

\$~52 & 54

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

% **Decided on : 21.01.2016**

+ W.P.(C) 7945/2014 & C.M.Nos.18629/2014 & 20301/2015
RIVIERA APARTMENTS O.C.H.S. LTD. Petitioner

Through: Mr.Suhail Malik and Mr.Kabir
Chhilwar, Advocates

versus

REGISTRAR OF CO-OPERATIVE SOCIETIES & ANR.

..... Respondents

Through: Ms.Sweetly Singh, Advocates for R-1
and R-2.

+ W.P.(C) 6164/2015 & C.M.No.11197/2015

RIVIERA APARTMENTS O.C.H.S. LTD. & ANR. Petitioners

Through: Mr.Suhail Malik and Mr.Kabir
Chhilwar, Advocates

versus

REGISTRAR OF CO-OPERATIVE SOCIETIES & ORS

..... Respondent

Through: Mr.Sanjoy Ghose, ASC, GNCTD and
Ms.Pratishtha Vij, Advocate for R-1
and R-2.

Mr.Harish Pandey, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

1. The petitioner co-operative society is aggrieved by the order of the Registrar of Cooperative Societies dated 10.11.2014 (in W.P.(C) 7945/2014). The said impugned order noticed that the strength of the

Managing Committee had fallen below its minimum number of 7 as prescribed in its bye-laws and accordingly appointed an Administrator under Section 37 (1) (b) of the Delhi Cooperative Societies Act, 2003. The said society is also aggrieved by the direction of the Registrar by order dated 04.06.2013 – which it challenges in W.P.(C) No.6164/2015. Vide the said order, the Registrar of Cooperative Societies directed the society not to take any major financial or policy decision. Learned counsel had contended that the Registrar lacks the authority to issue the order appointing the Administrator. He relied upon the fact that neither the Act nor the previous rules framed under the enactment prescribed a minimum required number of Members in the Managing Committee. It was submitted that the Registrar in these circumstances appears to have acted without applying his mind. The respondents on the other hand contended that bye-law 24(1) of the Bye-laws of the Society mandates that the Managing Committee “*shall consist of not less than 7 and more than 11 members*” of the society.

2. It is evident from the above that the basic premise of the petitioner’s grievance i.e. the order of the Registrar being irregular or without authority of law is misconceived. During the hearing there was no dispute that bye-law 24 (1) is cast in a clear manner; there is no room for doubt that at all times the membership of the Managing Committee has to be 7 if not more. Since there is no dispute that the membership of the managing committee had fallen below 7, the court is of the opinion that there is no infirmity in the order of the Registrar appointing the Administrator. Likewise, the Court is of the opinion

that the direction not to take any major financial or policy decision during the time when the administrator exercises his powers over the society does not warrant interference.

3. During the course of hearing it was submitted that the term of the Managing Committee had ended – since its last elections were held on 29.07.2012. According to Section 35 (3) of the Act, the tenure of the managing committee cannot be more than three years. Thus, the term of the Managing Committee itself ended on 28.07.2015. Learned counsel expresses a further difficulty saying that the elections cannot be ordered till the society accounts are accepted by the Registrar and that apparently only recently the same have been rejected. This court is of the opinion that the mandate of Managing Committee having ended on 29.07.2015, Section 35 (5) comes into operation and leaves no choice with the Registrar who has to ensure that the elections are held under the aegis of the Administrator appointed in that regard. Furthermore, as regards the difficulties expressed with respect to accounts under Section 60 (6), it is pointed out on behalf of the Registrar that by virtue of Section 60 (6) on the failure of the audit by the cooperative society within the stipulated time, the Registrar shall get the audit conducted and recover the fee, if any, paid in that regard. In light of the above discussion, a direction is hereby issued to the Registrar to decide within four weeks whether to permit the Administrator appointed by him to continue and oversee the elections. The Registrar shall also appoint a returning officer to oversee the elections. The entire process shall be completed within three months from today. The interim orders are hereby vacated.

4. Both the writ petitions along with pending applications are disposed of in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JANUARY 21, 2016

rb

