



2024:DHC:7910-DB



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

+ **W.P.(C) 14269/2024, CM APPL. 59753-54/2024**

M.S. BALAKRISHNAN AND ANR

...Petitioners

Through: **Mr. G.L. Verma, Advocate.**

versus

REGISTRAR OF COOP SOCIETIES AND ORS ...Respondents

Through: **Mr. Udit Malik, Additional
Standing Counsel (Civil) for
GNCTD.**

**Mr. Rajiv Vig and Ms. Reet Vig,
Advocates for R-4 & R-5.**

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Date of Decision: 9th October, 2024

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present writ petition has been filed under Article 226 of the Constitution of India seeking setting aside of (i) order dated 14th May, 2024 passed by the Assistant Registrar, office of Registrar Co-operative Societies appointing an Inquiry Officer; (ii) order dated 4th January, 2024 passed by the Financial Commissioner in Revision No.149/2022 whereby the matter was remanded back to the Registrar of Cooperative Societies to decide afresh and; (iii) the summons dated 13th August, 2024 issued by the Inquiry Officer directing the petitioners to appear before him.

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2. A complaint dated 31st March, 2019 regarding financial irregularity, misutilisation and misappropriation of funds in the respondent no.2/Indian Airlines Cooperative Group Housing Society was filed before the Registrar Cooperative Societies (for short 'RCS') under Section 62(1) of the Delhi Cooperative Societies Act, 2003 (for short 'DCS Act') by 1/3rd members of the Society. An Inquiry Officer was appointed by the RCS *vide* order dated 31st January, 2020 on the aforesaid complaint. Some members of the old Managing Committee filed Revision No.39/2020 before the Financial Commissioner against the aforesaid order of RCS, which was disposed of *vide* order dated 24th December, 2020 directing RCS to look into the legal provisions and if required, consider modification in the order or issue orders afresh to enable inquiry to continue and the Inquiry Officer should complete the enquiry expeditiously, preferably within three months. Thereafter, the RCS *vide* order dated 9th February, 2021 appointed a Retired Government officer as Inquiry Officer under Section 62 of the DCS Act, 2003. Complaints/representations regarding ineligibility of the Inquiry Officer so appointed by the RCS were filed. The Inquiry Officer submitted his Report dated 1st July, 2021, and the final/additional Report dated 24th February, 2022 after considering the objections raised, giving a clean chit to the members of old Managing Committee.

3. Aggrieved by the said Inquiry Report, the respondents filed Revision No.149/2022 wherein the impugned order dated 4th January, 2024 was passed by the Financial Commissioner setting aside the Inquiry Report so filed and remanding the matter back to the RCS for fresh consideration. Thereafter, the Assistant Registrar, office of RCS issued the impugned order dated 14th May, 2024 appointing an Inquiry Officer and directing him to complete the inquiry within a period of 60

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days. Consequently, impugned summons dated 13th August, 2024 were issued to the petitioners by the Inquiry Officer to appear for hearing on 20th August, 2024 at 11:30 p.m. alongwith relevant records. Hence, the present petition has been filed impugning the aforementioned orders.

4. This Court has heard the arguments of the learned counsel for the petitioner and examined the records of the case.

5. At the outset, it would be appropriate to consider the order dated 4th January, 2024 passed by the Financial Commissioner in Revision No.149/2022. Upon examination, it appears that the same is premised on the question of jurisdiction of a retired officer being appointed as Inquiry Officer to conduct inquiry under Section 62 of the DCS Act, 2003 and the validity of the Inquiry Report submitted by him. After considering the relevant provisions of DCS Act, 2003 as well as DCS Rules, 2007, the Financial Commissioner had come to the conclusion that appointment of a Retired Government officer as an Inquiry Officer in the present case was a clear violation of provisions of the Act and Rules and thereby held that the Inquiry Report submitted by such an Inquiry Officer is not sustainable, irrespective of the fact that the parties had participated in the inquiry so conducted, as the objections were raised by the respondents at the initial stage. Consequently, the Financial Commissioner set aside the Inquiry Report and remanded the matter back to the RCS to take action afresh as per the provisions of DCS Act and Rules. To that extent, this Court does not find any ground to interfere with the sound reasoning rendered by the Financial Commissioner in the aforesaid order.

6. Besides, this Court finds that there is no explanation as to why the petitioners did not assail the order of the Financial Commissioner dated 4th January, 2024 at an appropriate stage, allowing the Revision Petition



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filed by the respondents herein. To that extent, the order is final and binding against the parties therein. This Court finds that the petitioner had participated in the said proceedings and the submissions too were recorded. Thus, the petitioner cannot assail the said order after it has attained finality and has worked itself out by the RCS appointing an Inquiry Officer in the execution thereof.

7. It is also clear that not only the Inquiry Officer has been appointed afresh by the RCS in execution and compliance with the order of the Financial Commissioner referred to above, but the Inquiry Officer has also acted in furtherance of such appointment and has issued summons to the petitioners for appearance. The summons issued under Section 62 of the DCS Act, 2003, has also been assailed in the present writ petition. This challenge appears to be inconceivable, both on facts as also in law. Once the original order of the Financial Commissioner has not been challenged and has been executed in accordance with law, the petitioners cannot be permitted to overturn the apple cart at their whims and fancies. Non-challenge of Financial Commissioner's order has a binding effect upon the parties to the said *lis*.

8. Besides, the summons have been issued for appearance for conducting an enquiry under Section 62 of the DCS Act, 2003 which cannot and should not be interdicted by this Court at this stage. No order interdicting summons in the nature of an inquiry is perceivable, that too, when the same is in pursuance of an order passed by an authority in exercise of its statutory powers and functions. If summons of such nature are interfered with, no inquiry would ever get completed. Moreover, there is no penal action apprehensible at this stage and the challenge to such summons too appears to be premature.

9. Though the Supreme Court in *Neeharika Infrastructure (P) Ltd.*



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vs. State of Maharashtra & Ors., (2021) 19 SCC 401 was concerned with quashing petitions filed under section 482 of the Code of Criminal Procedure, 1973 *qua* the investigations under section 173 Cr.P.C., 1973, yet the ratio appears to be also applicable in the present facts. In that, the Supreme Court had held that the Courts should not interfere at the stage of investigations, unless non-interference would result in miscarriage of justice. In the present case, all that the Inquiry Officer has summoned the petitioners for is to conduct an inquiry under section 62 of the DCS Act. There appears to be no apparent miscarriage of justice or grave prejudice caused to the petitioners, at least at this stage of the proceedings.

10. On the aforesaid analysis, this Court does not find any reasons to interdict the inquiry proceedings at this stage. In any case, the petitioners would get full opportunity to defend themselves and can raise all their contentions before the inquiring authority, taking all the objections that are possibly available with them, that will be decided by the authority in accordance with law.

11. Consequently, the present petition, along with the pending applications, stands dismissed.

CHIEF JUSTICE

TUSHAR RAO GEDELA, J

OCTOBER 9, 2024/rl