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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 6336/2015, CM No. 11523/2015 & CM No. 13317/2015
RASHI COOP. G/H SOCIETY LTD. Petitioner

Through: Mr. R.K. Gupta, Advocate.

versus

THE REGISTRAR, COOPERATIVE SOCIETIES Respondent

Through: Mr. Praveen Kumar Jain, Advocate
alongwith Mr. Naveen Kumar Jain,
Advocate for R.Nos. 2 to 8.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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17.03.2016

The petitioner-Cooperative Society complains that acting on the complaint of certain members that reserved seats have not been properly notified for the purpose of elections, the Registrar of Cooperative Society (RCS-the first respondent in this case) directed the appointment of an Administrator by an order of 29.05.2015. The petitioner-Society complains that this order was not preceded by any hearing and that even the copy of such order was not served upon it. In any case, it was urged that such an order - on the face of it, that the Special General Body Meeting had been called for well in advance and was scheduled to be held on 31.05.2015 could not have been without some modicum of previous hearing or opportunity for hearing given to it.

This Court, on the first date of hearing, had stayed the operation of the order by which Administrator was appointed. The Court was

conscious of the fact that the elections were held—in terms of the schedule drawn on 31.05.2015. Counsel for the contesting respondents—who initiated the complaint which ultimately resulted in the order of the Registrar—contends that the conduct of the election was unquestionable. It is urged that in the election process, the dates were scheduled and rescheduled and several assurances were given to members who wished to contest leading them to withdraw the nominations, which were not only misrepresentations, but fraudulent. These irregularities persuaded the Registrar to issue the direction on 29.05.2015 which is impugned in the present case. It is urged that a combined reading of Sections 35 and 70 of the Delhi Cooperative Societies Act would show that Registrar has the power to issue the directions that were given to the Society.

The elections in this case were due on the expiry of the tenure of the Managing Committee of the petitioner-society; the Registrar had apparently directed appointment of the Returning Officer. Whilst, it might be a fact that some of the members had some disputes with respect to the assurances held out by the erstwhile members of the Managing Committee, that *ipso facto* could not have empowered the Registrar to take the drastic step of completely staying the elections as he did and appointing the Administrator. The Registrar's written submission by way of a counter-affidavit is on the record. It does not in any manner throw light on the objective considerations and the circumstances which led to the passing of an order of such ramification given that the election notice was given three months in advance. The mere existence of a power—though which might be statutory—would

not *ipso facto* justify every order purportedly made by invoking it. In the present case, the Registrar chose not only to stay the proceedings, but proceeded to straightaway issue an order appointing an Administrator. The fact remains that the elections were scheduled in accordance with the provisions of the Delhi Cooperative Societies Act; if a few members had some dispute with respect to its conduct or the result, the Registrar should have at least restrained himself, instead of proceeding not only to stay the elections, but also to appoint an Administrator. There are no circumstances to justify such use of power in a summary manner as appears to have been done in the present case.

For the foregoing reasons, the impugned order is hereby quashed. At the same time, it is open to the complainants/defending respondents to raise the dispute, if any, to the manner in which the elections were conducted or they were misled by withdrawing the nominations, etc. In case such a dispute is made under Section 70/71 of the Delhi Cooperative Societies Act, the Registrar shall take necessary steps in accordance with law either to decide it or have it resolved through an Arbitrator. The Registrar shall, in any case, ensure that the complaint/reference is decided on merits and not rejected on account of delay.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 17, 2016

sapna/bg