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

+ W.P. (C) 11427/2015, CM APPL.30135/2015

VINOD KUMAR AGARWAL Petitioner

Through: Mr. Barun Kumar Sinha, Advocate.

versus

NCT OF DELHI AND ORS Respondents

Through: Mr. Siddharth Dutta, Advocate for
Resp-1, 2 & 3/GNCTD.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

12.02.2016

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1. Learned counsel for the respondents states that the counter affidavit may be taken on record. It is so ordered.
2. The short question to be decided is whether the order dated 12.11.2014 impugned in this case violates Section 61 (1) of the Delhi Cooperative Societies Act, 2003 (hereafter referred to as "the Act").
3. The Registrar of Cooperative Societies by the impugned order held that having regard to the previous show cause notice dated 04.03.2014 - issued to the Eastend Apartment Cooperative Group Housing Society, it was expedient to hold an enquiry under Section 61(1) of the Act. The petitioner's contentions are twofold. He submits that the complaint which formed the basis of the impugned order - by one Dr. L.P. Gupta, a member of the society - directly implicated him and levelled serious allegations of embezzlement and irregularity in the funds of the society; the writ petitioner at the relevant time being President of the said cooperative society. The learned counsel argues,

in the first instance, that as per the Proviso to Section 61 (1), it is necessary for the Registrar to grant opportunity before forming an opinion whether an enquiry is necessary or not.

4. The second ground for challenge is that one Mr. S.K. Hari (retired Deputy Registrar) was appointed as an Inspection Officer under Section 61 of the Act. It is submitted that this is contrary to the said provision which permits an enquiry by “a person not below the rank of Assistant Registrar”.

5. Learned counsel for the cooperative society endeavoured to contend that the impugned order is valid and justified. It was submitted that the society had given an opportunity of a show cause notice on 04.03.2014 which is followed by an opportunity of personal hearing on 24.03.2014. In these circumstances, the first requirement of natural justice as a pre-requisite for the inspection order was satisfied. Secondly, it was contended that Mr. S.K. Hari, an Inspection Officer, was in fact Deputy Registrar on the date the impugned order was made and consequently fulfilled the requirement of Section 61 (1).

6. The Court is of the opinion that so far as the first issue is concerned, the record discloses that the show cause notice was addressed to the society - none of the previous office bearers much less the present petitioner who was an erstwhile President - were issued with notices. The Proviso to Section 61 (1) which applies in the present situation states as follows: -

“Provided that where a serious complaint is made by a member or a public servant in writing about the affairs of a

co-operative society or committee or office bearers, to the Registrar or to any person authorized by him in this regard not below the rank of Joint Registrar and if the Registrar is prima-facie satisfied, after recording his views in writing and affording an opportunity to the person against whom complaint has been made, he may order an inspection in respect of only issue or issues as the case may be, raised in the complaint and the inspection shall be conducted by a person not below the rank of an Assistant Registrar.”

7. It is evident that the satisfaction is to be recorded by the Joint Registrar or the Registrar after “affording an opportunity to the person against whom the complaint has been made”. In this case, the complaint was made by Dr. L.P. Gupta. It specifically alleged that the present petitioner was one of the wrongdoers on account of whose action, the cooperative society suffered losses. There is nothing on the record to suggest that the petitioner was issued notice or granted opportunity as contemplated by Proviso to Section 61 (1).

8. So far as the second issue is concerned, the Court is of the opinion that the inspection is to be conducted “by a person not below the rank of Assistant Registrar”. The tense used by the statute - present continuous - is indicative of the circumstance that the official should not only hold the position specifically described, i.e., “not below the rank of Assistant Registrar” at the time when nominated to perform the task, but also, continue to hold that position, throughout the proceedings and at the time of submission of the report. The reason for this is that the statutory nature of inspection and the serious implication which it is likely to have upon the individuals concerned as well as the members of the general public cannot be undermined. If

the other interpretation were to be favoured, the inspection at the behest of a third party, who is alien to the official hierarchy and, therefore, not accountable to the Government after her or his retirement, can have unanticipated repercussions. In *Central Bank of India v. C. Bernard*, 1991 (1) SCC 319, the Supreme Court upheld the ruling of the High Court whereby the action in a disciplinary proceedings conducted at the behest of the public employer and concluded by a retired official was quashed. The Court upheld the decision that the proceedings conducted and held by someone outside the official hierarchy would be void and contrary to the rules. Similarly, in the present case, the allusion to Assistant Registrar means not only that the concerned individual should hold a particular rank on the date he or she is nominated, but should also continue to be so during the entirety of proceedings till its culmination and submission of the report.

9. In view of the above discussion, the impugned order is hereby quashed. It is open, however, to the Registrar to issue specific notice to the concerned individuals and after affording them a reasonable opportunity take such decision in accordance with law as is warranted in his opinion.

10. The writ petition is allowed in the above terms.

Order dasti.

S. RAVINDRA BHAT, J

FEBRUARY 12, 2016/vikas/

DEEPA SHARMA, J