instance the General Body Meeting would be called giving 21 day's notice and thereafter the election of the petitioner society would be conducted within 60 days as per rules. Further, during the period of holding of elections, all statutory payments and other day-to-day payments shall be released with the consent of the Observer. It will be open for respondent no.1 to appoint the Returning Officer who would work under the supervision of the observer. Accordingly, the impugned order dated 09.07.2015 passed by the Financial. Commissioner, Delhi Cooperative Societies, New Delhi is set aside.

4. The petitioner contends that the election schedule which has now been published is in violation of Section 35 of the Delhi Cooperative Societies Act, 2003 [hereafter “the 2003 Act”], which requires the nomination/appointment of a Returning Officer [hereafter “RO”] by the Registrar Cooperative Societies [hereafter “RCS”] in certain classes and categories of Society cases.

5. Learned senior counsel for the Society, on the other hand, contends that given the time-frame which was made known to all members of the Society, the Court should not interfere and in any event, Section 39 of the 2003 Act declares that irregularities in procedure would not vitiate the acts, if any, of the Society.

6. It is also contended that in any event, no exception can be taken to the omission by the RCS to appoint an RO. In these circumstances, the Court Observer had directed the appointment of another RO.

7. During the course of hearing, the Court was informed of the

RO's notice dated 07.01.2016 publishing an election programme. The relevant schedule published in this regard is as follows:

<i>Sl. No.</i>	<i>Programme</i>	<i>Date</i>	<i>Timing</i>	<i>Venue</i>
1.	<i>Issue of Nomination Forms (Free of cost)</i>	12/01/16	10:30 am to 3:30 pm	The Home Living Cooperative G/H Society Ltd., Sector-9, Plot No.14, Dwarka, New Delhi-110077
2.	<i>Filing of Nomination Forms</i>	13/01/16	10:30 am to 3:30 pm	-do-
3.	<i>Scrutiny of Nomination Forms</i>	14/01/16	4:00 pm	-do-
4.	<i>Display of list of valid nominations</i>	14/01/16	5:00 pm	-do-
5.	<i>Withdrawal of Nominations</i>	15/01/16	10:30 am to 3:30 pm	-do-
6.	<i>Display of final list of contesting candidates</i>	15/01/16	5:00 pm	-do-
7.	<i>Polling, if necessary</i>	24/01/16	10:00 am to 3:30 pm	-do-

8. The Court is of the opinion that at this stage, it would not be appropriate to adjudicate on the effect of omission by the RCS in appointing an RO. That would be prejudging the issue since elections have not been completed. However, what the Court can do is to require the RCS to take immediate action for the appointment of the RO – its omission to do so led to the nomination of an Advocate as an

RO by the Court Observer. Given that this remedial step is possible at this stage, the Court hereby directs the RCS to – within the next two days – appoint a competent Officer as RO to carry-out the elections to the Society – under the overall supervision of the Court Observer. The election schedule mandates the scrutiny of nomination forms tomorrow, i.e. on 14.01.2016. Having regard to the fact that two days' time is available to the RCS, the schedule published by the existing RO (whose function shall henceforth be performed by the statutory RO), shall now be shifted appropriately by two days. The scrutiny shall accordingly take place on 16.01.2016 on which date itself, the list of valid nominations shall be displayed. The last date for withdrawal of nominations shall be 17.01.2016 and display of final list of contesting candidates shall be published on the same day. The date scheduled for polling, i.e. 24.01.2016 thus remains undisturbed. The writ petition is disposed of in the above terms.

Order *dasti* under signatures of the Court Master.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 13, 2016

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